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From:	Working Party on e-Law (e-Justice)
To:	Permanent Representatives Committee/Council
No. prev. doc.:	13666/15
Subject:	Roadmap on the sustainability of e-CODEX - Adoption

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1. The Working Party on e-Law (e-Justice) examined at its meeting on 13 November 2015 the results of the work carried out by the expert group on e-CODEX as set out in the Annex. The Working Party reached an agreement in principle on the content of the roadmap.
2. The Working Party on e-Law (e-Justice) invites the Coreper/the Council to:
  - a) confirm the importance of a new co-financed project covering the maintenance of the e-CODEX assets;
  - b) invite the European Commission to continue to cooperate with the expert group on e-CODEX regarding the on-going reflections relating to a proposal for long-term sustainability and the future governance of e-Justice at EU level, including the designation of an EU agency for that purpose;
  - c) invite the Commission to submit a legislative proposal covering the extension of the mandate of eu-LISA and to consider the possibility to evaluate that mandate after 7 years.

**Roadmap on the sustainability of e-CODEX****I. Introduction**

1. e-CODEX is a large-scale pilot project, co-financed by the Commission. It was launched in 2010 under the Multiannual European e-Justice Action Plan 2009-2013. It focuses exclusively on the realisation of some of the anticipated functions of European e-Justice as described in that Action Plan. In its meeting on 4 December 2014<sup>1</sup> the Council (Justice and Home Affairs) identified and underlined the need to establish a sustainable framework for the technical solutions developed in the context of the e-CODEX project. This issue was also addressed at the informal JHA ministerial meeting on 30 January 2015. The Council (Justice and Home Affairs) established the expert group on e-CODEX related issues on 15 June 2015<sup>2</sup>.
2. As outlined previously in papers presented to the Working Party on e-Law (e-Justice), the sustainability of e-CODEX plays an important role in achieving the aims and ambitions for the Digital Agenda for Europe by providing a secure and effective environment for data exchange in the field of e-Justice. This has been recognised in the Strategy on European e-Justice 2014–2018<sup>3</sup> and the associated Action Plan<sup>4</sup>, both of which have been endorsed by the Council of Ministers of the European Union and the European Parliament. All related activities must specifically take into account the principles of voluntary action, decentralisation, interoperability and, especially, the independence of the judiciary.
3. This roadmap outlines the tasks needed to ensure the mid- and long-term sustainability of e-CODEX.

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<sup>1</sup> See 15774/14

<sup>2</sup> See 9331/15

<sup>3</sup> See 17006/13

<sup>4</sup> See 9714/14

## **II. Description of tasks to ensure long-term sustainability**

4. This first and one of the main tasks is to develop the roadmap on sustainability, starting with the technical solutions developed in the context of the e-CODEX project and concluding with an organisational and legal framework to ensure the mid- and long-term sustainability. This document contains an initial overview of this roadmap and additional future tasks for e-CODEX.
5. The tasks identified include:
  - a) an impact and benefits assessment to build the business case for the long-term sustainability of e-CODEX;
  - b) a business plan that supports investment and suggests an approach for involving both the Commission and the Member States;
  - c) an engagement plan for key stakeholders;
  - d) an impact and benefits analysis to demonstrate how the building blocks can benefit national e-Justice systems and support citizens, businesses and legal professionals;
  - e) a financial assessment to estimate the level of investment required for each stage.
6. Further tasks were added, including:
  - a) practical arrangements (including timelines) for management of the output to be kept;
  - b) strategic and operational decisions, including security accreditation aspects;
  - c) links to other European projects;
  - d) feasibility assessment.

### III. Components to be maintained

7. The expert group confirmed the following initial list of components to be maintained. These technical building blocks are central to the sustainability of the e-CODEX pilot use cases<sup>5</sup>.
- a) Domibus Gateway;
  - b) Domibus Connector Framework;
  - c) National implementation example / stand-alone-connector;
  - d) Administrative interface;
  - e) Production environment & test environment;
  - f) Documentation and supporting documentation (manuals, specifications and tests);
  - g) Pmodes;
  - h) Truststores;
  - i) Support;
  - j) SMP/SML Server for Dynamic Discovery;
  - k) Central Testing Platform;
  - l) XML structures and core legal concepts.

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<sup>5</sup> The same applies to the e-SENS use cases.

8. In addition to these items the following non-technical topics were mentioned as elements to be maintained:
- a) Mutual legal agreements between partners in cross-border business cases, e.g. the Circle of Trust Agreement;
  - b) The way in which the new governance arrangement will support organisational and administrative interoperability.
9. In addition to these items the following non-technical topics were mentioned as needing to be addressed in more detail:
- a) The new principle for incoming legal acts “digital by default”;
  - b) The impact of regulations and directives.

#### **IV. Criteria for the possible involvement of an agency**

10. In its conclusions of 4 December 2014, the Council (Justice and Home Affairs) invited the Commission to finalise its internal reflections and submit to the Council solutions for the sustainability of the e-CODEX project in the short and longer terms, on the aspects concerning the future governance of e-Justice at EU level, including the possibility of using an existing EU agency. Based on this invitation the expert group has, to support the Commission, started to identify criteria for involving an existing European agency. Both the governance and technical aspects need to be considered.
11. With regard to governance, it is of utmost importance that the independence of the judiciary be respected and ensured. One solution could be to establish a seat on the agency's executive committee and an ‘opt out’ for the judiciary.

12. More specific requirements include:

- a) The agency chosen for the governance of the sustainability of e-CODEX must have a clear mandate, given the importance of the independent nature of the solution/s and the services required. The mandate must ensure the legal feasibility of the agency solution and be sufficiently funded.
- b) The agency must be ready, and enabled within a specific timeframe. Considering the initiatives and programmes available it is clear that the agency should be ready to accommodate e-CODEX components no later than mid-2018, to ensure the continued availability of e-CODEX. So the preparatory work needs to start at a suitable juncture beforehand.
- c) The agency must be able to operate for a minimum period of 7 to 10 years so as to provide an efficient and effective long-term solution. This minimum period will bring continuity for the services offered.
- d) With regard to the technical aspects, the agency will need to meet various requirements, including willingness to maintain and further develop the components of a decentralised architecture, as is the case for e-CODEX. The agency clearly has to agree to this since the architectural design must not be changed.
- e) Using this decentralised architecture the agency should be able to manage a diverse community of users. This is due to the fact that the e-CODEX project covers use cases from different domains and with different stakeholders. e-CODEX offers services to support cross-border legal procedures. The domain of European e-Justice comprises registers, civil proceedings and criminal cases.

13. All have their own requirements in terms of support and maintenance, which should dealt with by the agency. The management of this user community needs careful and thoughtful handling. Any further development of the components concerned needs to be clearly aligned with this user community.

14. The agency should already have available the necessary expertise and access to the resources needed for the maintenance of e-CODEX. It is to be expected to extend the (re)-use of the e-CODEX components to new use cases in the judicial domain and beyond. These daily operations require sufficient and readily available support for the e-CODEX technical solutions, and do not allow time for training on the job.

#### **V. Assessment of potential candidates for an agency - eu-LISA, ENISA and INEA**

15. The sustainability of e-CODEX assets has been identified as an important issue since its launch in December 2010.

16. The following initial options for maintenance of e-CODEX services were identified:

- a) maintenance by the Commission;
- b) maintenance by a consortium of Member States;
- c) maintenance by an allocated Member State;
- d) maintenance by a third party (commercial).

17. The initial options were examined within the e-CODEX project and subsequently in the Working Party on e-Law (e-Justice). A document drafted by the Italian delegation on the topic of the sustainability of e-CODEX, which was discussed at the meeting of the Working Party on 21 October 2014, identified three options<sup>6</sup>:

- a) Firstly, the Commission could be invited to assume responsibility for the continued maintenance of the e-CODEX solutions. However, the Commission may not be optimally equipped for such a form of operational management.
- b) A second option could be to assign these responsibilities to one or more Member States. Comparable experiences have, however, shown that this can create structural, organisational and technical difficulties (e.g. the Schengen Information System). Therefore such an approach might not be a viable solution.

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<sup>6</sup> See 14418/14, paragraphs 9 to 11

- c) A third option would be to entrust an existing agency with these tasks. Two possible candidates identified by the Italian delegation were eu-LISA and ENISA. Those two suggestions should not, however, be regarded as the only options - other potential candidates could be considered as well, if feasible.
18. As stated in paragraph 16 of 14418/14, “whichever solution is chosen, a legal instrument is necessary for the assignment of managerial tasks to an agency (or other body). Given the fact that the preparation and negotiation of such an instrument will require a substantial amount of time, the first steps should be taken as soon as possible.”
19. The Council concluded that "the Commission should be invited to continue its internal reflections and to submit to the Council solutions for the sustainability of the e-CODEX project in the short term and, in the long term on the aspects concerning the future governance of e-Justice at EU level, including the possibility of using an existing EU agency<sup>7</sup>."
20. The e-CODEX Management Board drafted criteria to evaluate the three potential existing agencies mentioned above. These criteria were confirmed by the expert group on e-CODEX on 8 October 2015.
21. The Management Board of e-CODEX has approached eu-LISA, ENISA and INEA to check their respective interest, willingness and approach towards acting as a partner for the sustainability of e-CODEX. Representatives of the e-CODEX project visited eu-LISA on 5 May 2015 and ENISA on 21 September 2015. Representatives of INEA attended the meeting of the expert group on e-CODEX on 12 November 2015.
22. After matching the criteria to the agencies, it is clear that none of the existing agencies currently meets all the criteria fully. In particular, launching the maintenance operations from 1 June 2016 onwards, or else from 2017, seems impossible owing to the necessary changes to the mandate of all three agencies. INEA and ENISA meet the fewest criteria. eu-LISA meets most of the criteria: those on governance, know-how and continuation of the decentralised architecture have been explicitly accepted by the management of eu-LISA.

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<sup>7</sup> See 15774/14, paragraph 20.b)

## VI. Suggested way forward

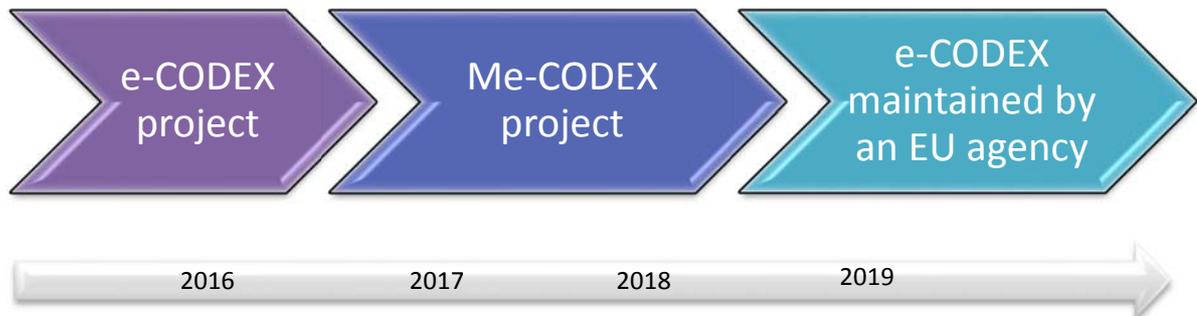
23. The Commission is invited to take the necessary measures to ensure that the CEF - DSI e-Delivery is ready by 1 June 2016. The Member States will support the Commission in the further development of CEF DSI e-Delivery in order for it to meet the requirements of the e-CODEX community.
24. An intermediate solution for the maintenance of e-CODEX is required. The impact of e-CODEX on daily operations in several Member States requires that its operations be guaranteed. A proposal for a grant seems the preferable option. The proposal should be aimed at securing the maintenance and further acceptance and implementation of e-CODEX. This shall be done for the building block e-Delivery by taking up the gateway, and possibly the connector, provided as part of the CEF DSI e-Delivery.
25. The expert group on e-CODEX recommends that the Management Board of e-CODEX start contacts with eu-LISA, in full cooperation with the Commission, with a view to it taking care of the maintenance of e-CODEX at a date to be agreed between all parties, though preferably no later than 1 August 2018. As a minimum, the following topics in particular should, be addressed in these discussions:
  - a) the mandate of eu-LISA;
  - b) sufficient funding for the operations to maintain e-CODEX;
  - c) the impact of the independent position of the judiciary on the governance of eu-LISA;
  - d) issues in the daily operations, such as release calendars and new use cases.
26. In the meantime between the end of the e-CODEX project and the uptake by a European agency the maintenance of the e-CODEX assets have to be ensured. A first step in this direction was taken by the Commission in its latest call for proposals for an Action Grant on e-Justice.<sup>8</sup> The Member States can use this call to apply for funding with the focus on the maintenance of the e-CODEX assets.

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<sup>8</sup> CALL FOR PROPOSALS FOR ACTION GRANTS 2015 – ACCESS TO JUSTICE, Call identifier: JUST-2015-JACC-AG, Publication date: 29-09-2015

## VII. Timeline

27. The planned timeline has to make sure that the sustainability of e-CODEX is ensured in the long term and ensure that there are no gaps between the different phases. The final goal is to entrust the operations to an agency which has the ability to perform the necessary tasks.



28. The e-CODEX project will end on 31 May 2016, after which two months will be needed for the official closing of the project. Hence the intended new funding project should start not later than 1 August 2016. The new funding project is planned for a duration of 24 months until 31 July 2018.
29. In parallel with these activities, a suitable agency needs to be found and the necessary legal and technical arrangements enabling that agency to fulfil its long-term role as a host for e-CODEX solutions, have to be made. The overall target is for the agency to start working by 1 August 2018. This means that the new funding project mentioned above will need to have finalised a corresponding handover document no later than March 2018. This handover document has to specify in detail how the results of e-CODEX will be transferred to the agency for proper long-term maintenance, taking into account all associated legal and technical aspects.