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Subject: Council Conclusions “Access to Justice – Seizing the Opportunities of Digitalisation”
- Text as agreed by Coreper

At its meeting on 7 October 2020, Coreper reached agreement on the text of the draft Council conclusions on 'access to justice – seizing the opportunities of digitalisation'.

The text agreed by Coreper, as verified by delegations, is set out in the Annex to this note.

Council conclusions

‘Access to justice – seizing the opportunities of digitalisation’

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING

- the Council conclusions of 9 June 2020 on shaping Europe’s digital future;
- the Council conclusions of 3 December 2019 on the future of civil justice cooperation;
- the Council conclusions of 7 October 2019 on Eurojust: the Union’s judicial cooperation unit in the digital age;
- the Council conclusions of 18 February 2019 on the coordinated plan on the development and use of artificial intelligence made in Europe;
- the Council conclusions of 8 June 2017 on the way forward to improve information exchange and ensure the interoperability of EU information systems;
- the Council’s 2019-2023 Strategy on e-Justice of 6 December 2018;
- the 2019-2023 Action Plan European e-Justice of 6 December 2018;
- the conference ‘Access to Justice in the Digital Age – Perspectives and Challenges’ hosted by the German Presidency on 16 July 2020;

- the communication from the Commission entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’ (COM(2020) 456 final);
- the 2020 EU Justice Scoreboard (COM(2020) 306 final);
- the communication from the Commission entitled ‘Shaping Europe’s Digital Future’ (COM(2020) 67 final);
- the communication from the Commission entitled ‘A European strategy for data’ (COM(2020) 66 final);
- the Commission’s White Paper entitled ‘On Artificial Intelligence – A European approach to excellence and trust’ (COM(2020) 65 final);
- the 2020 ‘Your rights matter: Data protection and privacy, Fundamental Rights Survey’ by the European Union Agency for Fundamental Rights;
- the 2016 ‘Handbook on European Law relating to access to justice’ by the European Union Agency for Fundamental Rights, the Council of Europe and the European Court of Human Rights;
- the study on the use of innovative technologies in the justice field, published by the Commission on 14 September 2020;
- the study on cross-border digital criminal justice, published by the Commission on 14 September 2020;
- the recommendation of 19 May 2019 ‘Unboxing Artificial Intelligence: 10 Steps to protect Human Rights’ by the Commissioner for Human Rights of the Council of Europe;
- the 2019 guidelines on Artificial Intelligence and Data Protection by the Consultative Committee of the Convention for the Protection of Individuals with regard to the Processing of Personal Data of the Council of Europe;
- the European Ethical Charter on the use of artificial intelligence in judicial systems, adopted by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe on 3-4 December 2018;
- the 2016 Rule of Law checklist by the Venice Commission of the Council of Europe;

Access to justice

1. EMPHASISES that access to justice is a fundamental right and a core element of the rule of law, which is one of the essential values on which the European Union is founded under Article 2 of the Treaty on European Union and which are common to the Member States. Article 19 of the Treaty on European Union states that the Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law, and entrusts shared responsibility for ensuring judicial review within the EU legal order to national courts/tribunals.
2. RECALLS the EU's mandate arising from Articles 81 and 82 of the Treaty on the Functioning of the European Union on the development of judicial cooperation, both in civil and criminal matters with cross-border implications, and reaffirms the associated objective of ensuring effective access to justice in the EU and in the Member States.
3. POINTS OUT that, as laid down in Article 47 of the Charter of Fundamental Rights of the European Union, every person has the right to effective remedy before an independent and impartial court/tribunal in order to have any violation of their rights and freedoms considered in a fair and public hearing, and to have a person to advise, defend and represent them.
4. AGREES that this right to effective legal protection must also be fully asserted in the conditions created by digital transformation in order to ensure the full and effective application of EU law, improve the acceptance of justice systems and strengthen confidence in the rule of law.

5. REAFFIRMS that the digital development of the justice sector should be human-centred and must be constantly guided by and aligned with the fundamental principles of judicial systems, namely the independence and impartiality of the courts/tribunals, the guarantee of effective legal protection, and the right to a fair and public hearing within a reasonable time.
6. EMPHASISES that digital technologies can be used in the judicial systems to advance adherence to rule of law standards and both the exercise of and respect for fundamental rights.
7. STRESSES that all citizens should benefit from the additional digital possibilities and should enjoy equal opportunities regarding digital access to justice and to fair proceedings, and that digital participation must therefore be unconditionally guaranteed to all societal groups without any discrimination. The needs of vulnerable persons, including children and vulnerable adults such as elderly people and persons with disabilities, and of victims of crime should be taken into account in particular. In any case, the use of digital technologies in justice systems should not diminish procedural safeguards for those who do not have access to such technologies.

Digital justice

8. UNDERSTANDS that digital transformation has profoundly changed people's lives in recent decades and will continue to do so.
9. RECOGNISES that the judicial systems, as a central pillar of the rule of law, are facing up to these evolving demands and are making the appropriate technological possibilities available to citizens. The EU Justice Scoreboard, a comparative information tool published annually by the European Commission, also already provides data on several indicators of the digitalisation of judicial systems for all Member States, such as online access to judgments or online claim submission and follow up.

10. EMPHASISES that measures such as the conducting of digital court/tribunal proceedings, electronic communication between parties, courts and authorities, the electronic transmission of documents and the use of audio and video hearings and conferencing have already become important elements of efficient judicial administration in numerous Member States.
11. WELCOMES the progress made in the area of e-Justice in the last decade, in particular the successive strategies and action plans (currently the e-Justice Strategy and Action Plan for 2019-2023).
12. OBSERVES a dynamic evolution of digital technologies in the judicial and legal sectors of the EU, in which plans to develop and use new technologies including artificial intelligence systems for justice are increasingly being formulated.
13. CONVINCED that the further digitalisation of the Member States' judicial systems has enormous potential to continue to facilitate and improve access to justice for citizens throughout the EU. Digital tools can help to better structure proceedings and to automate and accelerate the handling of standardised and uniform tasks, thereby increasing the effectiveness and efficiency of court/tribunal proceedings.
14. ENCOURAGES Member States in this context to make increased use of the digital tools offered by the eIDAS framework, such as secure means of electronic identification and trust services as highly effective instruments for promoting swift, convenient, secure, trusted and widespread access to the justice system.
15. EMPHASISES that digital solutions should, where possible, be developed for the entire course of judicial proceedings to enable faster and more secure proceedings and to facilitate cooperation between Member States. Such solutions should, as far as possible, be interoperable with each other.

16. REAFFIRMS the objective of further improving the high quality and transparency of judicial decisions in accordance with the rule of law through the use of digital technologies.
17. STRESSES nevertheless that employing digital technologies and means of electronic communication should not undermine the right to a fair hearing, in particular the right to equality of arms and the right to adversarial proceedings, the right to a public hearing, including in certain cases the right to an oral hearing in the physical presence of the affected party, as well as the right to appeal.
18. UNDERLINES the opportunities offered by digitalisation in enabling citizens and legal practitioners to have – as far as this is permissible under national law – comprehensive access at all times to legal information such as legislation and anonymised court/tribunal decisions, as well as information on the progress of their own case, and POINTS to the technological possibilities for making such information openly available, interoperable, easier to find and understand, easier to use and easier to re-use.
19. UNDERSCORES that providing better digital access to justice and conducting digital court/tribunal proceedings can benefit people from remote and rural areas in particular, provided that all the necessary technical prerequisites – such as high capacity broadband internet access – are met.
20. RECOGNISES nonetheless that it is necessary to retain traditional non-digital processes and, where available, physical helpdesks, alongside the new digital forms so as to provide citizens who cannot yet fully participate in technological developments with effective legal protection and access to justice. At the same time, there is a need to provide citizens with comprehensive information in simple and accessible language on how to use digital services and how to assert their rights in this way.

21. RECOGNISES that the use of digital technologies in the justice sector is highly sensitive and must therefore meet state-of-the-art-standards with regard to information and cyber security and fully comply with privacy and data protection legislation. Increased reliance on digital technology, and on automated processes in particular, requires careful human monitoring of such systems, including those using artificial intelligence, and increased transparency to ensure public trust.
22. EMPHASISES that the use of digital technologies can also improve access to out-of-court/-tribunal and alternative methods of dispute resolution while respecting the right to effective judicial protection in each individual case and the right to a fair trial, as well as access to information tools on rights and obligations for citizens, which can contribute to avoiding disputes.
23. RECOGNISES that further digitalisation of justice and enhanced use of new technologies are key enablers for ensuring the efficiency and resilience of justice systems and UNDERLINES that the Member States and the EU should increase their efforts to promote and further expand the digitalisation in this sector, with a view to ensuring equal access to and availability of digital services for everybody.
24. HIGHLIGHTS that the COVID-19 crisis has confirmed the need to invest in and make use of digital tools in judicial proceedings in the Member States and in cross-border proceedings.
25. RECOGNISES the importance of developing appropriate interoperable channels to ensure that justice systems can efficiently and securely cooperate digitally. e-CODEX (e-Justice Communication via Online Data Exchange) is the main tool for secured communication in both civil and criminal cross-border proceedings and its use should be further encouraged.

26. INVITES the Commission to present a legislative proposal, to be negotiated in the competent working party, ensuring the sustainability of e-CODEX with an adequate governance and management structure compatible with eu-LISA that respects the independence of the judiciary and the constitutional requirements of the Member States while ensuring adequate representation of the EU and Member States judiciary authorities, as well as the key stakeholders.
27. CALLS ON the Commission to assess possible actions and present its ideas for their implementation in the fields of judicial cooperation, while taking into account the opinion of the Member States:
- *in the field of civil and commercial matters*, by building on the progress already made towards the modernisation of cross-border exchanges between authorities through digitalisation and the use of IT, as in the context of the regulations on service of documents and taking of evidence, and continuing to examine the potential for modernisation of the core provisions of instruments in the field of civil and commercial matters, in line with the ‘digital by default’ principle, with a particular focus on those instruments that are of direct relevance to citizens and businesses;
 - *in the field of criminal matters*, by drawing on the results of the recent Digital Criminal Justice study and the work undertaken by the Member States, the Commission, Eurojust and all involved stakeholders in this context; in addition, by considering to which other judicial cooperation instruments in the field of criminal matters the e-Evidence Digital Exchange System (eEDES), which already supports procedures related to European Investigation Orders and mutual legal assistance between Member States, could be extended, while involving all Member States from the outset so as to prevent a Europe of different speeds.

28. CALLS ON the Commission to develop a comprehensive EU strategy towards digitalisation of justice by the end of 2020, for instance in the form of a communication, and to further develop the monitoring of relevant digitalisation indicators in the EU Justice Scoreboard in order to assist the EU and Member States in providing seamless access to justice, improving the effectiveness of justice systems and enabling efficient cross-border judicial cooperation.

Digital skills

29. NOTES that the promotion of digital skills in the justice sector is necessary in order to enable judges, prosecutors, judicial staff and other justice practitioners to use and apply digital technologies and tools effectively and with due respect for the rights and freedoms of those seeking justice.
30. HIGHLIGHTS the importance of creating awareness about the use of digital technologies in civil society and WELCOMES initiatives to raise citizens' awareness and to increase people's digital literacy, including through research, training and education, so that they can benefit from these digital technologies in order to further improve their access to justice.

31. EMPHASISES that it is especially necessary for judges, prosecutors, judicial staff and other justice practitioners to be sufficiently trained to be able to reap the benefits of using digital technologies, including artificial intelligence, and also to address the risks associated with the use thereof and the ethical requirements in terms of their own behaviour. To ensure competent use and avoid both over-reliance on and unfounded distrust of software outputs, users also need an adequate understanding of how artificial intelligence tools work and what the possibilities and the limitations of such tools are, including the assumptions about persons and groups on which they are based. Judicial training should also focus on adequate protection of individuals' rights in the digital space, including the right to privacy and data protection.
32. CALLS ON the Commission to promote training opportunities in digital literacy and skills for judges, prosecutors, judicial staff and other justice practitioners, including through the European Judicial Training Network (EJTN), as well as the use of digital technologies in judicial training methodology.

Artificial intelligence

33. NOTES that the deployment of artificial intelligence systems in the justice sector is already being researched and developed in the EU and that the practical implementation of such systems is already imminent in some Member States. RECOGNISES that a sufficient level of digitalisation is also a prerequisite for the use of artificial intelligence applications.
34. WELCOMES the European Commission's study on the use of innovative technologies in the justice field, which takes stock of the use of artificial intelligence and blockchain technologies by national authorities and recommends the strengthening of coordination at EU level in order to ensure synergies and interoperability.

35. EMPHASISES that artificial intelligence systems in the justice sector may in the future be capable of performing increasingly complex tasks – within the legal framework of a Member State – such as analysing, structuring and preparing information on the subject matter of cases, automatically transcribing records of oral hearings, offering machine translation, supporting the analysis and evaluation of legal documents and court/tribunal judgments, estimating the chances of success of a lawsuit, automatically anonymising case law and providing information via legal chatbots.
36. NOTES that the development of artificial intelligence systems, particularly machine learning systems, depends on the comprehensive availability of large data sets, such as anonymised court/tribunal files and judgments, that are of high quality in relation to the purposes they shall be used for.
37. CALLS ON the Commission, in cooperation with the Member States, to examine not only the conditions under which this information can be made machine-readable, available, reliable, re-usable and analysable, inter alia by making use of the ECLI framework, but also how biases in data sets can be addressed to prevent discriminatory outcomes.
38. RECOGNISES that the use of artificial intelligence tools has the potential to improve the functioning of justice systems for the benefit of citizens and businesses by assisting judges and judicial staff in their activities, accelerating court/tribunal proceedings and helping enhance the comparability, consistency and, ultimately, the quality of judicial decisions.
39. UNDERLINES that the use of artificial intelligence tools must not interfere with the decision-making power of judges or judicial independence. A court decision must always be made by a human being and cannot be delegated to an artificial intelligence tool.

40. EMPHASISES that the application of artificial intelligence in the justice sector may also contain the risk of perpetuating and possibly strengthening existing discrimination, including stereotypes, prejudices or structural inequalities, and of allowing distorted or opaque decision-making, and may thereby result in the impairment of fundamental rights such as human dignity, the right to liberty, non-discrimination, privacy and data protection and the right to a fair trial.
41. EMPHASISES that in certain cases, outcomes of artificial intelligence systems based on machine learning cannot be retraced, leading to a black-box-effect that prevents adequate and necessary responsibility and makes it impossible to check how the result was reached and whether it complies with relevant regulations. This lack of transparency could undermine the possibility of effectively challenging decisions based on such outcomes and may thereby infringe the right to a fair trial and an effective remedy, and limits the areas in which these systems can be legally used.
42. SHARES the assessment of the Commission in its White Paper on Artificial Intelligence that the judicial sector is an area where citizens' rights may be directly affected and that therefore a clear European regulatory framework could be relevant in this area.
43. SUPPORTS the Commission's view that the judiciary is a sector where, given the characteristics of the activities typically undertaken, significant risks can be expected to occur. Sufficient safeguards are needed to guarantee the protection of fundamental rights and to ensure a responsible, trustworthy, public-interest-oriented and human-centric development and use of artificial intelligence applications in the justice sector.

44. AFFIRMS the need to explore and to decide on mandatory legal requirements to be set for the design, development, deployment, use and evaluation of artificial intelligence systems in the justice sector in order to effectively address the potential risks to fundamental rights. These rules could include in particular a prohibition of automation that would make judicial decision-making opaque, appropriate levels of transparency, comprehensibility, verifiability, robustness, accuracy, security, accountability, as well as requirements to prevent discriminatory effects.
45. UNDERLINES that artificial intelligence systems in the justice sector, especially those involved in judicial proceedings, should be subject to an ex-ante assessment procedure regarding inter alia the reliability, comprehensibility, robustness and security of the system. POINTS to the need for an adequate and effective system for the monitoring and review of artificial intelligence applications and their results.
46. CALLS ON the Commission to take into account the potential benefits as well as the risks and requirements specific to the justice sector when designing a possible future EU legal framework for artificial intelligence.

Funding

47. HIGHLIGHTS that while the digitalisation of justice offers concrete and lasting benefits in terms of decreasing the costs relating to access to justice and the functioning of judicial systems, initial investments in various actions will require appropriate funding. CALLS on the Commission to ensure appropriate funding to support the digitalisation of justice, in particular through the Digital Europe programme.

48. ENCOURAGES Member States to participate in EU calls for proposals for funding and to actively develop actions related to the digitalisation of justice making use of various funding opportunities from the EU budget, such as the Cohesion Funds, the Recovery and Resilience Facility and the Justice Programme.
49. NOTES the importance of guaranteeing that, at the EU level, access to financing is to be facilitated, notably by making administrative formalities as simple as possible, while respecting the Financial Regulation.
50. CALLS on the Commission, all Member States and the European Parliament to ensure the funding of actions related to the digitalisation of justice through the various financial instruments included in the Multiannual Financial Framework. CALLS on the Commission to actively promote actions, including in the phase of research and development, related to the digitalisation and the technological innovation of justice in the Work Programmes.

Continued cooperation efforts

51. CALLS on all stakeholders, including the Commission, all Member States, the European Parliament and legal practitioners, to cooperate in a common, constructive and sustainable effort to continuously promote the further digitalisation of justice systems.
52. ACKNOWLEDGES and will consider the valuable work and initiatives carried out on the use of digital technologies, including artificial intelligence, in the Council of Europe and its institutions, such as the European Commission for the efficiency of justice and the Ad hoc Committee on Artificial Intelligence, as well as in other fora, such as the Organisation for Economic Cooperation and Development and the United Nations, and STRESSES the importance of coherence and cooperation in this area.