



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

Final report

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1. Introduction

The document constitutes the final report for the “*Study on the Digitalisation of Cross-border judicial Cooperation in the EU*”, a Request for Services JUST/2020/JACC/FW/CRIM/0130 issued under Framework Contracts JUST/2020/PR/03/0001 on Evaluation, impact assessment and related policy support services in the Justice and Consumers policy areas – Lot 1.

1.1. Study objectives and scope

The **main purpose** of this study is to analyse different aspects related to the digitalisation of communication between courts/competent authorities of Member States and between those authorities and the parties to the proceedings in the areas of EU civil, commercial and criminal law, including the possibility for using videoconferencing systems in cross-border proceedings.

With this overarching purpose in mind, the project aims to achieve the following **specific objectives**:

- To carry out a comparative analysis of the legal situation across Member States in relation to cross-border judicial procedures with the aim to identify key barriers to digitalisation, elements that could benefit from digitalisation and provisions of relevant EU instruments that govern communication;
- To carry out a comparative analysis of the legal provisions on the use of videoconferencing in cross-border legal proceedings in criminal, civil and commercial courts with the aim to identify key barriers to the use of videoconferencing;
- To detect synergies with other existing or planned channels of communication;
- To assess to what extent individuals, representatives of businesses, legal practitioners and other categories would benefit from digital communication with the competent authorities;
- To identify policy options for EU action in this field and assess their impacts in line with the Better Regulations’ methodology for impact assessments.

The findings of the study will support the preparation of the Commission’s Impact Assessment for this initiative. The study will build upon the Impact Assessments prepared for the recast of the Regulations for the Service of Documents and Taking of evidence.

The study covers all Member States except for Denmark. The digitalisation of purely national communication falls outside the scope of this study.

Context

Annex 1 provides a review of EU-level legal instruments on judicial cooperation; the review covers both civil/commercial and criminal acts.

1.2. Methodological approach

Our methodological approach 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. national legal mapping in all 26 Member States, 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 methodology is in line with the principles of the Better Regulations that require that policies and legislation are assessed transparently, based on factual evidence and considering the views of the stakeholders concerned.

Specifically, for the purpose of this study, 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

The above stakeholder consultation activities are discussed in more detail in the sections below.

1.2.1. 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 and EU bodies, 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 courts/competent authorities of 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 JHA agencies and EU bodies (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 (e-CODEX consortium, e-Evidence group), consumer associations, legal and judicial practitioners, and NGOs. A full list of stakeholders consulted through the EU-level focus group is provided in Annex 5.

Data collected through the EU-level focus group feed in the sections on policy options and their impacts of the draft final report.

1.2.2. 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), that were agreed upon with DG JUST 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 systems, 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.

As per agreement with DG JUST, the following Member States were selected for the national-level targeted stakeholder consultation:

Table 1: Initial Selection of Member States

Member States covered by the national stakeholder consultations	
Austria	Italy
Belgium	Luxembourg
Croatia	Poland
Czechia	Portugal
Estonia	Romania
Finland	Spain
France	Sweden
Ireland	

The national stakeholder consultation was carried out by means of a (1) national-level survey of selected stakeholder groups in 15 representative Member States; (2) national-level focus group with key stakeholders from 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, relevant Ministries (e.g. Justice, Interior etc.), IT departments and agencies, to understand the details of the national IT

system/strategies for the digitalisation of communication channels, their implications for cross-border solutions such as those identified by the options, the lessons learned from participation in EU pilots (if relevant);

- National contact points of Eurojust and the EJP-civil and EJP-criminal;
- National entities participating in EU pilots on cross-border digitalisation of justice systems;
- 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 was developed by the study team in cooperation with DG JUST, and 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, which are presented in this report .

• 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, the study team attempted 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, which are presented in this report.

1.2.3. Monitoring and evaluation arrangements

Monitoring and evaluation arrangements were proposed, including indicators for monitoring progress, in relation to the preferred option or the specific policy objectives. Elaborating the evaluation and monitoring framework at an early stage is important, in order to ensure that the key effects of the preferred option can be measured and assessed compared to the current situation.

The recommendations on the monitoring and evaluation framework and mechanisms for the preferred policy options include a set of comprehensive and mutually exclusive Key Performance Indicators (KPI) and targets, corresponding to the 'RACER' criteria (Better Regulation Guidelines Tool #41¹), defined on the basis of the operational objectives identified for the preferred option(s):

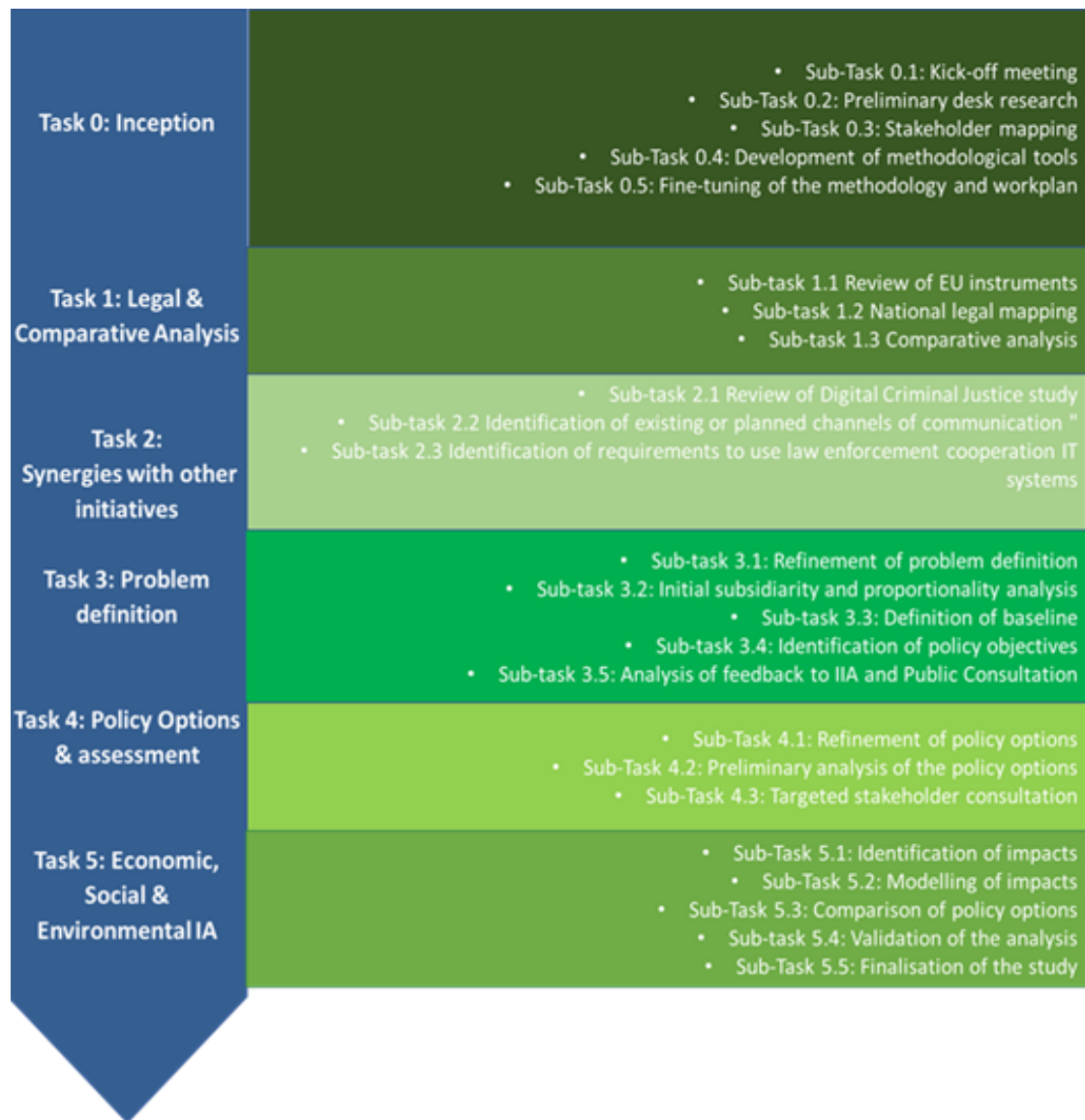
- Relevant, i.e. closely linked to the objectives to be achieved;
- Accepted by authorities' staff (that have to provide the necessary information) and stakeholders;
- Credible: externally, unambiguous and easy to interpret for non-experts;
- Easy to monitor; and
- Robust, e.g. against manipulation (for instance, in the case direct access to the digital channels, heavy registration requirements could simply be shifted from legal practitioners to individuals and businesses, instead of bringing real simplification).

As per the Better Regulation Guidelines, the monitoring and evaluation arrangements proposed were designed to re-use to the maximum extent possible data and information already provided, and to minimise the burden of reporting for national authorities and any other stakeholders. They were tailored on the characteristics of the preferred option(s) and any accompanying measure that are considered, and focus on any data gaps identified, which otherwise hamper the monitoring of the implementation and the effectiveness of the provisions introduced in the framework.

The figure below presents the overall methodological framework.

¹ European Commission, Better Regulation Toolbox. Tool #41. Monitoring Arrangements and Indicators, available at: https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-41_en_0.pdf

Figure 1: Overall methodological framework

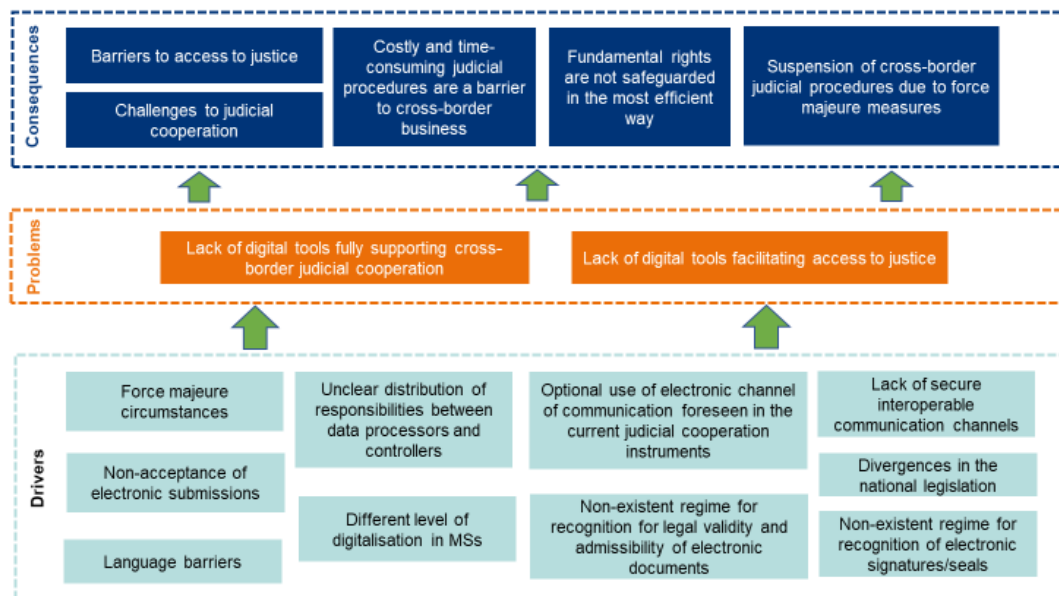


2. Problem definition

This section provides an overview of the various problems that the initiative under this study intends to address, their causes and their impacts. The problems, their drivers and consequences are presented below by means of a problem tree, which illustrates the issues faced by EU citizens, businesses and national authorities due to current limitations or shortcomings in the digital communication channels in cross-border judicial cooperation, the causes of these problems and their consequences. The figure should be read from the bottom to the top. The issues identified at the bottom of the so-called ‘problem tree’ are considered to be the root causes of the problems. Ultimately, the problems have effects at EU level which hamper the use of digital solutions in cross-border proceedings in civil, commercial and criminal law.

In the sections below, each element of the problem tree is examined in detail.

Figure 2: Problem tree



2.1 What are the problems?

The sections below provide an overview of the main issues affecting communication between courts/competent authorities of Member States and between these and parties to proceedings (individuals, legal entities) in cross-border judicial cooperation, in civil, commercial and criminal law.

2.1.1. Lack of digital tools to facilitate access to justice

At present judicial proceedings, in particular in cross-border situations, still take place mostly on paper and are based on **traditional transmission channels** (see Section 2.2.2

and 3.1). This situation does not provide for the use of a modern **access to justice** in an environment that is more and more digitalised. In a Europe of open borders, individuals and legal entities can easily find themselves in litigation before a court in another EU country.

Access to justice across borders is also particularly problematic for **victims of crimes** and defendants. Most of the Member States have not completely transposed the Victims' Rights Directive (infringement proceedings for these countries are on-going).² Several issues, such as the excessive length of proceedings and high legal costs including lawyers' fees and court fees, result in victims being deterred or unable to enforce their rights by taking cases to court. According to the consulted stakeholders³, victims who are already traumatized, may be discouraged to file a complaint in another country by the fact that they do not know the language and legal system of that country, they may not receive information on their rights and may not find appropriate guidance on the procedure. Access to justice across borders may be challenging also for **defendants** who are unfamiliar with the legal system of another Member State, may not trust that system and may not be reassured by the level of fundamental rights and procedural safeguards existing abroad.

More generally, the **lack of digital tools can curtail access to justice in many ways**. It is well-known that the threshold of accessing a court by individuals and legal entities is high, due to legal formalities, complexity and costs. Attending oral hearings in person are often considered as stressful and time-consuming. These barriers are evidently much higher in cross-border cases, where geographical distances, language differences and the confrontation with a foreign legal system make access to justice very cumbersome. In particular for consumers, small or even medium-sized businesses and generally for claims with a lower value, the costs and complexity are often too substantial to initiate a procedure cross-border.

2.1.2. Lack of digital tools to fully supporting cross-border judicial cooperation

According to latest data, the **average duration of judicial proceedings is still excessively long** in some EU countries in violation of the right to fair trial within a 'reasonable time', enshrined in Article 6 of the ECHR (see Section 2.4.2). In the OECD area the average length of civil proceedings is around 240 days in first instance, but in some countries a trial may require almost twice as many days to be resolved. Final disposition of cases may involve a long process of appeal before the higher courts, which in some cases can average more than seven years.⁴ The duration of the **cross-border proceedings** is naturally longer than the duration of national procedures due to legal and practical obstacles, including the need for cross-border service of documents, taking of evidence and travel for oral hearings. The excessive duration of judicial proceedings (within and across borders) is linked to various factors, including the need for the formal exchange of paper documents between competent authorities and between parties and the court, as well as the need to attend physical oral hearings which requires extensive planning far in

² REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of 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. The Commission has 21 on-going infringement proceedings for incomplete transposition of the Victims' Rights Directive against Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden.

³ EU level Focus Group conducted by VVA on 4 May 2021.

⁴ <https://www.oecd.org/economy/growth/judicial-performance.htm>

advance. Besides, the **insufficient level of digitalisation** of the judicial systems contributes to the length of the proceedings.⁵

Where national IT solutions exist for judicial authorities, they have often been developed in an uncoordinated manner, leading to fragmented IT systems across the Member States and, thus, **low efficiency of justice systems** within and across borders. To tackle this issue and comply with the reasonable time to conduct proceedings (in line with Article 6 of the ECHR), Member States adopted reforms aimed to introduce paperless judicial proceedings, notification and enforcement procedures, by computerised case-management systems. However, these reforms are limited to some countries or only to some areas of law or geographical area within the same country. In addition to the excessive duration of proceedings, the lack of digital communication has an **economic impact** on national authorities and parties involved. Research shows that paper exchanges imply undue costs, as these usually require a specific form, the involvement of a lawyer or other professional, translation, and the use of dedicated postal services that charge for a secured delivery and acknowledgment of receipt.⁶

2.2. What are the problem drivers?

This section presents the main causes behind the problems outlined in the previous section.

2.2.1. Force majeure circumstances affect the functioning of the judicial systems

A range of force majeure circumstances might affect the functioning of the justice systems. As defined by the CJEU⁷, force majeure shall be intended as “circumstances beyond the control of the Member States concerned”. The concept of force majeure refers, thus, to **abnormal and unforeseeable circumstances** which are outside the control and the consequences of which could not have been avoided in spite of the exercise of all due care. These include extraordinary events such as natural or political events (e.g. strikes, riots, epidemics etc.) that can deeply hamper the operating of judicial systems.

In this regard, the **COVID-19 pandemic** has considerably impacted the functioning of Member States’ justice systems and adversely affected EU cross-border judicial cooperation. Many cross-border and national procedures had to be suspended, *de facto* depriving many citizens and businesses from effective access to justice.⁸ The pandemic has emphasised the need for further efforts towards the digitalisation of justice, including enhanced cooperation between Member States and with international partners and the need for promoting best practices in this area (see Section 2.4.3 for a description of impacts of the pandemic).⁹

⁵ See also Impact Assessments on Taking of Evidence and Services of Documents.

⁶ Ibid.

⁷ See for example Case C-640/16 Vilkas.

⁸ European Commission website, Initiatives, “Digitalisation of justice in the EU”, Roadmap, p.2, available for download, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12547-Digitalisation-of-justice-in-the-European-Union->.

⁹ 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”, COM(2020) 710 final, accompanied by the Commission Staff Working Document SWD(2020)540 final, and Roadmap to the Communication, all available for download in the European Commission website, “Digitalisation of Justice in the EU”, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12547-Digitalisation-of-justice-in-the-European-Union->.

2.2.2. Reliance on paper-based communication between courts/competent authorities of the MS and between individuals/legal entities and courts/competent authorities in cross-border cases

According to the findings of the national legal mapping conducted for this study, in most Member States (e.g. BE, DE, CZ, ES, MT, LT, SK), **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 (e.g. individuals, businesses etc.). Besides, in some Member States (e.g. CZ) it is common practice that paper documents are sent first, whereas the subsequent communication takes place via digital means such as an email. Digital means are, thus, used as a second option giving priority to the transmission of information/evidence in paper format. The estimate is 90% paper-based versus 10% of digital communication for Czechia.

Only few Member States report that digital channels are used more often than paper ones. For example, the estimate is 40% paper-based versus 60% digital communication in Sweden. In the Netherlands, an absolute majority (90%) of cross-border exchanges in criminal matters is digital, mainly because the domestic procedure is highly digitalised. The share of **paper-based exchanges** in civil matters, however, is higher than the share of digital exchanges. The use of paper documents is widespread within the judiciary but also among notaries. For example, in Hungary, the consulted notaries estimated that 100% of cross-border communications are paper-based.

Even though IT tools might exist, they might not be used in practice. According to the data provided by the European Judicial Network in Civil and Commercial Matters for 20 Member States¹⁰, when communicating cross-border, only one Member State seems to use digital communication for all EU law instruments. On the contrary, seven Member States use a digital channel for exchanges limited to certain EU instruments whereas 12 Member States do not use any digital channels for communicating with foreign authorities. In criminal matters, a digital channel for exchanges with the competent authorities of other Member States and the JHA agencies and EU bodies for all relevant EU instruments, is used in eight Member States.¹¹

2.2.3. Optional use of electronic channel of communication foreseen in the current judicial cooperation instruments

The reliance on paper-based communication, described above, is also linked to the fact that, so far, the **digitalisation** of cross-border judicial cooperation procedures has been mostly based on **voluntary initiatives** between the Member States. To date, the pilot projects carried out by the Member States, and based on e-CODEX¹², (which is a tool for

¹⁰ Questionnaire on cross-border cooperation in civil and commercial cases sent to the contact points of the European Judicial Network in civil and commercial matters, 2020.

¹¹ Questionnaire sent to the Permanent Representations of the Member States to the EU on cross-border cooperation in criminal law matters, 2020.

¹² E-CODEX is a system that can be used in or between Member States to support cross-border operation of procedures in the field of justice. It was created by 21 EU Member States with the participation of other countries/territories and organisations, in the period 2010-2016. The objective of e-CODEX is to create a common and interoperable system to respond to common needs of Member States. Through e-CODEX, the participants have jointly developed interoperable software building blocks and have implemented them through piloting work. This package of software building blocks can be used to set up and operate an e-CODEX access point irrespective of the intended business context. By harmonizing the different approaches within the EU countries e-CODEX will improve the efficiency of cross-border information exchange. The main benefits are increased security and reliability along with saving time in completing cross-border processes.

interconnecting national systems primarily at cross-border level), mostly involved only few Member States.¹³

In particular, so far, the e-CODEX consortium has launched seven use cases or pilots applying e-CODEX to a specific legal procedure:

- Eight Member States participate in the European Order for Payment (EPO) pilot;¹⁴
- Eight Member States take part in the Small Claims pilot;¹⁵
- Three Member States and the European Chamber of Judicial Officers/ Bailiffs (CEHJ) are interconnected under the European Account Preservation Order pilot;¹⁶
- Three countries participate in the pilot on Matrimonial Matters and Parental Responsibility¹⁷;
- 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 (e-EDES) 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.

Although the geographical coverage and the number of users of e-CODEX are increasing¹⁸, the actual uptake by Member States still remains low. This approach has led to a fragmentation generating inefficiencies, including, the **continued use of the paper channel** resulting in financial costs and negative environmental impact.¹⁹ This fragmentation also affects access to justice for individuals and legal entities. Moreover, the fact that digitalisation is on a voluntary basis does not guarantee that all Member States will be interconnected in the future, or that they would implement an IT connection in a timely manner. These risks will be partially mitigated when Regulation (EU) 2018/1726 will be implemented by the Member States.

2.2.4. Lack of secure interoperable channels of communication between the courts/competent authorities

Domestic IT solutions are often not designed for cross-border exchanges of data. While **interoperability** is often defined at different levels, the definition provided by the Digital Criminal Justice Study²⁰ is adopted for this study: “*the ability of computer systems or software to exchange and make use of information*”. In other words, interoperability refers

¹³ <https://www.e-codex.eu/faq-e-codex>; e-CODEX Impact Assessment, page 9-10: https://ec.europa.eu/info/sites/info/files/law/cross-border_cases/documents/e-codex-impact-assessment_en.pdf

¹⁴ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

¹⁵ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

¹⁶ Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

¹⁷ Brussels IIa - Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction - Council Regulation (EC) No 2201/2003.

¹⁸ Additional instruments for which the use of e-codex is planned are: Service of Documents - based on Council Regulation (EC) 1393/2007; FD909 – Mutual Recognition of Sentences in Criminal Law.

¹⁹ 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).

²⁰ EC, Cross-border Digital Criminal Justice, Final Report, 2020.

to two or more systems that agree on how they will communicate and how the received messages will be interpreted. Technical interoperability requires the adoption of technical protocols and specifications.

While some progress on interoperability has been made at national level, in some cases national IT solutions for judicial authorities have been developed in an uncoordinated manner, leading to **different and fragmented IT systems** across the Member States.

The **lack of interoperability** between existing national systems can have negative consequences, also in terms of security, such as²¹:

- 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;
- Mutual misunderstanding of 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.

Upstream to the absence of interoperability at EU level, there is the **issue of interoperability between the judicial authorities within an individual country**.²²

In this regard, a recent assessment on Court e-filing, prepared for the CEPEJ Working Group on Cyber justice and Artificial Intelligence (CEPEJ-GT-CYBERJUST)²³, points out that interoperability with external systems is active in most of the selected countries (members of the Council of Europe)²⁴, although there is diversity with respect to the number and type of integrations, their status, and the purposes they are introduced for. Underusage of government-facilitated building blocks is evident. While countries often refer to automated exchange of data and documents with third-party systems, they rarely mention any reuse of existing nation-wide tools beyond the national identification and authentication infrastructure.

In general, the IT systems for the judiciary are designed to ensure compatibility on a national level (including with systems of the executive branch) and rely on open interoperability standards and architecture principles. For some countries (e.g. Bulgaria) the e-Justice legislation per se requires all IT systems to be designed in such a way to ensure such interoperability, while for others (e.g. Latvia) national standards and guidelines apply.

The **need for interoperability** was emphasised by the stakeholders who attended the EU level focus group, according to whom this is an optimal solution that allows to respect the legal differences between national systems.²⁵ 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

²¹ E-codex impact assessment.

²² EU level Focus Group carried out by VVA on 4 May 2021.

²³ <https://www.coe.int/en/web/cepej/cepej-working-group-cyber-just>. The report will be published later in 2021.

²⁴ Austria, Bulgaria, France, Italy, Latvia, Montenegro, Norway, Portugal, Slovenia, Turkey

²⁵ Ibid.

to harmonise the certificates of secure devices, to ensure their performance, traceability, security level, etc.

With regard to **security**, the availability of tools at the disposal of national courts ensuring **secure electronic communication** as alternative to paper or other channels, **is limited** in some Member States.²⁶ In this regard, only 15 Member States have in place tools for a secure electronic communication, at the disposal of courts. In 11 Member States such tools exist but they are used only to a limited extent whereas there are no electronic communication tools in one Member State. The availability of such tools is even lower within prosecution offices with only seven Member States having these tools in place for all uses and 17 Member States having them for limited uses. No secure electronic communication tools for use in any possible scenarios are available in two Member States.

The **absence of secure communication channels** also affects the **communication with JHA agencies and EU bodies**. According to the Digital Criminal Justice Study,²⁷ Joint Investigation Teams lack a secure tool for collaboration and exchange of information. Currently messages, information and evidence about ongoing investigations are exchanged between JIT members either by non-secured email, or using unsecure digital communication tools, or in non-digital ways (e.g. physically during meetings or using registered mail services). The current practices do not comply with security requirements (e.g. to ensure confidentiality of data about national criminal cases) and do not make use of the possibilities offered by digital technologies to improve online communication and collaboration.

2.2.5. Non-acceptance of electronic submissions from individuals/legal entities by the courts/competent authorities

As described above (section 2.2.2), in many Member States the exchanges between courts/competent authorities and between those and the parties to proceedings are still primarily paper-based in cross-border cases. To some extent this is due to the fact that also at the national level these exchanges are still largely though not in all cases paper-based .

For instance, in the European civil procedures, including the European Order for Payment and the European Small Claims Procedure, the Regulations provide for and encourage electronic exchange of documents. It is highly beneficial for the access to these procedures and enhances the procedure as a whole if parties can lodge an application for an order, submit a claim or send other forms electronically. However, only about half of the Member States accept electronic submission of forms, though Member States increasingly enable submitting forms by e-mail. Some Member States have their own electronic systems, and do explicitly not accept submissions by e-mail (for instance Austria).

In some Member States electronic systems are in place for domestic cases, but these are not accessible for citizens that are not registered in that Member State. For instance, in the Netherlands, electronic systems are not available for legal and natural persons that are not domiciled in the Netherlands as it requires having a Dutch DiGiD (a digital “passport” for residents widely used as an identification means for communication with governmental services). In other cases, it is necessary to have certain software or other formal requirements are in place or an intermediate located in that Member State is required to have access to national electronic systems. In addition – important for civil procedures in particular - cross-border digital service of documents is only possible in a limited number of Member States

²⁶ SWD (2020)540, final.

²⁷ EC, Cross-border Digital Criminal Justice, 2020.

2.2.6. Unclear distribution of responsibilities between the data processors and data controllers

When it comes to exchanging electronic messages for judicial cooperation at EU level, data protection provisions in relation to the processing of data, in particular clarification on the data protection responsibilities of the different entities maintaining and/or running such a (decentralised) system, would be provided for by the specific legislation measures. In general, there should be no data storage or data processing by the entity entrusted with the operational management of the cross-border exchange system components beyond what is necessary to maintain contacts with the entities operating the relevant access points. Depending on whether an access point is operated by an EU institution, body or agency or at national level, and depending on which national authorities are processing personal data and for what purposes, either Regulation (EU) 2018/1725 or Regulation (EU) 2016/679 or Directive (EU) 2016/680 would apply.

When a controller engages a processor, the relationship between data controller and data processor needs to be governed by a contract (or other legal act) and is subject to the minimum criteria laid down in these circumstances. The processing agreement sets out the subject matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller.

The processor must inform the data controller if it has any sub-processors, provide full detail if any and allow the data controller to decide if these sub-processors are acceptable or not. All sub-processors must comply with the same data protection safeguards that the processor is subject to. The processor is fully liable for failures of a sub-processor.

Considering the above, any proposal for further digitalization of judicial cooperation procedures shall also ensure (provide) a basis for the processing of personal data, within the meaning of the data protection legislation and applicable Union rules on data protection and determine the responsibilities of different controllers and processors.²⁸ Further considerations with respect to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (the e-Privacy Directive)²⁹ may also apply.

The unclear distribution of responsibilities with regards to data protection competent authorities in the judicial domain and/or divergencies in the national legislations should also be considered in a future initiative on digitalisation. While Regulation (EU) 2016/679 applies, inter alia, to the activities of courts and other judicial authorities, Union or Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the data protection supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including decision-making. Supervision of such data processing operations to specific bodies within the judicial system of the Member State, which should, in particular ensure compliance with the rules of Regulation (EU) 2016/679, enhance awareness among members of the judiciary of their obligations under Regulation (EU) 2016/679 and handle complaints in relation to such data processing operations.³⁰ While the European Data Protection

²⁸ See section 3.2. ("Making the digital channel the default option in EU cross-border judicial cooperation") of Commission Communication "Digitalisation of justice in the European Union A toolbox of opportunities" (COM/2020/710 final)

²⁹ OJ L 201, 31.7.2002, p. 37.

³⁰ Recital 20 of the GDPR

Supervisor cooperates with national supervisory authorities and other supervisory bodies to improve consistency in protecting personal information under Regulation (EU) 2016/679, the independent supervisory authorities under Directive (EU) 2016/680 shall cooperate with each other and with the Commission.³¹ Thus, further cooperation mechanisms should be established in this regard to ensure consistency in protecting personal information in judiciary and clear distribution of responsibilities in the digital environment.

2.2.7. Language barriers

According to the consulted stakeholders,³² **language barriers** constitute a problem in cross-border judicial cooperation. Communication between judicial authorities of different Member States may be difficult when different languages come into play; for example, the issuing authority might need to send documents in a language accepted by the receiving authority. Besides, European citizens are ill at ease when they are involved in judicial proceedings in other Member States because of language barriers.

This is confirmed by the literature according to which, in cross-border litigation, the use of different official court languages causes severe problems when, at least one of the parties, is not familiar with the official language of the court, since the parties' right to a fair trial depends very much on the communication with the court. As a consequence, interpreters must often be used during trials and hearings and legislatures have to decide to what extent legal documents should be translated. The language problem is often underestimated and there are no sufficient safeguards for the parties' right to be heard in a language they can understand.³³

2.2.8. Divergences in the national legislation

In the absence of EU-level rules requiring the use of digital technology, national procedural laws of Member States vary greatly: while some foresee the use digital means of communication, others do not refer to them (see Section 1.3.4). For example, in the case of the European Small Claims Procedure (ECSP), the decision on whether or not to allow electronic submissions of claims is left to the Member States. 12 Member States have notified that this is not allowed by their national legislation. Similarly, for the European Order for Payment procedure, 15 Member States have notified that electronic submission is not legally possible under their law.³⁴

According to the findings of the national legal mapping carried out for this study distance communication technology (e.g. videoconferencing) has been introduced by some Member States in their national law only in relation to specific EU legal instruments.³⁵ In all other cases, legal requirements differ significantly across Member States.³⁶

³¹ Also, European Data Protection Board (EDPB) contributes to the consistent application of data protection rules throughout the European Union and promotes cooperation between the EU's data protection authorities. However, its work does not reflect the specific aspect of data protection in judiciary.

³² EU level focus group conducted by VVA on 4 May 2021.

³³ See: [Practical obstacles in Cross-Border Litigation and Communication between \(EU\) Courts \(uni-konstanz.de\)](https://www.uni-konstanz.de/Practical%20obstacles%20in%20Cross-Border%20Litigation%20and%20Communication%20between%20(EU)%20Courts)

³⁴ E-CODEX impact assessment.

³⁵ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters; Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters; 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; Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union.

³⁶ It should be noted that the Council of the European Union published a guide on videoconferencing in cross-border proceedings. <https://www.consilium.europa.eu/en/documents-publications/publications/guide-videoconferencing-cross-border-proceedings/>

According to the data gathered by the Commission³⁷, out of the 26 Member States (that participated in the consultation), only 10 Member States allow for the use of distance communication technologies (videoconferencing) for hearings in civil and commercial cases, in all situations. Partial possibilities for use of these technologies for oral hearings exist in 15 Member States. In one Member State remote hearings are not allowed in any scenarios. A similar picture applies to the criminal law field, where out of the 26 Member States, 11 countries use distance communication technologies (videoconferencing) for hearings in criminal cases, with no limitation. Partial possibility for the use of these technologies for oral hearings is allowed in 14 Member States whereas one Member State does not allow remote hearings in any possible scenarios.

The use of videoconferencing by legal and judicial practitioners is also regulated differently. Lawyers in five Member States (out of 16) are allowed to use videoconferencing facilities to carry out functions in all aspects of their work. While in two Member States lawyers can use videoconferencing in most aspects of their work, in nine Member States there are limitations in this regard.³⁸ The figures are even lower for notaries, four Member States (out of 18) indicated that notaries are to use distance communication technology equipment in all aspects of their work, whereas in four countries - in most aspects. Besides, in four Member States the use of distant communication technology is allowed in a limited way. In six Member States, notaries are not allowed to use videoconferencing equipment for their functions at all.

2.2.9. Lack of information

While insufficient or inadequate information is a recurring issue in both criminal and civil/commercial law proceedings, the problem is even more significant when it comes to **cross-border exchanges** between Member States. As for the criminal law, the lack of information affects not only suspects/accused (e.g. in European Arrest Warrant proceedings) but also victims. In this regard, Directive 2012/13/EU on the right to information in criminal proceedings contains two sets of provisions: those on the right to information about rights, on the one hand, and those on the right to information about the accusation and the right of access to the materials of the case, on the other. Although the Directive has led to main achievements, compliance issues³⁹ have been detected across Member States. For example, in three Member States the information on the right to access a lawyer is not provided to suspects or accused persons who are not deprived of liberty. Several Member States do not explicitly refer to the requirement of 'prompt' provision of information. Similarly, with regard to Directive 2012/29/EU, implementation problems have arisen. Victims still often lack awareness of their rights. Several Member States failed to ensure that the communication is provided in a simple language and with a consideration of the personal characteristics of the victim (Article 3(2))⁴⁰. These problems are amplified when it comes to **cross border situations**, when the authorities of different Member States are involved (e.g. lawyers, judges, courts); **the lack of cooperation and coordination among them can hamper the right to information significantly**. The availability and user friendliness of the information is also an issue in civil and commercial cross-border

³⁷ COMMISSION STAFF WORKING DOCUMENT Accompanying the 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 {COM(2020) 710 final}

³⁸ COMMISSION STAFF WORKING DOCUMENT Accompanying the 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 {COM(2020) 710 final}

³⁹ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, 2018.

⁴⁰ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of 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.

cases, with citizens and businesses finding it difficult to understand the legal system of another country.

2.2.10. Access to data

According to the recent assessment on Court e-filing, prepared for the CEPEJ Working Group on Cyber justice and Artificial Intelligence, already mentioned in section **Error! Reference source not found.**, all the selected countries adopt secure mechanisms for identification of the users accessing national case management systems, based on a 2-factor authentication; most of them enable (or will enable) external users, especially citizens, to use a nationwide eID mechanism.

Nevertheless, the problem is the lack of interoperability with other countries' mechanisms. In some cases, in fact, legal and judicial professionals do not have access to the case management systems of another country. In order to get access to data and documents related to the proceedings they are involved, these external users (especially lawyers, but also other assessors like notaries) need to be securely identified (i.e. with the proper level of certainty) by the remote system through an authentication mechanism, which is not always available for people outside the country. The problem is the same in order to participate to a hearing via videoconference.

The e-IDAS Regulation⁴¹ has established a predictable legal framework for people, companies and public administrations to safely access on-line services across border. The recognition of eIDs is a key element of the Regulation. Electronic identification is regarded as the digital equivalent to presenting an ID card or passport in the physical world. For example, through their eIDs, persons can submit tax declarations, enrol in a foreign university, remotely open a bank account, set up a business in another Member State, authenticate for internet payments etc.

The recent European Commission's Proposal for a Regulation amending e-IDAS Regulation as regards the establishment of a framework for a European Digital Identity⁴² has the aim to overcome the issues of the current Regulation, in particular the limited possibilities and the complexity for online private providers to connect to the system, its insufficient availability of notified eID solutions in all Member States (today, only 14 of 27 Member States offer cross-border eID under eIDAS to their citizens) and its lack of flexibility to support a variety of use cases. The proposal's explanatory note points out that not all technical nodes to ensure the connection to the eIDAS interoperability framework are fully operational, so cross-border access is limited. Furthermore, very few online public services accessible domestically can be reached cross-border via the eIDAS network.

2.2.11. Different level of digitalisation in Member States

There are **varying degrees of digitalisation across Member States**, some of them are very advanced while others have a very low level of digitalisation.⁴³ According to the latest Digital Economy and Society Index (DESI)⁴⁴, all EU countries improved their digital performance during 2020. Finland, Sweden, Denmark and the Netherlands scored the highest ratings, followed by Malta, Ireland and Estonia. Some other countries, however, still have a long way to go, and the EU as a whole needs improvements. In addition, while some Member State rank high in digital performance, this does not always mean that their

⁴¹ Regulation (EU) No 910/2014: on electronic identification and trust services for electronic transactions in the internal market.

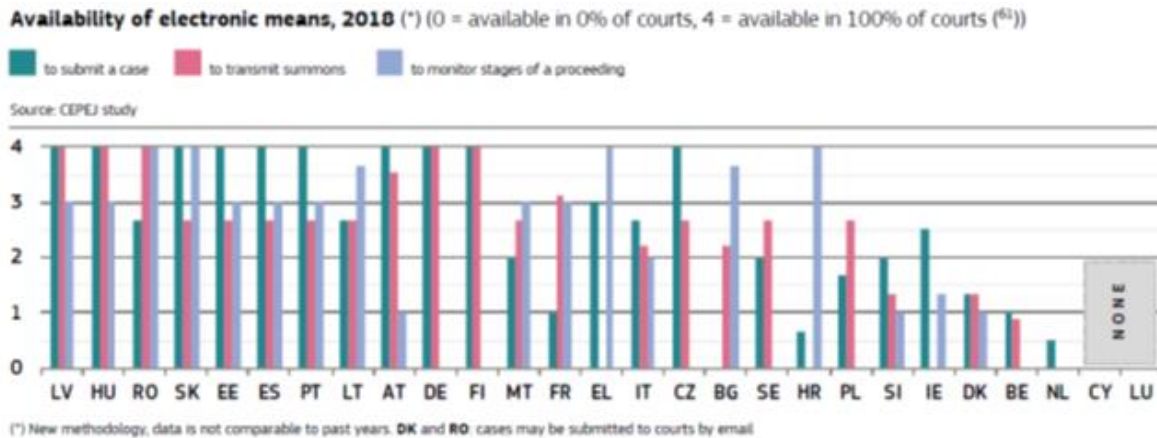
⁴² <https://digital-strategy.ec.europa.eu/en/library/trusted-and-secure-european-e-id-regulation>

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>

digital services are also available in cross-border cases. In line with these findings, the 2020 EU Justice Scoreboard⁴⁵ highlights the different use of the digital channel by the judiciary in the EU. As illustrated by the figure below, the **availability of electronic means for submitting and following a claim online**, varies significantly across Member States. The ability to use electronic means to submit claims or to monitor and advance 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. ICT systems in courts also play an increasing role in cross-border cooperation between judicial authorities and facilitate the implementation of EU legislation.⁴⁶

Figure 3: Availability of electronic means

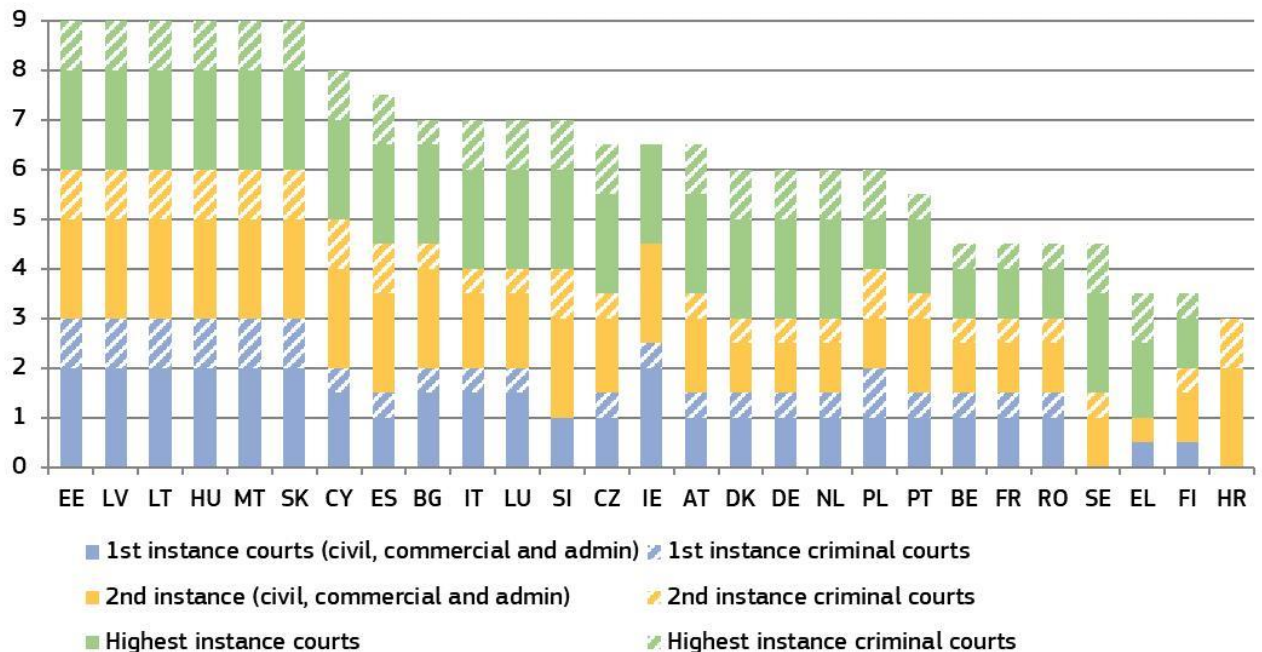


Similarly, as shown in the figure below (EU Justice Scoreboard), online access to judicial decisions by the public is not uniform across EU Member States. Ensuring such access is important to increase the transparency of justice systems, help citizens and businesses understand their rights and contribute to consistency in case-law.

⁴⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0306>

⁴⁶ Ibid.

Figure 4: Online access to published judgments by the general public, 2019⁴⁷ (civil/commercial, administrative and criminal cases, all instances)



These results are confirmed by the analysis conducted by the Commission⁴⁸, which reveals a **different level of progress** across EU Member States:

- individuals can access an electronic file of their ongoing cases in 10 Member States in all types of civil law procedures;
- in the context of criminal law, victims can access an electronic file in seven Member States and defendants in nine;
- evidence can be submitted to a court exclusively in digital format in the context of all types of criminal proceedings in 13 Member States;
- in civil and commercial law, digital evidence is admissible in all types of proceedings in 10 Member States.

More recently, some countries have made progress in the digitalisation of their justice systems. However, the level of digitalisation depends on the particular context in which the

⁴⁷ Maximum possible: 9 points. For each court instance, one point was given if all judgments are available for civil/commercial and administrative and criminal cases respectively and 0.5 points when some judgments are available. For Member States with only two court instances, points have been given for three court instances by mirroring the respective higher instance court of the non-existing instance. For those Member States that do not distinguish the two areas of law (civil/commercial and administrative), the same number of points has been given for both areas. BE: for civil and criminal cases, each court is in charge of deciding on the publication of its own judgments. BG: Court of Cassation criminal decision are all published except those containing classified information. DE: each federal state decides on online availability of first instance judgments. IE: for criminal cases, summary cases are not generally the subject of a written judgment. CY: for administrative and criminal cases, judges decide on which judgments to be published. LU and SE: courts do not publish judgments regularly online (only landmark cases). AT: for first and second instance, judges decide which judgments are published. NL: courts decide on publication according to published criteria. PL: for administrative cases, the chief of unit in every court decides on the publication. PT: for civil and criminal cases, a commission within the court decides on the publication. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0306>

⁴⁸ COMMISSION STAFF WORKING DOCUMENT Accompanying the 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 {COM(2020) 710 final}.

technology is used⁴⁹. As regards the digitalisation of the cross-border cooperation, Member States do not share a common approach on the use of the electronic means of communication, for instance some allow plain e-mail and others require more stringent means of communication, or do not allow such means at all (see Section 3.1).

The above findings are confirmed by the national legal mapping carried out for this study. According to it, in most of Member States cross-border communication takes place via **paper-based channels** (see Section 2.2.2).

2.2.12. Non-existent regime for the recognition of electronic signatures and seals

The e-IDAS Regulation⁵⁰ set up a common EU regulatory framework for electronic trust services (electronic signatures, electronic seals, time stamps, electronic delivery services and website authentication) recognised across borders with the same legal status as paper-based ones. Based on this Regulation, a document transmitted electronically has the same legal value as a paper document and cannot be refused only because it is transmitted digitally.

The Regulation has contributed to create a predictable legal framework for people, companies and public administrations to safely access services and carry out transactions online and across border. e-IDAS solutions have reduced red-tape for citizens and generated savings for business.

Despite the advantages provided by e-IDAS, the potential of electronic identification and authentication under the Regulation is not fully exploited, as mentioned in Section 2.2.10.⁵¹ The Regulation does not oblige Member States to notify electronic identification schemes. Today, **only 15 of 27 Member States offer cross-border eID under eIDAS to their citizens.**

Furthermore, in the **absence of commonly agreed assurance level of electronic signatures/seals**, those used by the issuing Member State may not be recognised by the receiving Member State in judicial proceedings. Besides, the use of qualified e-signatures is not yet common. Although electronic identification frameworks, are currently in place, few Member States have the infrastructures or experience to facilitate qualified e-signatures within the judiciary.⁵²

Data from 25 Member States in the context of the Public Documents Regulation⁵³ 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.

⁴⁹ COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document 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), and amending Regulation (EU) 2018/1726.

⁵⁰ Regulation (EU) No 910/2014: on electronic identification and trust services for electronic transactions in the internal market.

⁵¹ Ref. Ares(2020)3899583 - 23/07/2020.

⁵² COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

⁵³ COMMISSION STAFF WORKING DOCUMENT Accompanying the 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 {COM(2020) 710 final}.

One Member State requires the use of advanced electronic signatures whereas another one recognises electronic signatures not regulated by the e-IDAS Regulation.

2.2.13. Non-existent regime for the recognition of the legal validity and admissibility of electronic documents

At present, there is no EU regime for the recognition of the legal validity and admissibility of electronic documents exchanged between courts/authorities across borders. In the absence of such regime, the **legal validity and admissibility of documents** transmitted electronically during judicial proceedings **may be called into question** by receiving Member States. In the case of cross-border transmission using e-CODEX, the participating Member States have established a “Circle of Trust Agreement”⁵⁴ 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 his control and any subsequent change of the data is detectable. Despite the existence of this agreement, the latter only concerns parties to e-CODEX and is not binding on the such parties⁵⁵; therefore, it provides insufficient guarantees in the context of EU-wide judicial cooperation.

The problem of validity and admissibility also pertains to the cross-border exchange of **evidence**. Currently, judicial authorities fully admit evidence submitted in digital format only in 11 Member States, in civil and commercial cases. In seven Member States, such evidence is admissible just in some situations whereas in nine Member States it is not admissible at all. With regard to criminal law matters, 13 Member States recognize as valid in all situations the submission of evidence filed only in digital format. In four Member States such evidence can be filed only in certain situations whereas 10 Member States do not allow for the submission of evidence only in digital format.⁵⁶

2.3 What are the consequences?

2.3.1. Hampered functioning of the Internal Market

Effective justice systems are essential for the functioning of the internal market and a prerequisite for economic growth. Digital access to justice can facilitate operations, reduce costs and regulatory burden, as well as improve access to the Single Market of all businesses, in particular SMEs.⁵⁷

Conversely, the lack of or insufficient digitalisation of cross-border judicial cooperation can hamper the functioning of the internal market. In particular, the inability to easily access justice through digital tools prevents businesses and consumers to reap the full benefits of the Digital Single Market. The potential of the Digital Single Market is an estimated EUR

⁵⁴ e-CODEX Agreement on a Circle of Trust adopted by the e-CODEX General Assembly on the 20th of February 2013.

⁵⁵ Digital Criminal Justice study, page 93 and 107: <https://data.europa.eu/doi/10.2838/118529>

⁵⁶ COMMISSION STAFF WORKING DOCUMENT Accompanying the 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 {COM(2020) 710 final}.

⁵⁷ [communic of COM 2020.pdf](#)

415 billion a year.⁵⁸ The operation and development of cross-border commerce is also affected.

Moreover, the absence of digital communication tools in the judicial area affects SMEs and citizens wishing to submit claims in another country. For the latter group, the lack of easy accessible online tools for cross-border disputes may act as a deterrent to claim their rights. Many small and medium sized enterprises making use of the single market face difficulties with cross-border debt collection. Similarly, citizens face problems with goods purchased in another EU country. This results in an hampered digital economy.

2.3.2. Violations of fundamental rights

The lack of digital communication tools in the judicial area affects fundamental rights. Specifically, the lack of easy accessible online tools for cross-border disputes act as a deterrent to claim one's rights for both citizens and businesses. Likewise, victims of crimes may find easier and less traumatic to report a crime via digital tools or attend the hearing via videoconference, if adequate safeguards and protection measures (e.g. including concerning the venue where the victim is heard) are in place. In contrast, the absence of digital cross-border communication channels might mean that victims may face repeated face-to-face interviews by several professionals of both countries (the one where she is resident and the country where the offence was committed) with the risk of being re-traumatized. By slowing down exchanges between Member State authorities, paper-based communication, might also hinder access to information/evidence for defendants.

This results in limitations to the right to access justice and the right to an effective remedy (Article 47 of Charter on Fundamental Rights⁵⁹ and Article 6 of ECHR).

Similarly, violations of the right to fair trial are more likely to occur when paper-based proceedings, which affect the length of proceedings, take place. The safeguarding of the fundamental **right to a fair trial** within a '**reasonable time**' is established by Article 6 of the ECHR. This principle must be fully taken into account when managing the workload of a court, the duration of proceedings and specific measures to reduce their length and improve their efficiency and effectiveness. On several occasions the European Court on Human Rights (ECtHR) considered that one of the ways of guaranteeing the effectiveness, efficiency and credibility of judicial systems is to ensure that a case is dealt within a reasonable time (H. v. France, No. 10073/82, of 24 October 1989). More recently, the Court⁶⁰ stated that **significant and recurring delays** in the administration of justice are a matter of particular concern and are likely to undermine public confidence in the effectiveness of the judicial system and that, in exceptional cases, "the unjustified absence

⁵⁸ [Digital Single Market: Commission calls for swift adoption of key proposals and maps out challenges ahead \(europa.eu\)](https://ec.europa.eu/digital-single-market/en/digital-single-market-commission-calls-swift-adoption-key-proposals-and-maps-out-challenges-ahead)

⁵⁹ Article 47 - Right to an effective remedy and to a fair trial states:

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

⁶⁰ The Court has established the following criteria for assessing whether the duration of proceedings was reasonable: - Complexity of the case (complex cases need longer time to be completed, but complexity as such is not always sufficient to justify the length of proceedings); - The applicant's conduct (this is the only criterion that led the Court to conclude that Art. 6. was not violated even if the length of proceedings was manifestly excessive) - The conduct of the competent authorities (if the authorities have taken prompt and appropriate

remedial action to manage the temporary unpredictable overload of the courts, the longer processing time of some cases may be justified; -What is at stake for the applicant (some cases require particular speed; mainly "priority cases" such as 'labour disputes involving dismissals, recovery of wages and the restraint of trade; compensation for victims of accidents etc.). <https://rm.coe.int/1680748245>

of a decision by the courts for a particularly prolonged period could in practice be regarded as a denial of justice” (Glykantzi v. Greece, No. 40150/09, of 30 October 2012).⁶¹

The lack of secure online communication channels for cross-border communication affects also **data protection**. If no secure digital tools are in place, the use of informal unsecure communication channels (e.g. personal e-mail, Skype...) to transmit highly sensitive information, for instance related to criminal investigation procedures, might be seen as an alternative. The risk of **loss of confidentiality** of documents and attachments which could contain highly sensitive data should also be taken into account.⁶²

According to the consulted stakeholders⁶³, the lack of secure communication channels leads to potential **violations of personal data and privacy** as well as to an increased risk of cyber-attacks and a rise in thefts of identity and frauds. As the 2019 Europol report highlighted, new threats continue to emerge from vulnerabilities in established processes and technologies.⁶⁴ The risks involved in the exchange of paper documents should also not be underestimated, these include: loss of paper documents by postal services, delays in delivery, possibility of unauthorized access to documents by third parties etc.

2.3.3. Suspension of cross-border judicial procedures due to force majeure circumstances

Force majeure circumstances (e.g. epidemics, strikes, riots etc.) can have disruptive effects on the functioning of cross-border justice. Due to the national restricting measures to prevent the spread of the COVID-19 pandemic, a range of negative impacts on civil and criminal proceedings occurred:⁶⁵

- complete or partial suspension of the work of courts and other judicial authorities;
- temporary inability to obtain legal aid;
- difficulty to access information normally provided by the competent authorities;
- practical issues, for instance delays in enforcing a decision in a cross-border context or in serving a judicial document;
- temporary adjustments in terms of communication with the public (by email, by phone or by postal mail);
- the expiry of deadlines, due mainly to the restrictions on societal life and movement, have deprived citizens 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.

Despite the negative impacts highlighted above, overall, the pandemic has also had positive effects on the use of digital technology. According to the findings of the national legal mapping carried out for this study, the pandemic boosted the use of technology, in particular videoconferencing (see Section 1.3.4), making it clear the need for the digitalisation of cross-border exchanges.⁶⁶

⁶¹ CoE, European judicial systems Efficiency and quality of justice CEPEJ STUDIES No. 26, 2018.

⁶² E-CODEX impact assessment.

⁶³ EU level focus group carried out by VVA on 4 May 2021 and stakeholder consultation in the context of the national legal mapping.

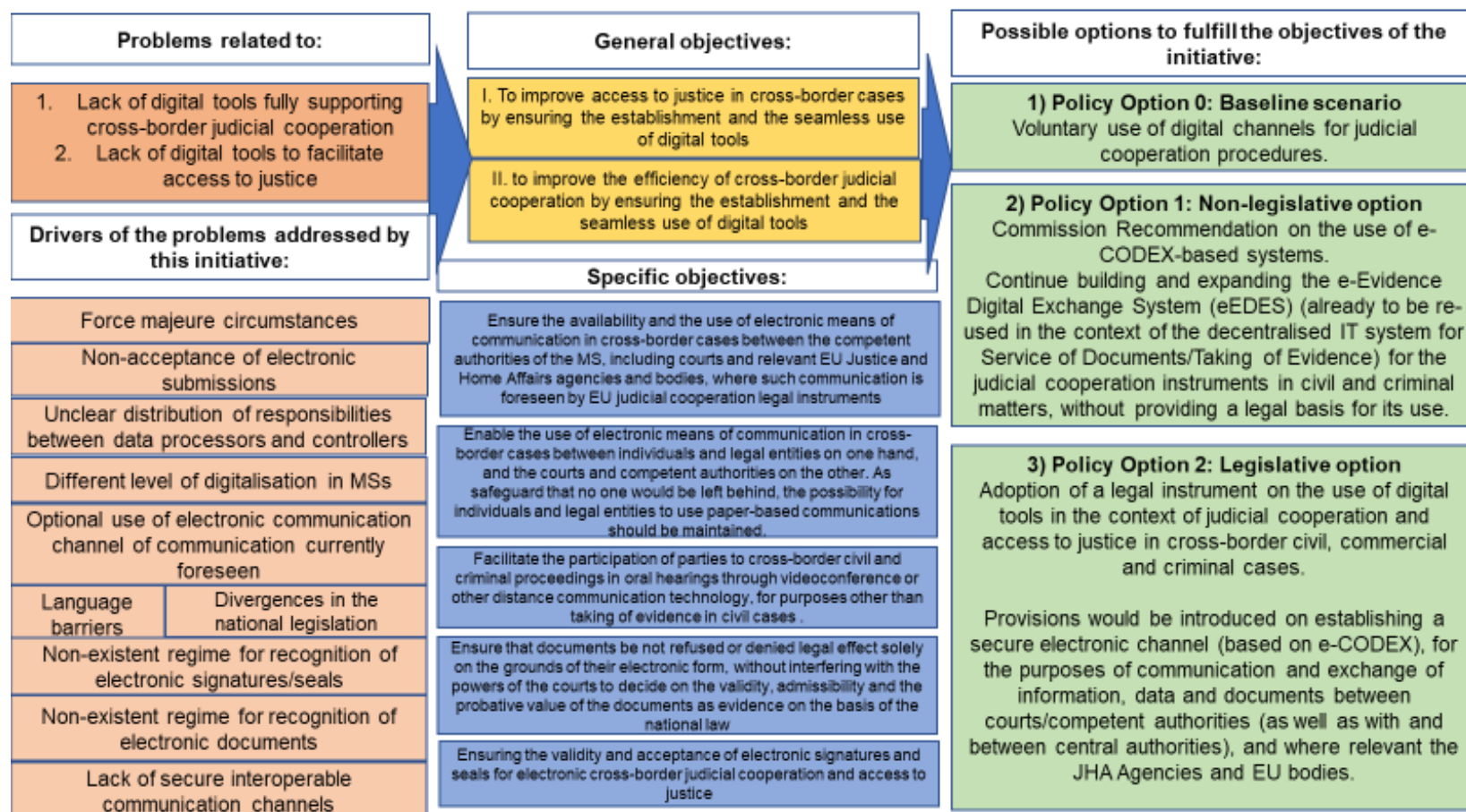
⁶⁴ INTERNET ORGANISED CRIME THREAT ASSESSMENT (IOCTA) 2019.

⁶⁵ European Commission website, Impact of COVID-19 on the justice field, https://e-justice.europa.eu/content_impact_of_the_covid19_virus_on_the_justice_field-37147-en.do. This website also provides links to the measures adopted by MS to counter the impact of COVID-19 on the justice field.

⁶⁶ See: <https://conflictoflaws.net/2020/access-to-justice-in-times-of-corona/> and <https://www.boomdenhaag.nl/webshop/civil-courts-coping-with-covid-19>

The interconnection between the problems and their drivers, the general and specific objectives of the initiative and possible options to fulfil the initiative's objectives are illustrated by the intervention logic below.

Figure 5: Intervention logic



3. Why should the EU act?

3.1. Legal basis

Since the (optional or mandatory) use of digital channels in cross border judicial proceedings would facilitate judicial cooperation both in civil and criminal matters, the legal basis for this initiative would be a combination of Article 81 and 82 TFEU. More specifically, the introduction of the digital channel would facilitate access to justice in civil matters in line with Article 81(2). In criminal matters, Article 82(2) is the legal basis for the Union's right to act in the field of judicial cooperation to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

3.2. Subsidiarity and proportionality

A mechanism/instrument for the (optional or mandatory) digital exchange of cross-border information in judicial proceedings in civil, commercial and criminal law, is best achieved at EU level. In the absence of EU action, there is a risk that Member States develop national systems independently, leading to a lack of interoperability between the systems. While management at EU level entails a cost (see Section 4), it is the only way to achieve an interoperable system for cross-border communication between judicial authorities and between those authorities and parties to proceedings (citizens, businesses etc).

Currently, legal provisions on the use of digital channel exist in the various EU instruments in both civil/commercial and criminal law matters; however, they are not coherent. In many cases they are outdated, for instance, they do not provide for the use of the existing interoperable solutions, and do not foresee or impose the use of the electronic channel. To date, only few Member States are involved in pilot projects, based on the e-CODEX tool. The legal validity and admissibility of documents transmitted electronically during judicial proceedings may also be questioned. Besides, there are no commonly agreed assurance level of electronic signatures/seals among Member States. National IT systems used by the judiciary are often not interoperable across and within Member States, this is in part due to the different level of digitalisation of countries. In the lack of EU rules, national rules diverge across Member States, (see Section 1.3), leading to legal uncertainty of applicable rules. The COVID-19 pandemic has exacerbated the above issues, highlighting the need for the EU to accelerate national reforms to digitalise judicial institutions' handling of cases, parties' and lawyers' exchange of information and documents, and continued easy access to justice for all.

The above issues cannot be sufficiently tackled by Member States themselves as they transcend the reach of national legal systems and can therefore be only solved at Union level. While nothing prevents Member States in principle from digitalising the way they communicate, the projection of what will happen without EU action shows that progress will likely be very slow and that even where Member States take action, interoperability cannot be ensured without a framework under EU law.

The EU added value lies in further improving the efficiency, resilience and speed of cross border judicial procedures, by simplifying and accelerating communication between national competent authorities of Member States and between the latter and parties to proceedings, and, thus, improving the administration of justice in cases with cross-border

implications. This initiative respects the principle of subsidiarity by allowing the differences between areas of law (civil, commercial and criminal law) and divergences among the national systems continue to exist, while ensuring cross-border compatibility. Cross-border legal cooperation necessitates that legal and technical tools are aligned and interoperable. Even in Member States that are digitally well-advanced, the existing tools are not always available in cross-border cases. The digitalisation measures are also linked to existing instruments in the area of cross-border judicial cooperation and would aim to improve the functioning of these existing instruments.

Moreover, the (optional or mandatory) digital exchange of cross-border information in judicial proceedings in civil, commercial and criminal law matters would be in accordance with the principle of proportionality as it would not go beyond what is necessary to achieve the objectives of ensuring the smooth functioning of the area of freedom, security and justice and ensuring the safeguarding the fundamental rights in the EU (e.g. access to justice, defence rights, victims' rights, data protection etc.). Where national IT systems exist, they could continue to be used, subject to certain conditions such as their interoperability.

Overall compliance with the principle of proportionality and subsidiarity would be guaranteed as Member States would remain free to decide whether to use or not secure digital channels for communication between courts/competent authorities (optional legislative option) and even if they will be obliged to use electronic channels (mandatory legislative option), certain requirements will continue to be regulated at national law such as the possibility to use nationally developed IT systems..

3.3. What should be achieved?

The policy objectives identify the EU political priorities and aims for action in the area of cross-border judicial cooperation in civil, commercial and criminal law. Their definition is an essential step of any impact assessment study since setting clear objectives allows to establish logical links between the identified problems and the solutions considered. In line with the Commission's Better Regulations, we selected objectives that are SMART (Specific, Measurable, Achievable, Relevant and Time-bound) and allow for a broad consideration of policy options.

As shown in the figure below, different policy objectives apply at different levels:

1. General objectives put the concrete initiative in the overall context of the Union's policies; they relate to the Treaty-based goals and create a link with the existing policy context.
2. Specific objectives relate to the specific domain of digitalization of cross-border judicial cooperation and clarify the aims of the Commission's initiative in detail; and
3. Operational objectives concern objectives of specific actions.

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

The **specific objectives** are:

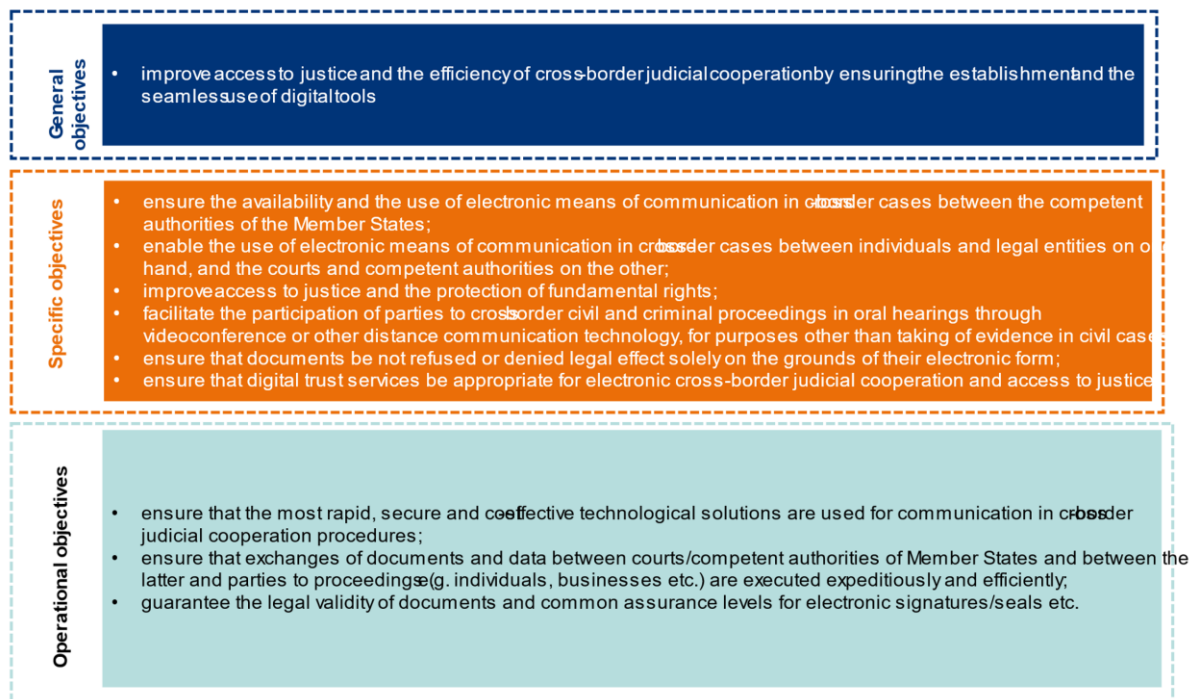
- i. Ensure the availability and the use of electronic means of communication in cross-border cases between the competent authorities of the Member States, including courts and relevant EU Justice and Home Affairs (JHA) agencies and bodies, where such communication is foreseen by EU judicial cooperation legal instruments.
- ii. Enable the use of electronic means of communication in cross-border cases between individuals and legal entities on one hand, and the courts and competent authorities on the other. As a safeguard that no one would be left behind, the possibility for individuals and legal entities to use paper-based communications should be maintained.
- iii. Facilitate the participation of parties to cross-border civil and criminal proceedings in oral hearings through videoconference or other distance communication technology, for purposes other than taking of evidence in civil cases⁶⁷
- iv. Ensure that documents be not refused or denied legal effect solely on the grounds of their electronic form, without interfering with the powers of the courts to decide on the validity, admissibility and the probative value of the documents as evidence on the basis of the national law;
- v. Ensure that digital trust services be appropriate for electronic cross-border judicial cooperation and access to justice.

⁶⁷ The use of videoconferencing or other distance communication technology is already foreseen in the recently adopted recast of the Taking of evidence regulation (Art.20) - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1783>. This regulation is not intended to be covered by the new proposal on the digitalisation of cross-border judicial cooperation.

The **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 (e.g. individuals, businesses etc.) are executed expeditiously and efficiently; guarantee the legal validity of documents and common assurance levels for electronic signatures/seals etc.

Please see Figure 6 below for a more detailed description of the policy objectives.

Figure 6: Policy objectives



4. Overview of the policy options

4.1. The baseline

This section presents the status a quo across the 26 Member States in the scope of the study. It is based on the findings of the national legal mapping and is structured around the following aspects:

- Intensity of cross-border communication and digital cross-border communication;
- Types of communication means used and context of their use;
- Conversion of paper documents into electronic ones and vice versa;
- Handling of classified information in cross-border communication.

4.1.1. Overview of the current functioning of cross-border judicial cooperation

4.1.1.1. Intensity of cross-border communication

Statistics on cross-border exchanges between competent national authorities is not collected in many Member States (e.g. AT, BG, DE, FI, FR, IE, LV, NL, PL, PT). The main reason for this is that the competent authorities communicate directly with their foreign counterparts (i.e. decentralised system) and the respective data is not collected by any central authority. In some Member States, only data on cross-border exchanges regarding a certain type of legal assistance (e.g. EAW or EIO) are collected. This is often due to the fact that one specific authority is responsible for serving this communication or the specific type of communication must go through a central channel.

Due to an uneven and incomplete data landscape, with many gaps, the tables below present the total number of exchanges in criminal and civil matters without the distinction by legal instrument. Only Member States for which data are available are listed in the tables below.

Table 2: Number of cross-border exchanges in civil and commercial matters

2015		2016	2017	2018	2019	2020		
	Total	Total	Total	Total	Sent	Received	Sent	Received
Austria							5251	
Belgium	1253	1004	1147	1147	1249			
Germany					22000	24000		
Italy							83	858
Romania					10822			
Spain							1478	5172

- Notes: Data for Austria concern only the European Orders for Payments; in total, according to the consulted stakeholders, 60-100 requests are received per day. Data for Belgium and Romania concern all international exchanges, not just within the EU. Data for Italy pertain to the Maintenance Regulation..

Table 3: Number of cross-border exchanges in criminal matters

	2016	2017	2018	2019		2020		
	Total	Total	Sent	Received	Sent	Received	Sent	Received
Croatia							440	803
Estonia			176	295	300	500		
Hungary					1213	3286	463	1260
Lithuania	90	67	42		605	1267	635	1522
Malta							135	274
Romania					31811			
Slovakia						2101		1309
Spain							489	3107

- Notes: Data for Estonia concern only EIOs. Data for Hungary refer to the Chief Prosecutor's Office (2019) and Budapest Police Department (2020). Data from Lithuania concern only EIOs and requests via Eurojust. Data for Malta refer only to EIOs and MLAs requests. Data for Romania provide the total number of all international exchanges. For Slovakia the 2019 data refer to EAWs.

The table below provides an overview of the numbers and estimates of unspecified exchanges (i.e. not specific to criminal or in civil and commercial matters; it is not specified if they concern communications sent or received).

Table 4: Number of unspecified exchanges

Member State	Nr of exchanges, time period
Croatia	below 500 via EIJN, over 2017-2018
Czechia	about 400 via EIJN, over 2017-2018
Estonia	523, over 2018-2019
Germany	approx 100000 per year About 2500 via EIJN, over 2017-2018
Luxembourg	1743 in 2016, 1767 in 2017, 1562 in 2018, 1551 in 2019, 1635 in 2020
Slovenia	1073 received in 2020
Sweden	approx 10000 per year

The lack of data and the gaps in the number of cross-border exchanges do not allow to make conclusions about trends in cross-border cooperation over time, by type of procedure (criminal versus civil) or across countries. One indication is, however, provided by the data from Germany (Table 6 above): the number of exchanges via the EIJN constitutes only a fraction of the total cross-border exchanges.

4.1.1.2. Intensity of digital cross-border communication

Most countries (e.g. BE, BG, ES, FR, HR, HU, IT, LU, PL, PT, RO, SI, SK) do not have statistics on whether the cross-border communication between competent authorities has been carried out by digital or by paper-based means.

Some interviewees could provide estimates of the share of digital versus paper-based exchanges based on their personal experience. Estimates on the intensity of cross-border communication differ considerably even within the same Member State, and seem to

depend both on the type of procedure (i.e. criminal or civil) and on the competent authority (e.g. how often the authority is involved in cross-border exchanges).

Based on the estimates, a conclusion can be made that in most Member States (e.g. BE, CZ, DE, ES, LT, MT, SK), paper-based communications constitute the very large majority of all cross-border communications. Ireland does not use digital channels for official cross-border communication at all. A few Member States (e.g. BE, FR) noticed an increase in the cross-border digital communications, which may be attributed to the COVID-19 pandemic.

A few Member States report that digital channels are used more often than paper based. For example, the estimate is 40% paper-based versus 60% digital in Sweden. In the Netherlands, an absolute majority (90%) of cross-border exchanges in criminal matters is digital, mainly because the domestic procedure is highly digitalised; only old cases still take place via paper documentation. The share of paper-based exchanges in civil matters, however, is higher than the share of the digital exchanges.

In Hungary, the consulted notaries estimated that 100% of cross-border communications are paper-based. However, the Private International Law Department of the Hungarian Ministry of Justice estimated 90-95% paper-based communication in relation to legal cooperation in taking of evidence or service of documents and 60-70% digital communication (via email) in relation to matters of maintenance obligations and parental abduction of children.

There is also an indication that a mix of paper and digital channels may be used in the same case. For instance, a consulted stakeholder from Czechia explained that paper documents are always sent first, whereas the subsequent communication (“to sort things out”) takes place via digital means (via email). The estimate is 90% paper-based versus 10% digital communication for Czechia.

4.1.2. Use of digital means in cross-border communication

- 4.1.2.1. Types of communication means used and context of their use

- 4.1.2.2. General overview

Many Member States do not adopt an additional national legislation or do not amend their national legislation to implement EU-level legal instruments and do not introduce (additional) means of communication. This is, of course, because many of the relevant EU legal instruments are Regulations are **applicable directly**, so they do not require any further intervention by Member States. However, even Directives are at times not transposed, and Member States rely on them having a direct effect. Some Member States (e.g. EL, FI, MT, PT) seem to be applying EU legal instruments directly more frequently than others (see Tables in Annex 2 for more detail). In such cases, only the communication means foreseen by the Regulations are used in the respective Member State.

Another trend is that some EU legal instruments almost universally were followed by an implementing national legislation that foresees (additional) means of communications (see Tables in Annex 2 for details). Naturally, Directives and Council Framework Decisions are among such documents as they need to be transposed into national law. However, most Member States also saw the need to pass national legislation to implement few Regulations and introduce rules and requirements on communication means in their national laws.

Examples of the legal instruments, for which comparatively many Member States passed national legislation to introduce means of communication, are:

- **Council Regulation (EC) No 1206/2001** of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- **Regulation (EC) No 1896/2006** of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;
- **Regulation (EC) No 861/2007** of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure;
- **Council Framework Decision 2002/584/JHA** of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States;
- **Council Framework Decision 2005/214/JHA** of 24 February 2005 on the application of the principle of mutual recognition to financial penalties;
- **Council Framework Decision 2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders;
- **Directive 2014/41/EU** of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
- **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.

By contrast, there are also EU legal instruments, for which Member States seemingly did not see the need to render the communication means more precise or introduce additional communication means. For example, few pieces of national legislation could be found that implement the 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 and the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union. In both cases, the implementing national legislation does not specify the means of communication. The same applies to many Regulations: often the national implementing legislation does not specify the means of communication at all.

There are several countries (e.g. BE, EE, FR, LU, RO, SE) that, as a general rule, use neutral (or technologically neutral) phrasing when prescribing means of communication in their implementing legislation. This applies to almost all legal instruments in civil, commercial and criminal matters with only few exceptions. Such national legislation refers to any communication means that are “secure” and/or “guarantee confidentiality”, or is “capable of leaving a written record” and/or “permitting to verify the authenticity of the document”. As long as digital communication means can meet these criteria, they can be used by national competent authorities and, in appropriate cases, by citizens/ businesses when communicating with the authorities in cross-border cases.

The EU-wide digital communication means/networks (Eurojust, EJN, SIRENE, SIENA) are frequently referred to in the implementing national legislation and used in practice. e-CODEX is currently being used in a number of pilots across the EU, and there is national legislation (e.g. FR, NL) or regional legislation (DE) enabling these pilots. However, the national legal mapping carried out for this study did not identify any national legislation that expressly permits or requires the use of e-CODEX in other circumstances. At the same time, e-CODEX is just another digital tool and, hence, can be used when national legislation foresees or allows the use of digital communication means.

Some Member States require that replies to the cross-border requests by foreign authorities should be sent by the same communication means as the original request (Spain in relation to cooperation in civil matters; Poland in relation to any cross-border information exchange between contact points, authorised entities and law enforcement). An interesting principle is enshrined in the Swedish law on international legal assistance in general and, therefore, applicable to the implementation of EU legal instruments. According to it, foreign criminal investigation or proceedings should be put on an equal footing with a corresponding national case and be treated in the same way. This means that the same means of communication should be available in the cross-border criminal proceedings as in the national criminal proceedings.

Based on the findings of the national legal mapping conducted for this study it seems that cross-border cooperation between competent authorities is more digitalised than the possibilities of individuals/legal entities to digitally interact with authorities across the border. In the domestic context, however, there are many electronic justice services available to individuals/legal entities, but usually they cannot be used in cross-border contexts.

As country research showed, at times the practice of communication has developed further, and certain means of communication are not used any more, even if they are provided for by law. Some of the stakeholders consulted for this study (e.g. NL) noted that, in practice, the means of cross-border communication may depend on the other country (i.e. how digitalised the counterpart is). Also, cross-border communication is mainly limited to transfer of standard forms enabled by EU legal instruments that are digitalised (NL).

The Tables in Annex 2 below provide an overview of the implementation of EU legal instruments by Member States with regard to communication means. Empty cell means that no such implementing national rules were identified.

The sections below provide more insights on the use of specific communication means by Member States in the context of cross-border cooperation based on the findings from the national legal mapping conducted in 26 Member States.

- **Post**

At present, traditional post remains the most widely used communication means for cross-border communications between national competent authorities. Most exchanges and communications across borders are still completely paper-based and take place by post. The national implementing legislations and legislations on cross-border cooperation of the majority of Member States in general require sending/receiving original documents or certified copies by post. Often, a requirement is added that documents must be sent by registered post or courier or that the security of delivery must be guaranteed in some other way.

Even where other communication means are permitted, they are considered complementary to the postal delivery. In some cases, the national law requires, in addition to digital transmission, to subsequently send the documents by post or courier (e.g. CZ). Ireland foresees that only in urgent cases of assistance in criminal matters, a request can be made by other means than in writing (i.e. by post or email). In practice, the initial request made by post may be followed by communication via digital channels, usually email in some countries (e.g. MT).

In practice, mutual trust between national authorities plays a role with regard to how they treat a request that must be sent by post, but is transmitted by digital means instead. In some cases, the receiving authority might start executing a request received by email without waiting for the original to arrive by post, if there are no doubts about the authenticity of the request (this is the case on CZ and LT in the context of criminal matters).

The consulted stakeholders from different countries provided insights on why post remains an indispensable communication means. For instance, large volumes of documents are always sent across borders by post (e.g. LT). Post is also perceived as the most suitable communication means from the point of data protection and security, therefore, sensitive information is rather sent by post (AT, FI, LT, SK). A few stakeholders (e.g. IE, FI) indicated that some Member States are adhering strictly to the rule of written communication via post only and would not accept requests or communications sent via other means.

- **Fax**

Fax (also known as telefax, facsimile or telecopier) is fairly often mentioned as a digital means of communication by national implementing legislation and legislation on international cooperation in civil and criminal matters. However, it seems that in practice it is out of use or rarely used in several countries (AT, BE, EE, RO, SK).

The use of fax is foreseen by law in a variety of situations, for example, for delivering an arrest or search warrant (e.g. MT), communications in the context of the European Small Claims procedure and European Order for Payment (e.g. IE), in the context of taking evidence in civil matters (e.g. DE), for transmission of various documents and communications for international cooperation in criminal matters (e.g. ES). Some national laws state that fax communications are accepted as long as original documents are sent in the paper form afterwards (e.g., CZ, IE, SK).

- **E-mail**

E-mail is very widely used across Member States, mainly for informal communications or as a follow-up on initial requests and/or official exchange of documents. The use of email for cross-border communications was mentioned by almost all consulted stakeholders in every Member State. For example, Italy has a practice of sending standard forms via email. A Czech stakeholder indicated that email may be used for operational exchange of information in criminal matters.

Besides the informal use, there are cases in which national law allows to use email in cross-border communications and for document exchange, provided the authenticity of the communications/documents can be verified. For instance, communications in the context of the freezing property of accused persons and the forfeiture of proceeds of crime can be made by email (e.g. MT). Ireland and Estonia reported that European Arrest Warrants may be accepted by email from the issuing judicial authority. In many other cases (see Tables in Annex 2), if documents are sent by email, national legislation usually require to follow them up by paper-based originals or certified copies sent via post.

Sending a document via email does not always equal to purely digital (i.e. paperless) transmission. In this regard, some stakeholders (e.g. LT, RO) explained that, in practice, still a paper document is written, signed, stamped, scanned and then sent via email.

• Purpose-built IT systems

In addition to the EU-wide IT systems, most Member States have at least one purpose-built national IT system. There are various types of IT systems depending on the structure of the national judiciary system. In general, there are IT systems for lawyers, notaries, bailiffs, prosecutors, courts, and police and central authorities. There are IT systems for civil proceedings, commercial proceedings, for criminal proceedings and also for administrative proceedings. There are also IT systems for a specific legal purpose (e.g. order for payment, videoconferencing) or for file management and exchange among different authorities. The overview of the different purpose-built IT systems and some of their characteristics are listed in Table 7 below.

Research into some of Member States (CY, DE, EL) did not yield any results about purpose-built IT systems. There were only indications that the EU-level systems are used (e.g. VIS, SIS, SIENA, EURODAC, EJR etc.). All Member States use commercial off the shelf (COTS) systems, like Skype, Webex, Zoom and others. Interviewees from some Member States indicated that even the usage of COTS is not always smooth, and problems with interoperability/ compatibility arise even in the national context.

Most of the purpose-built IT systems are not interoperable across borders. Only some Member States indicated that their systems are interoperable (MT, RO, ES, SE).

In some Member States, purpose-built IT systems allow non-citizens or non-residents to access them. However, there are sometimes practical difficulties with, or prerequisites for, acquiring this access. For instance, in Croatia, a non-citizen or non-resident would have to acquire the eCitizen status, a possibility open to any EU citizen. In Hungary and Slovakia, the respective services are open to anyone but are available only in national language, which may complicate the access for those who do not know it. In Italy, non-citizens can access the relevant IT system if they have an Italian residence permit. In the Netherlands, a person would need to have DigiD (for natural persons) or eRecognition (for legal persons); these identification management systems are, as a rule, available to citizens or residents save exceptions. The Estonian system e-File can be accessed by non-citizens and non-residents if they obtain the Estonian eResidency.

For attorneys (legal representatives), the access to the purpose-built IT systems is conditional on being registered at the national bar association in some Member States, as this professional organisation usually provides the account or certificate (e.g. IT, HR, ES). In this regard, an interesting development was reported in France. A recent ruling by CJEU established that the lack of access to the national virtual network for lawyers (RPVA) for foreign attorneys constitutes a restriction on the freedom of services provision. The RPVA must be, therefore, opened to all European lawyers.

A court can provide an access (special logins) to non-citizens or non-residents and to non-registered in the Member State attorneys on the case-by-case basis in some countries such as Lithuania, whereas in Romania, a respective request needs to be made to the court, and then a written consent must be given by the party that requested access to connect to the IT system for a specific case.

• Telephone

Telephone is also frequently used, both for official communications and requests and for informal communications between competent authorities cooperating across borders.

Telephone is also foreseen for a variety of cross-border procedural actions involving a competent authority, on the one hand, and a citizen, on the other. For example, for delivering an arrest or search warrant (e.g. MT), for questioning by the police or for taking evidence (e.g. SE), for notifications of the creditor within the European Account Preservation Order procedure (e.g. IE), for hearing a witness, expert witness, defendant or suspect (e.g. FI).

- **Videoconference**

The possibility of using audiovisual means of communication (e.g. videoconferencing) has been introduced by many Member States explicitly in their national law when implementing the following EU legal instruments:

- **Council Regulation (EC) No 1206/2001** of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- **Directive 2014/41/EU** of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
- **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;
- **Convention** established by the Council in accordance with Article 34 of the Treaty on European Union, **on Mutual Assistance in Criminal Matters** between the Member States of the European Union.

While Tables 19-62 in Annex 2 present an overview when videoconferencing was introduced implementing every EU legal instrument, Tables 8 and 9 below show for which purposes in general audiovisual means are available in the Member States. The latter tables are likely to present a more comprehensive overview of the use of audiovisual means because they take into account the national rules on international mutual legal assistance that exist in many countries and are applicable in addition to the rules from EU legal instruments.

On average, videoconference is more frequently explicitly introduced in the national law of Member States when implementing the EU legal instruments in criminal matters and when legislating on international mutual legal assistance in criminal matters. Hence, the insights about the use of audiovisual means also mainly pertain to the criminal procedure with a cross-border element.

Additionally, most national laws examined refer to the use of videoconference in court hearings and not during the investigative phase, although for some countries national rules on the use of audio-visual means during the investigative phase or preparatory phase could be also established. For example, Poland allows the examination of victims via audio-visual means in pre-trial stages such as investigation and jurisdictional hearing. Lithuania allows the questioning of a suspect by audiovisual means if the person is in detention. For the European Investigation Order procedure, the use of audio-visual means for questioning during the investigation is foreseen in CY, FI, HR, SI. The same applies in the context of the protection order (FI, SI). France allows audio-visual means in the context of freezing orders.

The circumstances, in which audiovisual means can be used in the criminal procedure in court vary and sometimes relate only to specific types of cases (e.g. sexual abuse).

However, across the majority of Member States the use of audiovisual means in criminal proceedings is foreseen when the following conditions are present: inability of a participant to travel to the court (including from a foreign country, but also due to detention or state of health), protection of anonymity of a witness, and protection of a victim of a crime. In several countries (e.g., IT, HR, FI, PL), additionally the hearing of minors can be carried out by audiovisual means. Additional conditions are regulated in Finland, namely where: the (physical) arrival of the person to the main hearing would, in comparison with the significance of the testimony, would cause considerable expenses or inconvenience; the credibility of the statement of the person being heard can be assessed in a credible manner without the person's presence in the main hearing; the procedure is necessary in order to protect the person being heard or a person related to the person being heard from a threat against life or health.

When using audiovisual means during court hearings, quite a few countries (e.g. BG, EE, FI, PL, SE) pay special attention to the equality of the parties and provide that the court needs to make sure that all parties have access to a similar/comparable technical capacities (e.g. image and audio for all parties of the proceedings).

While many procedural and investigative actions can be carried out by using audiovisual means, not many countries allow the whole proceedings to be held in this manner. Some countries allow only a certain type of proceedings to be held completely by audiovisual means. For instance, in Slovakia, the whole hearing is possible in this manner in small claims procedures, and in Austria and France this is possible for the European Investigation Order. The Netherlands is piloting digital hearings in civil/commercial matters for residents of an island.

Luxembourg and Belgium do not have any specific provisions on videoconferencing in the national law due to the technological neutrality of their legislation in this regard. In practice, videoconferencing is used, according to the interviewed stakeholders. These countries are not included in the tables below, however, as they do not have relevant national rules. In Estonia, no legislative changes, when implementing EU legal instruments, have been made regarding the use of audiovisual means in civil proceedings.

The type of IT system/software exactly used to execute audio-visual proceedings is not always clear, but several stakeholders mentioned the use of COTS products, such as Skype for Business, Zoom, Webex.

Table 5: Purposes of using audiovisual means in cross-border cooperation in criminal matters, according to national legislation

	Taking evidence	Hearing witness	Hearing expert witness	Defendant/accused/suspect	Victim of crime	Intervening parties	Interpreter	Court hearing as a whole
AT		x	x	x				
BG								
HR	x	x	x	x				
CY	x				x			
CZ		x	x	x				
EE		x	x	x	x	x		
FI	x	x	x		x	x	x	
FR				x		x		

DE	x							
EL				x			x	
HU								
IE		x	x	x	x			
IT		x	x	x				
LV		x	x	x	x	x	x	x
LT		x	x	x	x	x	x	
MT		x	x					
NL	x			x	x			
PL		x			x			
PT	x							
RO		x		x	x	x		
SK	x	x		x	x			
SI		x	x	x				
ES								x
SE		x	x	x	x	x		

Table 6: Purposes of using audiovisual means in cross-border cooperation in civil and commercial matters, according to national legislation

	Taking evidence from				Parties' participation in the procedure	Communi-cations*	Court hearing as a whole	Mediation hearing
	witness	expert	parties	N/S				
AT				x				
BG**				x	x			
HR				x			x	
CY				x				
CZ	x	x	x			x		
EE								
FI	x	x	x		x			
FR								
DE	x	x			x			
EL	x				x		x	
HU				x				
IE	x	x						
IT								
LV	x	x			x	x	x	
LT	x	x	x		x			
MT	x							x
NL				x				x
PL				x			x	
PT				x				
RO								
SK							x	
SI	x	x			x	x		
ES								
SE**				x				x

Notes: N/S – not specified; * communications refer, for example, to mediation of presence of a participant or interpreter; ** audio- or video-recordings are allowed.

Several stakeholders (e.g. DE, HU, LU, MT, NL, PL, RO, SK) mentioned the increase in the use of audiovisual means during the COVID-19 pandemic. In the Netherlands, where courts were closed almost completely during the pandemic, the requirement of 'exceptional circumstances' for the use of videoconferencing was suspended in criminal cases. A temporary act (in force till 1 September 2023) was adopted in relation to civil and administrative proceedings, stating that they can be conducted by videoconferencing if a physical hearing is not possible. Further options to use two-way digital communication means were foreseen for penitentiary complaints and appeal procedures, extension of family supervision order and custodial placements. In Poland, the use of audiovisual means has been considerably expanded during the pandemic, allowing to conduct the entire criminal procedure in this manner. At the same time, a German stakeholders reported that even during the pandemic, no main hearing in criminal cases were conducted by videoconferencing.

4.1.3. Certain legal foundations for the use of digital means

4.1.3.1. Conversion of paper documents into electronic ones and vice versa

Conversion of paper-based documents into electronic ones is a necessary prerequisite for the use of digital means of communication and document exchange across borders. However, the country research did not always bring specific results on the legal basis for such conversion or detailed descriptions of the conditions and process of conversion. In some countries (e.g. HR, SK), it seems there are no legal requirements on the conversion, but the practice of conversion exists. Table 10 below provides a summary of the country research.

In most Member States, for which the information was available, the entity responsible for such conversion is a judicial authority. Often conversion is a part of the document submission process, i.e. if in the course of judicial proceedings paper-based documents are submitted, they are digitalised by the competent authority, and electronic copies are stored and used. The converted electronic document has the same legal/probative force or evidential value as the paper-based original.

All Member States pay particular attention to authentication and validation of the digital copy. The requirement for the digital copies to correspond to the paper originals visually and in terms of content, is common. The providers of respective electronic services may be required to be certified. The correctness of the conversion or the transmission sometimes must be certified with an e-signature or e-stamp of the responsible staff. Some countries require the conversion and subsequent storage in such a way that no data loss, errors or forgery happens.

For several Member States, we have the most general information only, namely that they are in full compliance with the eIDAS Regulation and adopted national law to this effect. This is the case for **Belgium** (adopted in July 2016 the Law implementing and supplementing 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), **Cyprus** (Law 55(I)/2018), **Luxemburg** (new Act of 17 July 2020 amending the amended Act of 14 August

2000 on electronic commerce) and **Portugal** (Decree-Law no 12/2021 of 9 of February 2021).

Also, only very general information can be provided for **Finland** and **Lithuania**. For Finland, no documents were found regulating authentication. In accordance with the Section 16 of the Act on Electronic Services and Communication in the Public Sector (13/2003), any Finnish authority can sign decisions electronically. Paper documents are signed in accordance with normal domestic requirements and scanned to electronic format. Lithuania has a well-developed electronic signature platform and a comparatively widespread use of electronic signatures. There is a mandatory requirement for all government agencies to accept electronically signed documents, following the Law on electronic identification and trust services for electronic transactions.

For most countries, the rules on authentication of documents refer to the domestic procedural context. We can assume though that similar or even identical rules also apply in the cross-border context. Below, we provide a short summary per country as the (identified) national rules vary considerably and cannot be easily presented in a comparative overview.

In **Austria**, in civil and commercial proceedings (regulated by the Code of Civil Procedure, §§310-314), documents of public authorities are usually regarded as authentic, unless there are doubts (e.g. the opposing party contests). Then the authority or the person issuing a said document can be required to declare its authenticity. This can be done by a variety of means, e.g. the author of the document can testify, scripture can be compared or an electronic or other copy used as a proof. On the authenticity of documents by foreign authorities, the court has to decide on the case-by-case basis. In the case of doubt, the diplomatic mission or embassy can declare the authenticity.

The eIDAS Regulation was implemented in **Austria** by the Signature and Trust Services Act. The law states that the “qualified electronic signature” (QES) is legally equal to a handwritten signature on any document and must contain a “qualified certificate” issued by a qualified Confidence Service Provider. For private persons, there are two main ways to obtain an eSignature: via Citizencard (physical card with a chip) or via Phone-Signature. The use of those by people not living in Austria is unlikely because an Austrian cell phone number is needed to activate the mobile signature.

In **Bulgaria**, there are rules (Civil Procedure Code) regulating the use of authentication tools in communications between courts and parties. All electronic statements to the court are admissible when signed with qualified electronic signature, in compliance with the eIDAS Regulation and Bulgarian Electronic Document and Electronic Certification Services Act. Same applies when the statements are submitted by the parties’ representatives, while attaching an eligible digital copy. In case the authorisation is made electronically, the authorisation document has to be signed with qualified electronic signature and in a manner that allows for certification of the time of signing the Power of attorney with exact year, date, hour, minute and second with a qualified electronic time stamp. Electronic payments to the court, conducted via the integrated court payment system, do not require express documentary evidence, unless the fee is paid via digital banking.

In **Croatia**, authentication of documents/ copies and signatures is done by the notary public (Croatian Notary Public Act). Most of the communication in civil and commercial matters with Croatian courts is done through the e-Communication system. The submissions filed by external users have to be filed electronically and signed by the users qualified electronic

signature that must be issued by a qualified service provider, and it must be valid at the time of signing. The courts send documents electronically by directing them to a user's electronic inbox. The court documents are also signed by a qualified electronic signature with the application of an electronic time stamp that links date and time to data in a way that reasonably excludes the possibility of unnoticed data changes.

In **Czechia**, a signature is required for the validity of a legal act made in writing (Sections 561 and 562 of Act No 89/2012 Coll. on the Civil Code), but in some cases the signature may be replaced by mechanical means. The written form is preserved even in legal proceedings performed by electronic or other technical means that are able to capture the content and determine the acting person.

The use of electronic signature and seals in legal proceedings is governed by the Act No 297/2016 Coll. on Trust Services for Electronic Transactions Act. It stipulates that public authorities may legally act only with a qualified electronic signature or seal. Any person acting towards a public authority shall use a recognized electronic signature or seal (i.e. a guaranteed electronic signature based on a qualified certificate for an electronic signature or seal, or a qualified electronic signature or seal). Private parties are free to use any type of electronic signature or seal.

Estonia requires the authentication of documents in case of arrest warrants (section 442 of the Code of Criminal Procedure). The use of electronic signatures is regulated with respect to internal communication between the parties to the civil or criminal procedure and the courts by the Regulation of the Minister of Justice No 59 of 28 December 2005. General usage of electronic signatures is regulated by the Identity Documents Act that establishes an identity document requirement and regulates the issue of identity documents to Estonian citizens and aliens by the Republic of Estonia. Section 9(5) of the Identity Documents Act states that the information which enables identification of a person digitally, including a cryptographic key enabling digital identification and the respective certificate, and information which enables digital signing, including a cryptographic key enabling digital signing and the respective certificate, and other digital data may be entered in an identity document.

France is on the way to implement the requirements of the eIDAS Regulation, specifically the use of qualified electronic signatures. Under French Civil Code, the electronic signature consists of the use of a reliable identification process guaranteeing its link with the document to which it is attached. The reliability of this process is presumed, until proven otherwise. When the electronic signature is created, the identity of the signatory is assured, and the integrity of the document is guaranteed. Electronic seals/ stamps are not mentioned in French law.

In practice, the use of electronic signatures is limited. The access to the ATLAS platform is made via the justice intranet, which is only open to the staff of the Ministry of Justice. The link cannot be communicated outside the ministry. When a Ministry of Justice employee sends a file, a link is sent to the external recipient to allow him/her to access the platform and download the file. The employee basically creates an invitation ticket that is sent to the external recipient and includes a link that allows him/her to access the platform and upload the file.

In **Germany**, the authenticity of documents, both physical and electronical ones, is addressed in the Code of Civil Procedure (§§118, 371a, 437-440), which is in full compliance with the eIDAS Regulation. eSignatures that have been qualified in accordance

with the process of the eIDAS regulation count, are deemed to be authentic until one proves “serious doubt” about it. Documents issued by a German authority are considered authentic. In case the court has doubts about the authenticity of a document, it can question the issuing authority about it (this also applies to the documents within the scope of the Regulation 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the EU). The same applies to foreign official documents, except the declaration of authenticity is to be issued by the diplomat or consul of the issuing country.

In **Greece**, electronic documents, to be valid, have to bear an approved time stamp, approved electronic stamp of the public body or the approved electronic signature of the person issuing the document, the indication “certified copy” and the personal details of the person signing the document as the signatory (Law 4727/2020 and Presidential Decree 25/2014). Electronic stamps serve as original stamps.

Hungary adopted the Act CCXXII of 2015 on the general rules for trust services and electronic transactions and Government Decree 451/2016. (XII. 19.) that regulates the system of electronic certification, implementing the provisions of the eIDAS Regulation. The said Decree contains an exhaustive list of cases, in which an electronic document is deemed authentic. For instance, a private document needs a time stamp. Similarly, the Act CXXX of 2016 on the Civil Procedure Code states that a private electronic document has full probative value if it is executed by the signatory’s qualified electronic signature or advanced electronic signature based on a qualified certificate or stamp, including - where so provided for by law - a time stamp.

Ireland fully applies the Regulation (EU) 2016/1191 of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the EU and does not require an authenticity stamp (apostille) for the documents within its scope. For the documents not in the scope of this Regulation, either an apostille or authentication can be conducted by the Department of Foreign Affairs and Trade, depending on whether the document is destined to the country that is a party of the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents or not.

The eIDAS Regulation is also fully applicable in **Ireland**, thus legal effects of electronic documents, electronic seals and electronic time stamps are recognised. The Electronic Commerce Act of 2000 recognises electronic contracts. However, it also lists documents that must be signed using wet-ink signature, in particular wills, codicils, trusts, enduring powers of attorney, documents by which interest in real property (including a leasehold interest in such property) may be created, acquired, disposed of or registered, other than contracts (whether or not under seal) for the creation, acquisition or disposal of such interests, affidavits or a statutory or sworn declaration, and documents required by the rules, practices or procedures of a court or tribunal.

In **Italy**, the use of digital signature and digital seal are regulated by the Digital Administration Code. The information provided refers to the need of authentication in the domestic context, when citizens are communicating with public authorities. The main tool is the National Service Card (CNS) that allows the access to public administration services. Complete IT correspondence between the CNS and the Electronic Identity Card (CIE) ensures interoperability between the two cards. The Public Digital Identity System (SPID)

allows citizens to access online services of public administrations and private entities with a single digital identity.

Latvia regulates the use of electronic signatures, seals and stamps in the Civil Procedure Law and the Law on Electronic Documents. An electronic document is considered to have been signed by hand if it has a secure electronic signature. An electronic document shall be considered to have been signed by hand also in such cases where it has an electronic signature and the parties have agreed in writing regarding the signing of electronic documents with an electronic signature. In such case, the written agreement shall be drawn up and signed on paper or electronically with a secure electronic signature. Authentication is performed by a notary public.

For civil and commercial matters, **Malta** does not require authentication of acts of foreign governments, courts and notaries public if they have been authenticated by the diplomatic or consular representative of the Government of Malta in the respective state (Article 627-630 Code of Organisation and Civil Procedure). Authentic copies of documents are admissible as evidence and copies are deemed to be authentic when made in the form prescribed by law by the officer by whom the original was received or is preserved, or by a person lawfully authorised for the purpose.

In criminal matters, the Maltese Criminal Code and the Extradition (Designated Foreign Countries) Order implementing Framework Decision 2002/584/JHA stipulate that a document is deemed to be duly authenticated if it is signed by a judge, magistrate, another judicial authority or officer of the [foreign] State; certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the [foreign] State; authenticated by the oath, declaration or affirmation of a witness. There is also a certification by the Attorney General, for instance, in case of execution of European Protection Order and imposition of supervision measures. Upon the issue of an order, the Attorney General must append the standard-form certificate (provided by the relevant legal act) purporting to reproduce details setting out the information required by the same certificate and must sign and certify as authentic the contents of the certificate.

In **the Netherlands**, no authentication is required for requests for taking evidence, as prescribed by the Regulation 1206/2001. The authentication of the European Enforcement Order is carried out by the interim relief judge of the court of the place of establishment of the notary who has executed the authentic instrument (Article 7 of the European Enforcement Order Implementation Act of the Act of 28 September 2005). The electronic signature in criminal cases has to fulfil the requirements of authentication under Article 5 of the Decree on Digital Documents in Criminal Procedures. For instance, each document signed electronically by a police officer is provided with a unique document attribute in the document's metadata, as well as the Organization Identification Number (OIN) of the Police. This means that not just the name of the signee will be known, but also the time the person signed it and their role. Following the requirements of the eIDAS-Regulation, the Dutch police adds an e-seal - based on a qualified certificate – next to every e-signature.

The use of e-signatures by civilians is possible, under the conditions of Article 6 of the Decree on Digital Documents in Criminal Procedures.

In **Poland**, changes to the Code of Administrative Procedure entered into force on 1 July 2021 that transpose Directive (EU) 2015/1535, Regulation (EU) 910/2014 and Commission Implementing Regulation (EU) 2015/1501. As a result, the following rules on authentication apply. A party to the procedure may submit a copy of the document, if its compliance with

the original has been certified by a notary or by the party's representative who is an attorney, legal advisor, patent attorney or tax advisor. For an electronic copy, a certificate of compliance shall be made using a qualified electronic signature, trusted signature or personal signature. Copies of documents certified electronically are prepared only in specified data formats (namely XML or PDF – if XML is not possible). Matters can be conducted and settled in writing in paper or electronic form. Letters in electronic form shall be affixed with a qualified electronic signature, a trusted signature or a personal signature or a qualified electronic seal of a public administration body with an indication in the content of the letter of the person affixing the letter with the seal. Matters may be handled with the use of automatically generated letters and provided with a qualified electronic seal of a public administration body.

Similar provisions are already included in the Polish Code of Civil Procedure.

While both documents lay out national procedures, we expect that similar rules are or will be applicable in the cross-border context. The Polish Act of 5 September 2016 on trust services and electronic identification implementing the eIDAS Regulation determines the existence of the so-called national eIDAS node, i.e. the connection point enabling the coupling of the national electronic identification infrastructure in Poland with the national electronic identification infrastructures of other Member States.

In **Romania**, in general, a digital document signed with an extended electronic signature equals a written signed document. In civil matters, citizens can communicate with courts in electronic form if they apply extended electronic signature. In criminal matters, a complaint may be filed in electronic form with an electronic signature. Furthermore, persons authorized to conduct technical surveillance measures and those authorized to present copies of documents, may use the electronic signature, provided an extended electronic signature is applied.

In **Slovakia**, applications submitted in electronic form regarding taking evidence, European Order of Payment, European Small Claims Regulation and Maintenance Regulation must be confirmed by a guaranteed electronic signature (Act No. 272/2016 Coll. Implementing the eIDAS Regulation). Submissions by fax must be supplemented by the original within a defined period. Submission made by telegraph must be supplemented by written or oral submission within a defined period.

Documents within the scope of the Regulation (EU) 2016/1191, if required in proceedings under this act and issued by the authorities of foreign states, must be provided with a higher verification clause, unless an international agreement or a special regulation provides otherwise; the Ministry of the Interior of the Slovak Republic may, in justified cases, waive the requirement for higher verification of the certificate of good conduct.

Financial penalties (fines), judgments in criminal matters imposing custodial sentences, judgements and probation decisions and European Investigation Orders as well as certificates and other documents related to them can be sent across the border by post or other secure form of communication that allows a written text to be drawn up and to assess the authenticity of the document. The executing Slovak court can request the issuing court to send the originals additionally if necessary.

Compensation claim forms and related documentation (regarding compensation to crime victims) sent between the assisting authority and the decision-making authority are exempt from verification or other similar formality by Act No. 215/2006 Coll.

In **Spain**, the Law 6/2020 regulating certain aspects of trust electronic services is applicable to judicial communications, according to Article 14 of Law 18/2011 regulating the use of information technologies and the communication with the Justice Administration. The Law 6/2020 foresees that authentication of electronic documents can be made through electronic signature systems based on the use of certificates of secure devices or equivalent means that allow to identify the electronic judicial site and the establishment of secured communications with that site; systems of electronic signature for the automatised judicial activity; electronic signature of the staff of the Justice Administration; and systems of electronic data exchange in communication closed-environments.

Sweden is a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, therefore with the other parties of this Convention only an apostille by the issuing state's authorities is necessary to attest the authenticity of documents. Sweden is also complying with the eIDAS Regulation and is preparing to notify a Swedish electronic identification scheme. Following the eIDAS Regulation, Sweden accepts all kinds of e-signatures by individuals if these can prove the validity of the signature. However, the Qualified Electronic Signature (QES) is given preference for certain types of transactions as more secure. The Ordinance (2018: 1199) supplements the provisions of the Regulation (EU) 2016/1191 simplifying the requirements for presenting certain public documents in the EU.

4.1.3.2. Handling of classified information in cross-border communication

Rules on the exchange of classified information across borders could not always be identified. Often this was the case because this issue is regulated by bilateral and international agreements between countries and which may not contain the description of the procedure but leave it up to the further specification by the parties of the Agreement. However, in some countries (DE, FI, SI, SK), practices have been identified.

Spain prohibits the use of classified information in judicial procedures completely (i.e. information would need to be declassified first). Hungary and Slovakia do not use digital channels for transmission of classified information across borders. Countries that allow the transmission of classified information across the border prescribe the use of secure channels and/or encryption.

The requirements to the accreditation of the IT systems handling such information also could not always be identified. A clear observation can be made only on the competent bodies that are entitled to accredit secure IT systems. There is a great variety of them. In some countries, national accreditation bodies (PT, SE) are responsible, while in others (CY, PL) national security agencies carry out this specific accreditation. National cybersecurity agencies also provide this type of accreditation (DE, IT, LU). The justice administration itself is responsible for the accreditation of its IT systems in some Member States (AT, BG, ES, SI).

A table on Exchange of classified information in cross-border cooperation and accreditation of the relevant secure IT systems is contained in Annex 2.

4.2 Policy options

Taking into account the problems presented in Section 2.1 and the results from the various stakeholder consultation activities⁶⁸, a range of options from non-legislative to different levels of ambition of legislation has been identified. Because of the multiplicity of issues and options, this assessment is based on a distinction between the core options as the most important building blocks of an initiative and other less central options (sub-options). The options and sub-options are illustrated in the table below.

The analysis of each option will take into account the following **key elements**:

- 1 Establish an electronic interoperable channel for digital communication for all EU cross-border judicial cooperation communication and data exchanges between courts/competent national authorities, as well as with the relevant JHA Agencies and EU Bodies.
- 2 Ensure acceptance of electronic communication for cross-border judicial cooperation procedures which individuals and legal entities are parties to and providing a possibility for parties to still communicate on paper;
- 3 Legal validity of electronic documents across Member States;
- 4 Assurance levels (simple, advanced or qualified) for electronic signatures/seals across Member States;
- 5 Responsibilities of different data controllers and processors, technical and organisational measures to ensure security of processing of data;
- 6 Videoconference or other distance communication technology for participation in oral hearings not falling under the scope of taking of evidence in cross-border cases in civil and criminal matters; Obligation for Member States to provide for online payment of court fees for cross-border.

⁶⁸ Results from OPC carried out by the EC from March till May 2021, EU level focus group conducted by VVA on 4 May 2021; stakeholder consultation conducted by VVA at national level.

Table 7: Policy options

Policy options	Option 0 (Baseline scenario)	Option 1 (Non-legislative option)	Option 2 (Legislative option)
Establishing a digital communication channel	Voluntary use of digital channels for judicial cooperation procedures in cross-border civil, commercial and criminal cases.	Commission Recommendation on the use of e-CODEX-based systems for the purpose of digitalising communication in the context of judicial cooperation and access to justice in cross-border civil, commercial and criminal cases⁶⁹. Continue building and expanding the e-Evidence Digital Exchange System (eEDES) (already to be re-used in the context of the decentralised IT system for Service of Documents/Taking of Evidence) for the judicial cooperation instruments in civil and criminal matters, without providing a legal basis for its use.	Adoption of a legal instrument on the use of digital tools in the context of judicial cooperation and access to justice in cross-border civil, commercial and criminal cases. Provisions would be introduced on establishing a secure electronic channel (based on e-CODEX), for the purposes of communication and exchange of information, data and documents between courts/competent authorities (as well as with and between central authorities), and where relevant the JHA Agencies and EU bodies.
Removing barriers to cross-border judicial cooperation and introducing digital means supporting		The Commission could encourage Member States to allow for the use of e-CODEX based systems in cases of authority-to-authority cross-border	Common provisions would be introduced, ensuring acceptance and the legal validity of digital documents and evidence, and outlining the data protection requirements inherent to cross-border communication.

⁶⁹ The choice of e-CODEX as the most appropriate technical solution is based on the Impact Assessment on the Commission's Proposal for a Regulation on e-CODEX (SWD(2020) 541 final (https://ec.europa.eu/info/sites/default/files/law/cross-border_cases/documents/e-codex-impact-assessment_en.pdf))

Policy options	Option 0 (Baseline scenario)	Option 1 (Non-legislative option)	Option 2 (Legislative option)	
such cooperation (Voluntary or obligatory use of the digital communication channel)		communication by means of a Recommendation. .	Sub-option 2.1.a The legal instrument would allow the Member States' authorities to use a common, decentralised EU IT system, for the purposes of cross-border communication and exchange of information, data and documents with the authorities of other Member States.	Sub-option 2.1.b The legal instrument would require that Member States' competent authorities (as well as central authorities established under EU law) and where relevant JHA Agencies and EU bodies, use a common, decentralised EU IT system in instances of mutual communication with the authorities of other Member States, within the scope 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, transport of material which cannot be transferred via digital means (ie. blood samples)

Policy options	Option 0 (Baseline scenario)	Option 1 (Non-legislative option)	Option 2 (Legislative option)	
Introducing legal and technical measures supporting access to justice		The Commission Recommendation would encourage Member States to enable and allow individuals and businesses to file electronic claims via national IT systems and inviting Member States to accept such electronic submissions made in other Member States. The Commission Recommendation would also encourage the Member States to allow for participation of parties to cross-border cases and their representatives upon their request in oral hearings through videoconference or other distance communication technology.	Common provisions would be introduced, ensuring acceptance and the legal validity of digital documents and evidence, and outlining the data protection requirements inherent to cross-border communication. To facilitate access to justice, provisions would be introduced providing for the online payment of court fees in EU cross-border cases.	
			Sub-option 2.2.a The legal instrument would not oblige Member States to accept electronic communication between individuals/legal entities and the competent authorities. In this case, the question of whether parties may undertake procedural action through digital means would be regulated by the national law of the Member States, which would decide on their authorities: Accepting or not accepting electronic communication from individuals/legal entities,	Sub-option 2.2.b The legal instrument would oblige Member States to accept electronic communication between individuals/legal entities and the competent authorities. Such communication would take place via an access point on the European e-Justice Portal, or via portals at Member State level. This would allow (but 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. Traditional, e.g.

Policy options	Option 0 (Baseline scenario)	Option 1 (Non-legislative option)	Option 2 (Legislative option)	
			- Developing a national solution for such submissions, - Using an EU developed solution (e.g. Small Claims submissions pilot via the European e-Justice Portal) This option would also not provide a legal basis for the participation of parties to cross-border cases in oral hearings through videoconference. The development and utilisation of such tools would remain at the discretion of the Member States.	paper-based, means of communication will be maintained. This sub-option would also provide a legal basis for participation of parties to cross-border cases and their representatives upon their request in oral hearings through videoconference or other distance communication technology, subject to: (i). availability of such technology, (ii). court's discretion, (iii). parties' consent. In this case, the oral hearing via videoconference or other distance communication technology would be performed under the rules and the procedure applicable for videoconference for domestic cases.
Ensuring the validity and acceptance of electronic signatures and seals		The Commission Recommendation would encourage Member States to incorporate standards in line with the e-IDAS Regulation on trust services, where digital	Sub-option 2.3.a The legal instrument would not oblige Member States to	Sub-option 2.3.b The legal instrument would contain provisions on e-

Policy options	Option 0 (Baseline scenario)	Option 1 (Non-legislative option)	Option 2 (Legislative option)	
		technology is used in the context of judicial cooperation or access to justice. Such an approach would also allow the Member States to develop their own standards with regard to the use of electronic trust services, while raising awareness of the benefits of the e-IDAS framework of trust services.	implement electronic trust services in accordance with the e-IDAS Regulation, allowing them to: • Develop their own methods and standards with regard to the use of electronic signatures and seals. • Accept or deny communication coming from other Member States through the secure decentralised IT system, depending on national law and bilateral/multilateral trust agreements. •	signatures and e-seals in accordance with the e-IDAS Regulation. In this way, a harmonized regime would be achieved for ensuring the admissibility and recognition of electronic signatures and seals in cases where digital technology is used in the context of judicial cooperation or access to justice.

5. Impact of policy options

5.1. Status quo

This section presents the current situation as perceived by the consulted stakeholders. It presents stakeholders' views on key barriers to cross-border judicial cooperation.

Respondents to the national-level online survey⁷⁰ were asked to estimate the key barriers that hamper the use of digital solutions in communication between the competent authorities of Member States and between those authorities and parties to the proceedings (e.g. individuals, businesses etc.) in civil/commercial law EU cross-border proceedings. According to survey respondents, the following barriers are most relevant:

- Lack of cross-border interoperability: domestic IT solutions may not be designed for cross-border exchanges of data (56.9 % of respondents consider this barrier to be highly relevant, 23.5 % consider it relevant to some extent);
- Different level of digitalisation across Member States (49 % of respondents consider this barrier to be highly relevant, 37.3 % consider it relevant to some extent);
- Electronic signatures/seals used by the issuing Member State may not be recognised by the receiving Member State (46.3 % of respondents consider this barrier to be highly relevant, 25.9 % consider it relevant to some extent);
- Lack of interoperability at international level (e.g. with the IT systems of the courts of other Member States) – 45.3 % of respondents consider this barrier to be highly relevant, 34 % consider it relevant to some extent;
- Limitation on type of evidence that can be transmitted electronically (e. g. DNA, blood sample) – 40.4 % of respondents consider this barrier to be highly relevant, 30.8 % consider it relevant to some extent;
- Lack of IT equipment at national level (e.g. limited court rooms for the use of videoconference mainly in criminal proceedings) – 39.2 % of respondents consider this barrier to be highly relevant, 29.5 % consider it relevant to some extent;
- National legislation may prevent the use of videoconference or other distance communication technology f or the participation of parties to oral hearings in cross-border proceedings (39.2 % of respondents consider this barrier to be highly relevant, 21.6 % consider it relevant to some extent);
- Voluntary participation: Member States are free to decide whether they wish to use digital means for cross-border communication (e.g. as it is the case f or the e-CODEX tool) – 38.2 % of respondents consider this barrier to be highly relevant, 43.6 % consider it relevant to some extent;
- Lack of IT skills of legal, judicial and other professionals involved (37.3 % of respondents consider this barrier to be highly relevant, 41.2 % consider it relevant to some extent);

⁷⁰ The total number of responses to the survey was 77, with 39 of those responses being complete responses and 38 being partial responses

- The legal validity and admissibility of documents transmitted electronically in another Member State may be called into question (35.2 % of respondents consider this barrier to be highly relevant, 38.9 % consider it relevant to some extent).

Respondents to the national-level online survey⁷¹ were asked to estimate the key barriers that hamper the use of digital solutions in communication between the competent authorities of Member States and between those authorities and parties to the proceedings (e.g. individuals, businesses etc.) in criminal law EU cross-border proceedings. According to the survey respondents, the following barriers are most relevant:

- Lack of cross-border interoperability: domestic IT solutions may not be designed for cross-border exchanges of data (48.1 % of respondents consider this barrier to be highly relevant, 25.9 % consider it relevant to some extent);
- Lack of interoperability at international level (e.g. with the IT systems of the courts of other Member States) – 44.4 % of respondents consider this barrier to be highly relevant, 27.8 % consider it relevant to some extent;
- Different level of digitalisation across Member States (43.4 % of respondents consider this barrier to be highly relevant, 35.8 % consider it relevant to some extent);
- Voluntary participation: Member States are free to decide whether they wish to use digital means for cross-border communication (e.g. as it is the case for the e-CODEX tool) – 37 % of respondents consider this barrier to be highly relevant, 33.3 % consider it relevant to some extent;
- Lack of IT skills of legal, judicial and other professionals involved (35.8 % of respondents consider this barrier to be highly relevant, 34 % consider it relevant to some extent);
- The electronic signatures/seals used by the issuing Member State may not be recognized by the receiving Member State (35.2 % of respondents consider this barrier to be highly relevant, 27.8 % consider it relevant to some extent);
- National legislation may prevent Member States from using digital means of communication by the judiciary (34.6 % of respondents consider this barrier to be highly relevant, 19.2 % consider it relevant to some extent);

Limitation on type of evidence that can be transmitted electronically (e. g. DNA, blood sample) - 33.3 % of respondents consider this barrier to be highly relevant, 37 % consider it relevant to some extent.

5.2. What are the impacts of policy options?

This Section analyses key impacts of the proposed policy options such as social, environmental and economic impacts. The analysis is structured around the following

⁷¹ Here and below, we refer to the national-level online survey. The total number of responses to the survey was 77, with 39 of those responses being complete responses and 38 being partial responses. Full analysis of the survey responses is available in Annex6 of this report.

criteria: **coherence, effectiveness, efficiency and EU added value** in line with the Better Regulations.⁷²

Each of these criteria is described below, in the context of this study.

Coherence refers to synergies between the proposed options and existing initiatives such as e-CODEX, e-EDES (Evidence Digital Exchange System), the new e-identity initiative by the Commission and the digital solutions under the Digital Criminal Justice Study⁷³. Under this aspect, we have detected similarities and complementarities between the initiatives on the one hand, and potential contrasts and discrepancies between them on the other hand. The final aim of this analysis is 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, we will identify those options aimed to reduce legal fragmentation across countries, which creates uncertainty for citizens and businesses. Finally, coherence is examined with regard to existing EU instruments in civil/commercial and criminal law.

Effectiveness analysis considers how successful the proposed options would be in achieving or progressing towards their objectives. It examines whether the objectives (general, specific, operational) will likely be achieved or not.

Efficiency looks closely at both the likely costs and benefits of the proposed options as they accrue to different stakeholders, identifying what factors are driving these costs/benefits and how these factors relate to the examined options.

The **EU added value** considers 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.

5.2.1. Coherence

• Policy Option 0

Under this option, **Member States will use the digital channel for cross-border judicial cooperation in civil, commercial and criminal cases, on a voluntary basis**. Currently, the digitalisation of cross-border judicial cooperation procedures has been mostly based on voluntary initiatives by Member States. To date, the pilot projects based on the e-CODEX⁷⁴ mostly involved only few Member States.⁷⁵ In particular, the e-CODEX consortium has launched seven use cases or pilots applying e-CODEX to a specific legal procedure

⁷² According to the BR, based on the assessment of the various impacts and their distribution across affected stakeholders, different options should be compared with regard to their effectiveness, efficiency and coherence.

⁷³ EC, Cross-border Digital Criminal Justice Final Report, 2020, available at [criminal justice study deloitte.pdf](https://ec.europa.eu/info/sites/info/files/law/cross-border_cases/documents/e-codex-impact-assessment_en.pdf)

⁷⁴ E-CODEX is a system that can be used in or between Member States to support cross-border operation of procedures in the field of justice. It was created by 21 EU Member States with the participation of other countries/territories and organisations, in the period 2010-2016. The objective of e-CODEX is to create a common and interoperable system to respond to common needs of Member States. Through e-CODEX, the participants have jointly developed interoperable software building blocks and have implemented them through piloting work. This package of software building blocks can be used to set up and operate an e-CODEX access point irrespective of the intended business context. By harmonizing the different approaches within the EU countries e-CODEX will improve the efficiency of cross-border information exchange. The main benefits are increased security and reliability along with saving time in completing cross-border processes.

⁷⁵ <https://www.e-codex.eu/faq-e-codex>; e-CODEX Impact Assessment, page 9-10: https://ec.europa.eu/info/sites/info/files/law/cross-border_cases/documents/e-codex-impact-assessment_en.pdf

(see Section 2.2.3). Despite the number of users of e-CODEX is increasing⁷⁶, the actual uptake by Member States still remains low.

The review of EU instruments, carried out for this study, pointed out that in the area of civil and commercial law, no e-CODEX tool or similar tool is used or planned for the vast majority of the examined instruments. Since the e-CODEX Regulation is not yet adopted, none of the EU instruments exclusively requires the use of e-CODEX per legal act. While e-CODEX can be used (for example in the context of Regulation (EU) 2020/1783 on taking of evidence in civil or commercial matters (recast)⁷⁷, Regulation (EU) 2020/1784 on service of documents in civil or commercial matters (recast)⁷⁸), it is not required by law to date. For the following legal instruments, e-CODEX is used voluntarily: Regulation (EC) No 1896/2006 creating a European order for payment procedure⁷⁹; Regulation (EC) No 861/2007 establishing a European Small Claims Procedure⁸⁰; Regulation (EC) No 4/2009 maintenance obligations⁸¹. The existing digital systems at the national level are not always suitable or available for cross-border cooperation, and in some Member States electronic communication within the judiciary is not in place yet.

The use of the e-evidence Digital Exchange System (e-EDES) is also limited. e-EDES (based on e-CODEX) is currently used for Directive 2014/41/EU on the European Investigation Order in criminal matters⁸², and is planning to be used it in the future (if/when adopted) for the 'Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters'.⁸³ Only five Member States were connected via e-EDES by 2020.

Based on the above considerations, should no action be taken, the impacts on overall coherence would likely be negative with some Member States joining voluntary initiatives (e.g. e-CODEX and e-EDES), while others not being involved. This would likely reinforce or maintain the current tendency to rely on a continued use of the paper channel which results in financial costs and negative environmental impacts.⁸⁴ The lack of a coherent digital approach across Member States would also affect access to justice for individuals and legal entities. While these risks will be in part mitigated by the new e-CODEX Regulation, there is no guarantee that a cohesive approach will be adopted in the area of cross-border judicial communication between Member States' authorities and between those authorities and parties to proceedings (e.g. individuals, businesses). In the absence of an obligation, many or at least some Member States will likely not make efforts to adopt the infrastructure and will not be willing to bear the installation and maintenance costs.

76 Additional instruments for which the use of e-codex is planned are: Service of Documents - based on Council Regulation (EC) 1393/2007; FD909 – Mutual Recognition of Sentences in Criminal Law.

77 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), OJ L 405, 2.12.2020.

78 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), OJ L 405, 2.12.2020.

79 Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006.

80 Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 399, 30.12.2006, as amended Regulation (EU) 2015/2421 of 16 December 2015.

81 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, OJ L 7, 10.1.2009.

82 According to the e-CODEX website.

83 COM(2018) 225 of 17.04.2018.

84 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}.

- **Policy Option 1**

Under this option, **the Commission would issue a Recommendation encouraging the use of e-CODEX-based systems by Member States**. The continuous development and expansion of e-EDES⁸⁵ would also be strengthened in the context of the judicial cooperation instruments in civil and criminal matters. However, this option as non-legislative and would, not provide a legal basis in this regard.

The consulted stakeholders⁸⁶ pointed out that this option would ensure coherence with the solutions recommended by the Digital Criminal Justice Study.⁸⁷ According to the latter, e-CODEX presents several advantages. First, it is a flexible solution, as multiple gateways can be used for different institutions in one Member State. Moreover, it is possible to connect multiple connectors to one gateway (e.g. if different backend solutions are used to receive different types of messages). Second, security is ensured at multiple levels: at transmission level (through the use of the TLS cryptographic protocol), at message level (though the use of the AS4 and WS (Web Services) messaging standards to securely exchange messages over the internet) and at document level (through the use of digital signatures).

The Digital Criminal Justice Study also notes that by 2021 all Member States should have e-CODEX installed in the context of e-EDES. The amount of e-CODEX connectors (and underlying access points) across the different Member States will likely not be consistent, with some having only a few connectors and others having many. Therefore, according to the study, the implementation of the complete eDelivery implementation in any EU JHA body/agency or Member State (including the Domibus access point (or any other AS4-conformant software), and the e-CODEX connector) could constitute a future proof solution for the automated exchange of structured information between all stakeholders. Based on these considerations, the study concludes that given the additional advantages of e-CODEX and the planned future developments that are based on e-CODEX (in the context of e-EDES), e-CODEX is the preferred solution to be re-used together with eDelivery.

The Study also examines the re-use of the e-EDES solution which enables the digital exchange of European Investigation Order (EIO) and Mutual Legal Assistance (MLA) requests via a secure communication channel, as well as the exchange of subsequent messages and replies between competent national authorities in the Member States. It encourages the re-use of e-EDES for the following reasons:

- e-EDES responds to the needs of the European criminal justice community: the design and implementation of e-EDES is based on the working methods and legal instruments used by judicial practitioners in the EU.
- e-EDES is based on e-CODEX connector and the Domibus Gateway which are both open source and available for free.

While, under Option 1, the advantages of e-CODEX and e-EDES would, thus, be significant as explained above and in line with the conclusions of the Digital Criminal Justice Study, they will also likely be limited in scope given that Member States, where such solutions are not in place, will remain free to adopt them or not (even if e-EDES will be extended to other exchanges normed by other Regulations). The Recommendation, being not legally binding,

⁸⁵ e-EDES is currently used by Member States that do not wish to connect their system directly to e-CODEX or do not have any internal system/CMS.

⁸⁶ Interview carried out with a Representative of Eurojust on 14.07.2021.

⁸⁷ EC, Cross-border Digital Criminal Justice Final Report, 2020, available at [criminal justice study deloitte.pdf](https://ec.europa.eu/justice/stories/stories_en?story=criminal-justice-study)

will leave countries free to decide whether to implement/reinforce these solutions or not. This approach will likely, thus, lead to a fragmentation generating inefficiencies, while (compatible) national solutions are also limited (see Section 2.2.3).

Moreover, it should be noted that e-CODEX can be used over a secure transport layer like S-TESTA. This applies in cases where classified information is shared. The legal analysis conducted for this study has highlighted discrepancies in the legislation of Member States with regard to the handling of classified information across borders. While some Member States (e.g. Spain) prohibit the use of classified information in judicial procedures completely (i.e. information would need to be declassified first), others (e.g. Hungary, Slovakia) do not use digital channels for transmission of classified information across borders. Countries that allow the transmission of classified information abroad prescribe the use of secure channels and/or encryption. The requirements to the accreditation of the IT systems handling such information also vary across countries (see Section 3.3.2.2). These differences will be, in part, mitigated by the use of e-CODEX over a secure transport layer like S-TESTA.

• Policy Options 2

Under this option, **an EU legal instrument on the use of digital tools in the context of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, would be adopted.** The EU instrument would contain provisions establishing a secure electronic channel (based on e-CODEX), for the purposes of communication and exchange of information, data and documents between courts/competent authorities (as well as with and between central authorities), and where relevant the JHA Agencies and EU bodies.

By introducing common provisions, the EU instrument would guarantee a high level of coherence across Member States, ensuring the acceptance and the legal validity of digital documents and evidence, and outlining the data protection requirements inherent to cross-border communication. As indicated in Section 2.2, a range of problems come to attention in this area:

- Since there is no EU regime for the recognition of the legal validity and admissibility of electronic documents exchanged between courts/authorities across borders, the legal validity and admissibility of documents transmitted electronically during judicial proceedings is often called into question by receiving Member States.
- The problem of validity and admissibility also pertains to the cross-border exchange of evidence. Currently, judicial authorities fully admit evidence submitted in digital format only in 11 Member States, in civil and commercial law matters, whereas only 13 Member States recognize as valid in all situations the submission of evidence filed only in digital format in criminal proceedings.⁸⁸
- The lack of secure online communication channels for cross-border communication affects also data protection. If no secure digital tools are in place, the use of informal unsecure communication channels (e.g. personal e-mail, Skype...) to transmit highly sensitive information, for instance related to criminal investigation procedures, might be seen an alternative. The risk of loss of confidentiality of documents and attachments which could contain highly sensitive data should also be taken into account.⁸⁹

⁸⁸ COMMISSION STAFF WORKING DOCUMENT Accompanying the 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 (COM(2020) 710 final).

⁸⁹ E-CODEX impact assessment.

Option 2 would, in part, solve these problems by ensuring a coherent legal framework across Member States, where digital documents and evidence can be exchanged electronically and be recognised as valid across borders. The introduction of data protection requirements would also have positive effects tackling issues of security and confidentiality, outlined above. The use of a single electronic system, guaranteeing technical interoperability, coupled with a regulatory framework regarding validity, and securing sensitive data would increase coherence and efficiency. Authorities would make use of a uniform system through which information can be validly and securely exchanged. If this were to be extended to EU citizens and businesses as end users of the judicial system (particularly in civil and commercial cases) this would have the advantage of unifying the use of digital tools for the purposes of access to justice, regardless of the Member State addressed and having jurisdiction.

- **Suboptions**

2.1.a Legislative suboption: Optional use of a common, decentralised EU IT system

The same considerations made under Option 2, apply here. However, while overall coherence would likely be improved with the adoption of an EU instrument, divergent approaches towards digitalisation might still occur across countries, since the EU instrument would not oblige Member States' authorities to use a common, decentralised EU IT system, for the purposes of cross-border communication and exchange of information, data and documents with the authorities of other Member States.

2.1.b Legislative suboption: Mandatory use of a common, decentralised EU IT system

Under this suboption, an EU legal instrument would require that Member States' competent authorities and where relevant JHA Agencies and EU bodies, use a common, decentralised EU IT system in instances of mutual communication with the authorities of other Member States, subject to justified exceptions (e.g. force majeure, technical unavailability, transport of material which cannot be transferred via digital means (i.e. blood samples). The EU instrument would, thus, introduce a higher level of coherence, by reducing divergences of approaches across countries. This harmonisation would only concern cross-border procedures, without interferences with national procedural laws. The benefits would consist in a uniform framework that will enable countries to exchange data/evidence electronically without running the risks of seeing their documents/evidence being refused legal validity. The mandatory use of a decentralised EU IT system would also likely address problematics linked to the interoperability of national IT systems as there will be technical equivalence.

2.2.a Legislative suboption: Optional acceptance of electronic communication from individuals/legal entities

Under this suboptions, **Member States will remain free to decide whether to accept or not electronic communication from individuals/legal entities; develop a national solution for such submissions or use an EU developed solution (e.g. Small Claims submissions pilot via the European e-Justice Portal).** Although the level of coherence will be high given that an EU instrument will be in place, the margin of discretion left to Member States will likely not guarantee a consistent approach across countries, with a citizen from Member State X, being able to file a claim electronically in his own country, but seeing his digitally submitted claim rejected by Member State Y. It would require obtaining of a up to date information on the possibility of digital communication exchanges; it would make the use of digital tools for access to justice divergent depending upon the Member State addressed and having jurisdiction , and would mean having recourse to paper means

in case a Member State does not allow for digital submission of requests and other documents.

Member States will also remain free to allow the parties' participation in remote hearings through video-conference and distance communication technology. While this option would ensure that national legal traditions are taken into account, divergences across Member States would lead to an inconsistent framework in cross-border proceedings. For instance, victims, who are already traumatised, might be forced to travel to a court in another Member States if videoconference is not permitted in that State. For these, and equally for citizens involved in civil and commercial matters, this may substantially increase the costs of proceedings and make it more burdensome. Scheduling a videoconference is generally also far more time-efficient - in fact, it is easier for courts to schedule based on the availability of parties involved, and for the parties involved it takes far less time than having to travel abroad, and possibly spending hours in a court building due to formalities and waiting time.

2.2.b Legislative suboption: Mandatory acceptance of electronic communication from individuals/legal entities

Under this suboption **Member States will be required to accept electronic communication between individuals/legal entities and the competent authorities.** Such communication would take place via an access point on the European e-Justice Portal, or via portals at Member State level. This suboption will consist in the adoption of EU instrument that will provide a legal basis for participation of parties to cross-border cases in oral hearings through videoconference or other distance communication technology, subject to three conditions: (i). availability of such technology, (ii). court's discretion, (iii). parties' consent.

The new EU instrument will ensure maximum coherence eliminating legal divergences across Member States. This will likely benefit the legal certainty which, in turn, will have positive effects on access to justice by individuals and legal entities. The possibility to participate in remote hearings via videoconference or other distance communication means will also be harmonised across countries while at the same time taking into consideration the specificities of each case by means of the three conditions mentioned above. This would lead to an improvement of the current situation where national rules differ significantly across countries. According to the findings of the national legal mapping carried out for this study distance communication technology (e.g. videoconference) has been introduced by some Member States in their national law only in relation to specific EU legal instruments.⁹⁰ In all other cases, legal requirements differ significantly across Member States.

2.3.a Legislative suboption: Optional electronic trust services in accordance with the e-IDAS Regulation

This suboption would involve the adoption of an EU legal instrument which will not oblige Member States to implement electronic trust services in accordance with the e-IDAS Regulation. Member States will thus be able to develop their own standards and methods. Today, only 15 of 27 Member States offer cross-border eID under eIDAS to their citizens.

⁹⁰ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters; Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters; 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; Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union.

Moreover, the Regulation merely encourages Member States to make eIDs available to private online service suppliers, but very few Member States have implemented this possibility.

The likely impacts of this suboption would, thus, be beneficial by creating a coherent framework where trust services are regulated in line with the e-IDAS Regulation's standards. However, the extent of coherence will depend on the type of standards implemented by each Member State. At present, it is clear that having different technical solutions has an effect on interoperability, while differences in the legal framework requires authorities to adhere to different standards and may have an impact on mutual trust in each other's systems. For individuals and legal entities it may also mean being confronted with different rules and standards.

2.3.b Legislative suboption: Mandatory electronic trust services in accordance with the e-IDAS Regulation

The legal instrument would contain provisions on e-signatures and e-seals directly referring to the e-IDAS Regulation. The introduction of such provisions and common standards for the recognition of e-signatures and e-seals would likely reinforce the coherence of the current legal frameworks of Member States by strengthening the legal certainty for individuals, legal entities and public administrations. As a result, they will likely access services and carry out transactions online and across border in safer manner. By creating a harmonised regime for the acceptance and recognition of electronic signatures and seals, this suboption would likely benefit access to justice and promote legal certainty.

5.2.2. Effectiveness

The aim of this section is to assess the proposed options with regard to their ability to achieve the objectives of the initiative.

Achievement of objectives

- **Policy Option 0**

Should no action be taken, no improvement will likely occur towards the achievement of the general objectives of this initiative, specifically the improvement of the efficiency and resilience of cross-border judicial cooperation and the improvement of access to justice for individuals, legal entities and legal practitioners.

To date, cross-border judicial cooperation still takes place mostly on paper and is based on traditional transmission channels (see Section 2.2.2 and 3.1). This situation affects access to justice⁹¹ in an environment that is more and more digitalised and in a Europe of open borders, where individuals and legal entities can easily find themselves in litigation before a court in another EU country.

Access to justice enables individuals to protect themselves against infringements of their rights, to remedy civil wrongs, to hold executive power accountable and to defend themselves in criminal proceedings. It is an important element of the rule of law and cuts across civil, commercial and criminal law.⁹² In European human rights law, the notion of

⁹¹According to international and European human rights law, the notion of access to justice obliges states to guarantee each individual's right to go to court or, in some circumstances, an alternative dispute resolution body to obtain a remedy against the violation of his rights. It is thus also an enabling right that helps individuals enforce other rights. FRA, Handbook on European Law relating to access to justice, 2016.

⁹² [Handbook on European law relating to access to justice \(coe.int\)](#)

access to justice is enshrined in Articles 6 and 13 of the ECHR and Article 47 of the EU Charter of Fundamental Rights, which guarantee the right to a fair trial and to an effective remedy, as interpreted by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), respectively. Core elements of access to justice include effective access to a dispute resolution body, the right to fair proceedings and the timely resolution of disputes, the right to adequate redress, as well as the general application of the principles of efficiency and effectiveness to the delivery of justice.⁹³

As explained under Section 2.1.1. the lack of digital tools hinders access to justice in many ways. Initiating proceedings for EU citizens, be it in consumer cases, family law cases, or a commercial dispute is cumbersome if documents have to be produced, filed and served in paper form. Attending oral hearings in person can be stressful and time-consuming for both parties involved in civil and criminal cases. The factors are exacerbated in cross-border cases, where geographical distances, language differences and the confrontation with an unknown foreign legal system make access to justice very cumbersome. Moreover, during procedures, the delays caused by the lack of digital communication between competent authorities and between them and parties to the proceedings, are detrimental to effective access to justice and to the right to an effective remedy. In cross-border proceedings, the existing differences between legal systems are even more prominent where in some Member States proceedings are in part or, where possible, largely digitalised, whereas in other Member States, proceedings are still paper-based.

More generally the absence of electronic channels leads to inefficient cross-border cooperation. According to latest data, the average duration of judicial proceedings is still excessively long in some EU countries in violation of Article 6 of the ECHR.⁹⁴

The excessive duration of judicial proceedings (within and across borders) is linked to various factors, including the need for the formal exchange of paper documents between competent authorities and between parties and the court, as well as the need to attend physical oral hearings which requires extensive planning far in advance.⁹⁵

Stakeholders consulted for this study⁹⁶ and those consulted by the Commission⁹⁷ considered that the current paper-based exchange of documents used by justice systems creates challenges. They considered that it both is important to be able to easily submit documents digitally and also to receive information from relevant authorities in digital format. The **issues described above will likely remain the same** under this Option, thus, preventing the achievement of the general objectives of this initiative.

• Policy Option 1

The adoption of a non-legislative option, supporting the use of e-CODEX and e-EDES, would likely **have positive effects** on the achievement of the general objectives of this initiative. In fact, progress towards the objectives of improved access to justice and resilience/efficiency of cross-border communication would likely take place, if the use of e-CODEX and e-EDES is expanded and reinforced across Member States. As pointed out by the Impact Assessment on e-CODEX, by implementing European cross-border procedures for civil matters in an electronic way, a permanent e-CODEX would provide an

⁹³ Ibid.

⁹⁴ <https://www.oecd.org/economy/growth/judicial-performance.htm>

⁹⁵ See also Impact Assessments on Taking of Evidence and Services of Documents.

⁹⁶ Focus Group at EU level conducted by VVA on 4 May 2021.

⁹⁷ [swd_digitalisation_en.pdf](#)

easy access to justice for European citizens. Criminal proceedings will be speeded up due to a full electronic exchange of requests by avoiding undue delays in the communication, which are more likely in traditional ways of transmission. As a result, implementing e-CODEX could have a positive impact on the fight against cross-border crime.

As pointed out by the consulted stakeholders, there is a **need for a secure and easily accessible tool** that allows direct contact between judicial authorities from their working stations. Judges/prosecutors need to be able to get in touch directly in the context of various proceedings (e.g. European Arrest Warrant, European Investigation Order). Both e-CODEX and e-EDES meet these requirements, allowing direct communication and exchange of documents/evidence in a secure, swift and easily accessible manner. This positively impacts access to justice and efficiency of cross-border cooperation by ensuring prompt communication between competent authorities of Member States.

With regard to effectiveness, Policy Option 1 received the least support among respondents to national-level online survey. While some **specific objectives** will likely be achieved under this option (e.g. to ensure that the IT systems of Member States are interoperable), others, on the other hand, **will not be specifically addressed by Option 1**, such as the recognition of the legal validity of the legal electronic documents and electronic signatures and seals, as well as the possibility for parties to participate in hearings through videoconference and defining of the responsibilities of data processors and controllers. The positive impacts of Option 1 will, thus, be limited.

• Policy Option 2

With the adoption of an EU instrument containing provisions on a secure electronic channel (based on e-CODEX), for the purposes of cross-border judicial cooperation between courts/competent authorities and where relevant the JHA Agencies and EU bodies, significant progress towards the attainment of the general objectives of this initiative will be made.

As confirmed by the consulted stakeholders⁹⁸, to date, there is a **need for regulating technical tools** since technical means and their legal status are not well defined under the current EU legal framework. The adoption of an EU instrument, would, thus respond to the national authorities' needs for exchanging (sensitive) data in an efficient, legally valid, and secure manner. In turn, it will likely enhance the efficiency of cross-border judicial cooperation and access to justice by regulating the digital channel, without excluding the use of the paper channel for individuals and legal entities. While digitalisation will be likely beneficial for cross-border cooperation through more efficient and timely exchange of information, it should not undermine the effectiveness of available remedies, including the relevance, accuracy and legality of evidence gathered in another Member State⁹⁹ (see Section on Social Impacts).

The adoption of an EU instrument will also likely have **positive effects on mutual trust**. Cross-border judicial cooperation is based on mutual trust between Member States, on which the principle of mutual recognition of judgements is based. The principle of mutual trust implies that Member States could assume that all other Member States comply with EU law and, specifically, with EU fundamental rights.¹⁰⁰ The aim of the principle of mutual

⁹⁸ Ibid.

⁹⁹ [BRIEFING-PAPER-ON-THE-COMMUNICATION-ON-DIGITALISATION-OF-JUSTICE-IN-THE-EUROPEAN-UNION FAIR TRIAL.pdf](#)

¹⁰⁰ BlogActiv.eu website, "Mutual Trust before the Court of Justice – a view from CJEU Judge Sacha Prechal", 11 November 2015, <https://acelg.blogactiv.eu/2015/11/11/mutual-trust-before-the-court-of-justice-a-view-from-cjeu-judge-sacha-prechal/>.

trust is to achieve an equivalent protection across countries;¹⁰¹ this applies to criminal, civil and commercial matters. In order to cooperate with other Member States, a Member State must, thus, be reassured that in the other Member States the trial will be fair, the rights of the defendant will be respected, EU procedural safeguards (e.g. access to a lawyer, access to interpretation, right to information etc.) will be in place, the treatment of suspects/accused will meet certain fundamental rights standards etc.

Unfamiliarity with certain EU rules or with law/practices in other Member States undermine mutual trust and create barriers to a smooth cross-border cooperation, for instance communication between Central Authorities under Regulations 4/2009¹⁰² or 2201/2003¹⁰³, the conduct of European uniform procedures, and the enforcement of judgments. These issues will likely be partially solved by means of an EU instrument containing common provisions, which ensure the acceptance and the legal validity of electronic documents and evidence, and outline the data protection requirements inherent to cross-border communication. Such instrument will create an uniform regime where the acceptance and validity of documents/evidence of one Member cannot be questioned in another Member State. This will strengthen mutual trust among Member States in line with the principles of judicial cooperation in the EU and elaborated by the CJEU.¹⁰⁴

A national authority consulted in the study drew a direct link between the resilience of the judiciary system and the use of digital means of communication during the early stage of the COVID-19 crisis.

A consulted EU agency expressed that Policy Option 2 is preferable over Policy Option 1 as the former would be necessary to address the lack of legal basis of communication between competent authorities.

Policy Option 2 received the most support among respondents to national-level online survey. Namely, 75.9 % of respondents believe that this policy option would ensure the smooth functioning of the area of freedom, security and justice by strengthening the trust in the judicial systems of the Member States and the EU; 82.8 % of respondents believe that this policy option would ensure safeguarding the fundamental rights in the EU; 81.5 % of respondents believe that this option would make digital communication mandatory or not for all EU cross-border judicial cooperation and data exchange between competent national authorities and between the latter and parties to proceedings.

• Suboptions

2.1.a Legislative suboption: Optional use of a common, decentralised EU IT system

An EU instrument **allowing** Member States' authorities to use a **common, decentralised EU IT system**, would likely enhance the achievement of the general objective of this initiative, to improve the efficiency and the resilience of cross-border judicial cooperation,

¹⁰¹ BlogActiv.eu website, "Mutual Trust before the Court of Justice – a view from CJEU Judge Sacha Prechal", 11 November 2015, <https://acelq.blogactiv.eu/2015/11/11/mutual-trust-before-the-court-of-justice-a-view-from-cjeu-judge-sacha-prechal/>.

¹⁰² [EUR-Lex - 32009R0004 - EN - EUR-Lex \(europa.eu\)](#)

¹⁰³ [EUR-Lex - 32003R2201 - EN - EUR-Lex \(europa.eu\)](#)

¹⁰⁴ See landmark judgment in Joined Cases Aranyosi and Căldăraru, concerning the Framework Decision on the European Arrest Warrant, The CJEU pointed out the essential character of the principles of mutual trust and recognition for the Area of Freedom, Security and Justice. The principle of mutual recognition obliges Member States to act on an EAW and they must/may only refuse to execute an EAW under the exhaustive situations laid down in Articles 3 and 4 Framework Decision on EAW. Nonetheless, in exceptional circumstances the principles of mutual trust and recognition can be limited. The CJEU was confronted with two nearly identical references from the Higher Regional Court of Bremen (Hanseatisches Oberlandesgericht in Bremen) in two cases concerning a Hungarian (C-404/15, Aranyosi) and a Romanian national (C-659/15 PPU, Căldăraru). The German Court was principally concerned with the issue whether Article 1(3) of the Framework Decision on the European Arrest Warrant (FD-EAW) must be interpreted as meaning that a surrender for the purposes of prosecution or for executing criminal sanctions is inadmissible if serious indications exist that the conditions of detention in the issuing Member State infringe the fundamental rights of the requested person.

by ensuring interoperability at EU level while, at the same time, allowing for flexibility of national solutions at Member States' level.

In this regard, it should be noted that the e-CODEX could be the underlying solution of a common decentralised EU IT system; however, under this suboption Member States will remain free to use other IT systems if such exist.

With regards to e-CODEX, this is one of the components of a decentralised system where each Member State operates its own node in a network where there is no central element (such as a central server). Through this, the Member States retain full control of the data sent and received by the node and can also leverage all the data available in its national systems.¹⁰⁵ Specifically, under e-CODEX:

Every participant hosts its own e-CODEX access point on the basis of the software package and consisting of a gateway and a connector; no central component is involved in the communication. The participant is also responsible for hosting and running these components.

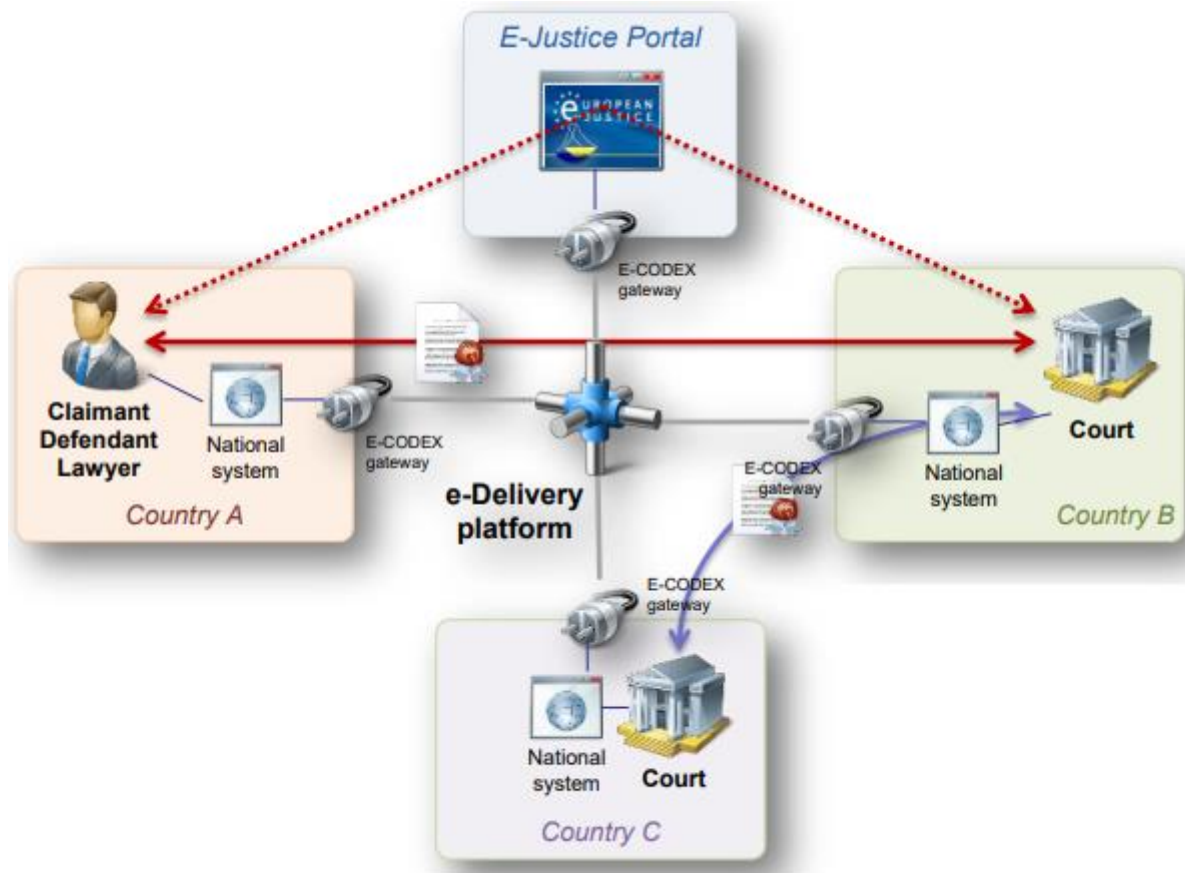
The connection to the national backend systems is channelled by a so-called "gateway" (DOMIBUS / eDelivery Access Point). An e-CODEX message flow would be: backend application A sends to gateway A, which in turn sends to gateway B, and then further to backend application B.

Some functionalities necessary for the message exchange within the justice domain are not part of the ebMS3.0/AS4 standard. These were realised in a software component called the "connector" (DOMIBUS), which builds the bridge between the Gateway and the backend applications.

The picture below presents a high-level view of the e-CODEX architecture.

¹⁰⁵ [e-codex-impact-assessment_en.pdf](#)

Figure 7: e-CODEX overview



Moreover, high benefits would likely come from the introduction of common provisions ensuring the acceptance and the legal validity of digital documents and evidence and outlining the data protection requirements inherent to cross-border communication. These provisions will likely address the current problems of legal documents/evidence of one Member State being refused in another country and the risks connected to security and confidentiality (see Section 2.2) by strengthening access to justice. Equal positive effects would likely derive from the provisions providing for the online payment of court fees in EU cross-border cases. This would allow individuals and legal entities to pay in a swift manner, skipping the potential delays and costs of post service.

2.1.b Legislative suboption: Mandatory use of a common, decentralised EU IT system

An EU instrument **requiring** Member States' authorities to use a **common, decentralised EU IT system**, would likely have **significant positive effects** on the achievement of the general objective of this initiative to improve the efficiency and the resilience of cross-border judicial cooperation, by ensuring that all Member States are connected to a decentralised IT system and are, thus, interoperable one with another. One of the specific objectives of this initiative is, in fact, to ensure that the IT systems of Member States are interoperable. The need for interoperability has been strongly emphasised by the stakeholders consulted

for this study.¹⁰⁶ Under this suboption, the level of interoperability will be higher than compared to suboption 2.1.a, as all Member States will be required to sue the same system.

A national authority consulted indicated their preference for this suboption in terms of achieving greater effectiveness in terms of guaranteeing harmonisation of establishing digital communication channels among Member States, but the same stakeholder indicated that the objective could possibly be achieved through other policy options.

2.2.a Legislative suboption: Optional acceptance of electronic communication from individuals/legal entities

Under this suboption, Member States will remain free to decide whether: to accept or not electronic communication from individuals/legal entities; develop a national solution for such submissions or use an EU developed solution (e.g. Small Claims submissions pilot via the European e-Justice Portal). This will leave to the discretion of Member States whether to accept or reject electronic files from individuals/legal entities, at the detriment of the achievement of one of the general objectives of this initiative – improved access to justice. In fact, access to justice involves also the ability to lodge a complaint. The ability to lodge a complaint or produce evidence/information will likely be hampered if submissions can be made only in paper or if the possibility to submit digitally exists but such submissions are not accepted by other countries. Proceedings are faster, more easily accessible and less costly and time-consuming if documents can be exchanged using digital means and hearings can take place through videoconferencing.

Furthermore, under this suboption, the development and utilisation of videoconference and distance communication tools will be left at the discretion of Member States. While face-to-face hearings are regarded positively by the consulted stakeholders,¹⁰⁷ given that the equality of arms and fundamental rights safeguards are deemed to be better guaranteed, the lack of a legal basis for the participation of parties in hearings through ICT means, would not benefit access to justice, nor the resilience and efficiency of justice. The pandemic has showed the benefits of participation through such means especially in cross-border cases, if adequate safeguards of fair trial rights are in place. In this regard, the CEPEJ has issued guidelines on videoconferencing in judicial proceedings in line with fair trial rights.¹⁰⁸

To date, distance communication technologies, such as videoconferencing, are used for cross-border criminal cases in 10 Member States for all relevant EU legal cooperation instruments allowed by national law and in four Member States, for some of the relevant EU legal instruments. Out of the 14 Member States consulted, seven responded that their competent authorities have not faced systematic technical difficulties in the use of distance communication technologies with regard to cooperation in cross-border criminal matters.¹⁰⁹

2.2.b Legislative suboption: Mandatory acceptance of electronic communication from individuals/legal entities

A legal instrument obliging Member States to accept electronic communication between individuals/legal entities and the competent authorities would **highly benefit** access to justice by allowing individuals and legal entities to file claims via digital means, without

¹⁰⁶ Focus Group at EU level conducted by VVA on 4 May 2021.

¹⁰⁷ National Focus Group conducted by VVA on 15.07.2021.

¹⁰⁸ [CEPEJ\(2021\)4 - Guidelines videoconference EN.docx.pdf](#)

¹⁰⁹ [swd_digitalisation_en.pdf](#)

running the risk of seeing those claims rejected. In fact, one of the specific objectives of this initiative is to ensure that electronic documents are not denied legal effect. If EU citizens can rely on the possibility to submit documents online this no longer requires them to establish whether a particular Member State allows for digital submission and how to accomplish that.

Besides, a **legal basis** for the parties' participation in oral hearings would enable those, who cannot travel or attend the hearing in person for whatever reason, to be able to participate remotely, thus, enhancing access to justice and the right to a fair trial. As explained above, the pandemic has showed the benefits of videoconferencing allowing hearings to take place without the need for parties to travel. This is particularly important in cross-border cases where geographical distances might be considerable.

Under this suboption, the use of videoconference or other distance communication technology will be subject to three conditions: (i). availability of such technology, (ii). court's discretion, (iii). parties' consent. The oral hearing will be performed under the rules and the procedure applicable for videoconference for domestic cases. The EU instrument would, thus, not require the use of distance technology automatically.

However, the level of positive impacts of this suboption would depend on whether **adequate safeguards of fair trial rights** are adopted. In this regard, the EU instrument should introduce some guarantees in line with the CEPEJ guidelines on videoconferencing in judicial proceedings.¹¹⁰ These safeguards, in relation to specific rights, might include¹¹¹:

- **Right to a confidential consultation with a lawyer** (Directive 2013/48/EU ('Access to a Lawyer Directive'): Speaking to a lawyer by videoconference should not be a replacement for in-person counsel; confidential space/time for lawyer-client communication should be ensured;
- **Right to effective participation in a hearing** (Directive 2016/343 ('Presumption of Innocence Directive'): research shows that there is limited to no possibility for confidential interaction between lawyers and suspects or accused persons during remote hearings. This can have serious implications for both the effectiveness of legal assistance and a defendant's ability to understand and be actively involved in the hearing. It also may not be possible to identify whether a suspect or accused person is vulnerable or has special requirements. These issues should be properly addressed and adequate safeguards put in place.
- **Right to be present** (Presumption of Innocence Directive): Participation via videoconference is not equivalent to being physically present at a trial and therefore restricts this right. Therefore, on a national level, remote hearings should not be imposed without a suspect or accused's person's consent. Where such hearings are conducted, they must be accompanied by detailed additional safeguards to ensure the effective exercise of defence rights.
- **Right to protection** (Victims' rights Directive): the modalities of the hearings through videoconference, the location where the victim is heard, the presence of adequate support in person and other factors, should all be taken into account to avoid further victimisation.¹¹²

¹¹⁰ [CEPEJ\(2021\)4 - Guidelines videoconference EN.docx.pdf](#)

¹¹¹ [BRIEFING-PAPER-ON-THE-COMMUNICATION-ON-DIGITALISATION-OF-JUSTICE-IN-THE-EUROPEAN-UNION FAIR TRIAL.pdf](#)

¹¹² Focus Group at EU level conducted by VVA on 04 May 2021.

2.3.a Legislative suboption: Optional electronic trust services in accordance with the e-IDAS Regulation

Access to justice, resilience and efficiency of justice **would likely be improved significantly** if a legal instrument **not obliging** Member States to implement electronic trust services, under the e-IDAS Regulation, is adopted. A more harmonious regime where the standards of the e-IDAS Regulations are directly references, compared to the current situation (today 15 out of the 27 Member States allow for the use of e-IDs under the e-IDAS Regulation), would mean that individuals and businesses will more likely use their e-IDs to access online public services abroad and more likely have their electronic signatures/seals recognized in another country. In fact, one of the specific objectives of the initiative under this study is to ensure that electronic identities, signatures and seals are recognised across borders.

2.3.b Legislative suboption: Mandatory electronic trust services in accordance with the e-IDAS Regulation

More positive effects, compared to suboption 2.3.a, would arise from the introduction of a legal instrument containing provisions on e-signatures and e-seals by directly referring to the e-IDAS Regulation. Common standards across the EU would likely create a framework common to Member States where all individuals/legal entities can use their e-IDs to access online public services and have their electronic signatures/seals recognized abroad. This would not only benefit access to justice and resilience/efficiency of justice and, more generally, the Single Market.

In particular, a **significant improvement of the current situation** will likely take place under this suboption. Today, even if the eIDAS Regulation clearly provides that qualified signatures should have the same legal effect as a handwritten signature, many authorities refuse to verify electronic signatures. As a result, a submission made by a lawyer from another Member State may be refused because the signature on the document may not be automatically verifiable by the judge or a different authority. Moreover, there are extensive technical differences even in the format of electronic signatures used or the containers of electronically signed documents (ASICS-E, P12, DER etc.), and also in the fields of the certificates that should be used for identifying a person (e.g. a “common name” of a person included in one field of the certificate will usually not uniquely identify someone). Different identifiers need to be used, such as tax numbers, e-government identifier, personal identification numbers, etc. Automated verifications have to rely on these extra fields, and this may pose a significant problem for cross border use of e-signatures in judicial proceedings. These problems not only affect authorities, but also businesses trying to rely on the authenticity of e-signed documents from another EU country (e.g. banks).¹¹³

The creation of a harmonised regime would, thus, solve the above issues.

A national authority consulted in the context of the study indicated that the introduction of a procedure on qualified signatures would be absolutely necessary to favour that judges and authorities use digital tools as a rule with few exceptions.

Use of videoconference

The majority of respondents to the national-level online survey consider it effective for parties to participate in EU cross border proceedings by videoconference or other distance

¹¹³ [EN_ITL_20200904_CCBE-comments-on-the-roadmap-on-the-digitalization-of-justice-in-the-EU.pdf](#)

communication technology. 54.7 % of respondents consider the use of videoconference to be highly effective in civil/ commercial law matters, while 24.1 % of respondents consider it effective to a limited extent. When it comes to criminal law matters 43.6 % of survey respondents consider it highly effective, and 38.9 % of respondents consider it effective to a limited extent.

5.2.3. Social/ fundamental rights impacts

- **Policy Option 0**

Should no action be taken, the problems described under Section on effectiveness would likely remain the same. These will result in negative **social impacts**, including procedural delays involved in paper-based communications.

The Study on Service of Documents pointed out a predominant reliance on paper-based and formalised methods of communication between agencies, causing delays to the process and hindering the objective of providing speedy and efficient service of documents.¹¹⁴ According to it, almost all communication between transmitting and receiving agencies was conducted through regular post. Even in cases where no particular issues arose, the use of regular post meant that a certain amount of time was spent on communication even before any attempts to serve the document. Where issues arose or clarifications were needed with regard to the request (e.g. clarification of address or method of service), communicating this through post significantly delayed the process.

Similar conclusions were reached by the impact assessment on Taking of Evidence.¹¹⁵ According to the latter, the fact that communication between competent courts and authorities was to a large extent non-electronic, produced delays and additional costs. A majority of courts only accepted paper-based requests via post or fax. Only six Member States accepted requests via email in general and another five Member States accepted emails for certain types of requests or communications. Email addresses were frequently not provided by the requesting court and may not be found by the requested court. Since this form of communication was not widely accepted, the process to rectify requests was reported to be time-consuming and “very frustrating” (as one central body explained).¹¹⁶

The majority of respondents to online national-level survey were neutral when asked to assess effectiveness of Option 0 with regard to social impacts. According to the respondents, Policy Option 0 does not have a negative impact on the following objectives: (1) quality of legal representation (10.3 % of respondents believe that the impact of Option 0 is positive, 24.1 % consider it rather positive, 34.5 % consider it neutral); (2) good administration and efficiency of justice (33.3 % of respondents consider the impact of this option neutral, 40 % either very positive or rather positive); (3) access to justice (44.8 % of respondents consider the impact of this option neutral, 41.4 % consider it either very positive or rather positive); (4) fair trial including timeframe of proceedings (43.3 % of respondents consider this option neutral, 33.3 % consider it either very positive or rather positive); procedural safeguards of suspects/accused (44.8 % of respondents consider this option neutral; 31 % consider it either very positive or positive); victims’ rights (31 % of respondents consider this option neutral; 41.4 % consider it either very positive or rather positive); data protection (41.4 % of respondents consider this option neutral, 34.5 %

¹¹⁴ [study on modernization of judicial cooperation.pdf](#)

¹¹⁵ [IA on taking of evidence.pdf](#)

¹¹⁶ [IA on taking of evidence.pdf](#)

consider it either very positive or positive); rights of vulnerable people (30 % consider this option neutral, 33.3 % consider it either very positive or positive); resilience of judicial systems to deliver justice in times of crisis (34.5 % consider this option neutral, 37.9 % consider it either very positive or rather positive).

• Policy Option 1

As pointed out by the impact assessment on e-CODEX¹¹⁷, the use e-CODEX would likely provide an **easy access to justice** for European citizens. Criminal proceedings will be speeded up due to a full electronic exchange of requests by avoiding undue delays, which are more likely in traditional ways of transmission. As a result, implementing e-CODEX could have a positive impact on the **fight against cross-border crime**. The use of e-CODEX would also likely help **enforce financial penalties** such as traffic offences. In France, 143 054 fines imposed on foreign residents remain unpaid each year. With an average fine of 280 EUR, this amounts to over 40 million euros of unpaid fines to be enforced by court proceedings.¹¹⁸ Assuming that electronic procedures could increase the efficiency of cross-border proceedings by 20 %, an additional 8 million euros could be enforced in France every year, according to the impact assessment on e-CODEX.¹¹⁹ Therefore, a full implementation of e-CODEX across the EU would considerably facilitate the **recovery of fines and more effective enforcement** would also have a positive effect on the abidance by traffic rules across Europe.

Positive impact can also be expected on the **efficiency of national courts**. In an evaluation carried out by the e-CODEX consortium, it was estimated that the implementation of e-CODEX in Germany has led to a time saving of 5-10 minutes to process a case because the data no longer needs to be manually entered into the case management systems.¹²⁰

However, the extent of positive impacts would be limited considering that Member States will not be obliged to use e-CODEX or to adopt e-EDES implementations. In other terms, it could lead to unequal treatment for the parties involved and different level of efficiency in different Member States.

Respondents to online national-level survey consider potential effectiveness of the Policy Option 1 with regard to social impacts to be rather high. In particular, respondents assess positively the option's (1) potential impact on quality of legal representation (16.7 % of respondents believe that potential impact of Option 1 would be positive, 40 % consider it to be rather positive, 16.7 % consider it neutral); (2) potential impact on good administration and efficiency of justice (69 % of respondents consider that the impact of this option would be either very positive or rather positive; 10.3 % consider it neutral); (3) potential impact on access to justice (56.7 % consider potential impact of this option to be either very positive or rather positive; 23.3 % of respondents consider it to be neutral); (4) potential impact on fair trial including timeframe of proceedings (62 % consider it either very positive or rather positive; 13.8 % of respondents consider this option neutral); potential impact on procedural safeguards of suspects/accused (24.1 % of respondents consider this option neutral; 55.1 % consider it either very positive or positive); potential impact on victims' rights (23.3 % of respondents consider this option neutral; 50 % consider it either very positive or rather

¹¹⁷ [e-codex-impact-assessment_en.pdf](#)

¹¹⁸ Data on AFM fines the FR fine collecting agency.

¹¹⁹ [e-codex-impact-assessment_en.pdf](#)

¹²⁰ e-CODEX D3.5/D3.7/D3.8 WP3 Final Report.

positive); potential impact on data protection (32.1 % of respondents consider this option neutral, 46.4 % consider it either very positive or positive); potential impact on rights of vulnerable people (21.4 % consider this option neutral, 44.7 % consider it either very positive or positive); potential impact on resilience of judicial systems to deliver justice in times of crisis (21.4 % consider this option neutral, 60.7 % consider it either very positive or rather positive).

• Policy Option 2

The introduction of an EU instrument establishing a secure electronic channel (based on e-CODEX), would likely have positive social impacts. In particular, the possibilities created by the e-CODEX electronic system would have **positive effects** on the ability to exercise the **right to an effective judicial remedy**, in conformity with Article 47 of the Charter of Fundamental Rights, since electronic communication and document transmission enhances and reduces the time of the court proceedings.¹²¹ Stakeholders, consulted in the context of the impact assessment on e-CODEX,¹²² pointed out that Article 47 also guarantees the right to an impartial and independent tribunal, and that in order to be in conformity with that Article, future governance and coordination of e-CODEX and e-CODEX-related activities need to ensure that the **independence of the judiciary** is guaranteed. Since e-CODEX is a decentralised system, there will be no data storage or data processing by the entity entrusted with the maintenance of the e-CODEX software components. The entities operating e-CODEX access points are solely responsible for the personal data transiting via their access points. Depending on whether an access point is operated by Union institutions, bodies, offices and agencies or other entities, either Regulation (EU) 2018/1725 or the General Data Protection Regulation will apply respectively. **Data protection rights**, will, thus, likely be safeguarded.

The extent of positive impacts of Option 2 would also depend upon **certain conditions**. In order to uphold fair trial rights, the **new EU instrument** should be coupled with **sufficient safeguards and due process procedures**, including the protection of professional secrecy and legal professional privilege. As pointed out by CCBE, any perceived need to increase efficiency through the use of technology should not sacrifice the consistent delivery of justice at least as well as that delivered by traditional means. It is important that all users are also aware of the risks related to the use of online tools and remote hearings, and that special attention is paid to the respect of human rights and other ethical principles.¹²³

Benefits on the functioning of the judicial systems and the professionals using them, would also likely arise from the **harmonisation** created by the new EU instrument. In this respect, it is also important to consider that, even within the same country, lawyers/judges might use different IT systems based on applications.¹²⁴ This can mean, for example, a system for electronic document exchange with courts, a completely different system with police, with prosecutors, with every major branch of administration and larger governmental bodies. Even in a small country, there may be dozens of such different authorities with many different IT systems used. Different authorities often have their own requirements in regard to document formats, sizes, forms to be used, for acknowledgement of receipt of

¹²¹ [e-codex-impact-assessment_en.pdf](#)

¹²² Ibid.

¹²³ [EN_ITL_20200904_CCBE-comments-on-the-roadmap-on-the-digitalization-of-justice-in-the-EU.pdf](#)

¹²⁴ Ibid.

documents etc.; and the requirements are constantly changing. Such changes can concern technical evolutions which require a permanent upgrading of systems, as well as constantly changing laws and procedures. Therefore, by introducing an EU instrument establishing a secure electronic channel (e.g. based on e-CODEX) and defining all related technical standards for cross-border interoperability, **uniformity will likely be enhanced**, at the same time **without asking Member States to change their own national IT systems**. This solution will remain flexible to address frequently changing requirements as well as the variety of IT systems among different countries.

- **Suboptions**

2.1.a Legislative suboption- Optional use of a common, decentralised EU IT system

No significant differences in terms of social impacts have been identified between suboptions 2.1.a and 2.1.b, with the only difference that positive social impacts will likely be more extensive under 2.1.b.

The introduction of common provisions, ensuring the acceptance and legal validity of digital documents and evidence, and outlining the data protection requirements inherent to cross-border communication, would likely benefit access to justice and fair trial right. Provisions providing for the online payment of court fees in EU cross-border cases, would likely strengthen the good administration and efficiency of the justice system.

Respondents to online national-level survey consider potential effectiveness of the suboption 2.1a with regard to social impacts to be either very high or rather high. In particular, respondents assess positively the option's (1) potential impact on quality of legal representation (27.6 % of respondents believe that potential impact of this suboption would be positive, 48.3 % consider it to be rather positive, 17.2 % consider it neutral); (2) potential impact on good administration and efficiency of justice (79.3 % of respondents consider that the impact of this suboption would be either very positive or rather positive; 13.8 % consider it neutral); (3) potential impact on access to justice (82.8 % consider potential impact of this suboption to be either very positive or rather positive; 3.4 % of respondents consider it to be neutral); (4) potential impact on fair trial including timeframe of proceedings (71.4 % consider it either very positive or rather positive; 14.3 % of respondents consider this suboption neutral); potential impact on procedural safeguards of suspects/accused (69 % of respondents consider this suboption neutral; 20.7 % consider it either very positive or positive); potential impact on victims' rights (10.7 % of respondents consider this suboption neutral; 71.4 % consider it either very positive or rather positive); potential impact on data protection (35.7 % of respondents consider this suboption neutral, 46.5 % consider it either very positive or positive); potential impact on rights of vulnerable people (17.9 % consider this suboption neutral, 64.3 % consider it either very positive or positive); potential impact on resilience of judicial systems to deliver justice in times of crisis (14.3 % consider this suboption neutral, 75 % consider it either very positive or rather positive).

2.1.b Legislative suboption- Mandatory use of a common, decentralised EU IT system

Respondents to the survey consider the social impacts of suboption 2.1b to be the highest. Around half of respondents believe that potential social impact of this suboption would be very positive, while roughly one third consider potential impact of the suboption to be rather positive.

2.2.a Legislative suboption- Optional acceptance of electronic communication from individuals/legal entities

Under this suboption, Member States will be free to decide whether to accepting or not electronic communication from individuals/legal entities. This will likely have **negative effects** on access to justice and fair trials rights in those countries where only paper submissions will be accepted. Individuals and legal entities will, thus, be deprived of a swift and cheap way of filing claims or transmitting documents, being subject to the risks of delays and costs involved with traditional means of transmission.

By not providing a legal basis for the use of videoconference, the participation of parties in hearings through distance technology will be left at the discretion of Member States, thus, **hampering the rights of suspects/defendants and victims who cannot attend the hearing in person**. While face-to-face hearings are regarded by the consulted stakeholders¹²⁵ as higher guarantees of fair trial and defence rights, the pandemic has shown that benefits come also from the attendance through videoconference, if adequate safeguards are put in place. In this regard, the guidelines issued by CEPEJ¹²⁶ should be followed.

2.2.b Legislative suboption: Mandatory acceptance of electronic communication from individuals/legal entities

Positive impacts would likely arise from this suboption in terms of access to justice and fair trial rights for both individuals and legal entities who will be able to file submissions both via paper and electronic channels. The risk of seeing their submission rejected by another Member State will be reduced. At the same time, a legal basis for the participation of parties in hearings through distance technology would like ensure some harmonisation across Member States, reducing the differences in the legal landscape across countries. The stakeholders consulted by the Commission,¹²⁷ were supportive to the increased use of videoconferencing, if appropriate safeguards are taken to protect fundamental rights. However, different views were presented about the use of videoconferencing in criminal justice, either supportive or very cautious (allowing the use of videoconferencing in very limited cases).

The extent of positive impacts will, thus, depend on whether adequate fundamental rights safeguards are adopted.

A consulted organisation of legal practitioners pointed out to problematic aspects of videoconferencing, as whereas it could have positive aspects in some phases of criminal law procedures, it could hamper fundamental rights (such as the right to information) when videoconferences prevent the press from following a procedure. The same stakeholder indicated that this is a topic of debate in multiple Member States currently.

2.3.a Legislative suboption: Optional electronic trust services in accordance with the e-IDAS Regulation

An EU instrument **not obliging** Member States to adopt e-IDAS standards with regards to e-signatures and seals used in the context of judicial cooperation would have **limited positive effects** if each Member State will remain free to decide whether to recognize e-

¹²⁵ Focus Group at EU level, conducted on 04 May 2021.

¹²⁶ [CEPEJ\(2021\)4 - Guidelines videoconference EN.docx.pdf](#)

¹²⁷ [swd_digitalisation_en.pdf](#)

signatures and e-seals of another Member State in the context of cross-border judicial procedures.

2.3.b Legislative suboption- mandatory electronic trust services in accordance with the e-IDAS Regulation

Significant positive social and fundamental rights impacts would derive from a harmonised regime in line with e-IDAS standards. This would benefit access to justice and data protection rights by ensuring that a person can be identified through its e-ID in the context of cross-border proceedings.

5.2.4. Environmental impacts

• Policy Option 0

The environmental impacts of Option 0 are mainly related to **paper-based communication** or effects from **travelling to attend physical hearings in person**. To date, the majority of exchanges between competent authorities of Member States still take place via paper channels. The magnitude of this impact per case is expected to remain stable, depending on innovations in communication via postal services or passenger travel.

In particular, under the baseline scenario, the main environmental impacts pertain to the use of non-renewable resources, due to paper-based 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**.

In addition to the negative impacts due to the costs for paper, toner or ink and postage, paper-based communication also has implications for the environment.¹²⁸ Presently, standardised forms under EU instruments are often printed on paper, whose production requires renewable resources (e.g. wood), consumes water and involves chemicals (e.g. brightening agents). Likewise, the production of toner requires non-renewable raw materials (e.g. plastic particles and other chemical products produced using mineral oil). Both paper and toner need to be packaged and shipped to end-users, leading to emissions from transport and handling. Both the production and use of these materials produce waste which may only be partially recycled, again requiring energy.

Finally, communication on paper is usually transmitted via postal services which: require further material for processing (e.g. envelopes, wrapping, etc.); consume additional resources for transport (e.g. fuel in transport); and produce greenhouse gas emissions (e.g. in transport via trucks and delivery vehicles).

According to the consulted respondents to the online national-level survey, Policy Option 0 has either neutral or rather positive environmental impact. Namely, 25 % of respondents consider its carbon footprint neutral, while 25 % consider it either positive or rather positive. 32.1 % of respondents consider neutral the option's impact on waste production, while 35.7 % of respondents consider it either positive or rather positive. 34.5 % of respondents consider neutral the option's impact on use of resources (34.4 % consider it either positive or very positive).

¹²⁸ [IA on taking of evidence.pdf](#)

- **Policy Option 1**

This option would likely have positive environmental effects given that e-CODEX is a paperless system. As a result, natural resources will be saved by reducing the use of paper, ink and postal delivery, to the extent that the use of digital communication is permitted by the relevant EU instrument and national law.

Nonetheless, the magnitude of positive impacts would depend on how many Member States will likely comply with the Commission's recommendation.

Respondents to online national-level survey believe that Policy Option 1 would have either positive or neutral environmental impact. Namely, 33 % of respondents consider its carbon footprint neutral, while 30 % consider it either positive or rather positive. 26.7 % of respondents consider neutral the option's impact on waste production, while 46.7 % of respondents consider it either positive or rather positive. 30 % of respondents consider neutral the option's impact on use of resources (43.3 % consider it either positive or very positive).

- **Policy Option 2**

The environmental impacts of this option are mainly related to the adoption of electronic means of communication and a likely increase in the use of videoconferencing and distance communication instead of physical hearings. While both channels of communication consume energy in operation and resources to produce the equipment, the overall impact on the environment is positive. The impact assessment on taking evidence pointed out that videoconferencing and other means of distance communication, may only produce 7% of carbon emissions of physical meetings.¹²⁹ At the same time, electronic communication has a smaller carbon footprint than equivalent standard mail (50% to 90% per unit).¹³⁰

Moreover, the promotion of videoconferencing and other means of distance communication for the direct taking of evidence would mainly reduce the need for cross-border travelling. Therefore, it would decrease unnecessary pollution and gas emission of the transport.

In conclusion, under this option, the necessity to use paper-based means of communication and attend hearings in person by traveling to another county will likely be reduced. Modern electronic communication would lead to the savings by reducing the costs of paper, toner or ink. It will not require additional materials, such as envelopes in the post office, fuel for transportation. Consequently, less gas emission will be produced by deliveries.

Respondents to online national-level survey expressed opinions that go in line with the above conclusion, as they consider this option to have most positive environmental impact. Namely, 50 % of respondents consider its carbon footprint either positive or rather positive, while 23.3 % consider it neutral. 53.3 % of respondents consider either positive or rather positive the option's impact on waste production, while 20 % of respondents consider it neutral. 69 % of respondents consider either positive or very positive the option's impact on use of resources (17.2 % consider it neutral).

¹²⁹ [IA on taking of evidence.pdf](#)

¹³⁰ Ibid.

- **Suboptions**

2.1.a (Optional use of a common, decentralised EU IT system) & 2.1.b (Mandatory use of a common, decentralised EU IT system)

No significant differences in terms of environmental impacts have been identified between these two suboptions, with the exception that the extent of positive impacts under suboptions 2.1.b might be greater, given that Member States will be required to use a common, decentralized IT system and, thus, the use of the electronic channel will be mandatory.

2.2.a (Optional acceptance of electronic communication from individuals/legal entities) & 2.2.b (Mandatory acceptance of electronic communication from individuals/legal entities)

More positive environmental impacts would derive from suboption 2.2.b given that Member States will be obliged to accept electronic submissions from individuals/legal entities and, thus, the extent of positive effects, described under Option 2, will be more significant. The introduction of a legal basis for the participation of parties in hearings through videoconference, would also have significant positive effects on the environment (see considerations under option 2).

2.3.a (Optional electronic trust services in accordance with the e-IDAS Regulation) & 2.3.b (Mandatory electronic trust services in accordance with the e-IDAS Regulation)

Under suboption 2.3.b, Member States would be obliged to use and recognize e-signatures and e-seals in cross-border situations, in line with e-IDAS standards. Thus, the magnitude of positive impacts would be higher than under suboption 2.3.a.

5.2.5. Efficiency and economic impacts

The aim of this section is to assess the proposed options with regard to the likely costs and benefits as they accrue to different stakeholders. The analysis presented in this section is 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 limited, 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.

Statistics of cross-border communication by purpose of request

This subsection presents an overview of available relevant statistics of cross-border communication in 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 II¹³¹ 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 ¹³²	637

In turn, the table below presents the statistics of cross-border exchanges on judicial matters in **France**.

Table 9: statistics of cross-border exchanges on judicial matters in France (2017-2020)

	MLA		European arrest warrants		EPO	Small claims	I-support ¹³³
	Received ¹³⁴	Sent ¹³⁵	Received	Sent ¹³⁶	Received from other countries	Received from other countries	
2017	1694	250	1600	1429	448	138	2
2018	1655	1254	1736	1736	604	181	2
2019	1755	n/a	1850	1828	532	411	2
2020	1713	1607	1461	1355	426	448	2

¹³¹ 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 e-EDES (e-Evidence Digital Exchange System) of the European Commission.

¹³² Excluded closed cases with no answer

¹³³ i-Support (Regulation (CE) n° 4/2009): 1530 active cases, with two messages a year on average (=3060 messages needed every year).

¹³⁴ Received from other countries

¹³⁵ Sent to other countries

¹³⁶ Disseminated through the police cooperation channels:

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 2021¹³⁷:

Table 10: 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

According to information provided by the German Ministry of Justice, in Germany the following number of cases of cross-border judicial cooperation in civil and commercial matters takes place:

Table 11: Statistics on cross-border judicial communication in civil and commercial matters in Germany (2017-2020)

	Council Regulation (EC) No 1206/2001		Regulation (EC) No 1896/2006 of the European Parliament and of the Council		Regulation (EC) No 861/2007 of the European Parliament and of the Council
	Incoming requests	Outgoing requests	Incoming requests	Outgoing requests	Initiated procedures
2017	n/a	n/a	n/a	n/a	478
2018	1791	711	3706	n/a	567
2019	1837	756	3577	n/a	1155
2020	n/a	n/a	3697	n/a	n/a

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;

¹³⁷ Statistics provided by the Austrian Federal Computing Centre

- 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.

Moreover, according to a representative of the **Directorate-General for the Administration of Justice of the Portuguese Central Authority**, under 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.

Each letter sent by post by the Portuguese Central Authority to another Member State has a cost between 5.25 euro and 8.80 euro, 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 reports of **Sofia City Court in Bulgaria**, the following number of requests were received by the Court in 2019-2020:

Table 12: 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	-

According to information provided by the Supreme Judicial Council in Bulgaria, the following number of cross-border exchanges took place in 2020-2021 for Council Regulation (EC) No 2201/2003, Council Regulation (EC) No 4/2009 and Regulation (EU) No 655/2014.

Table 13: Number of cross-border exchanges of the Supreme Judicial Council in Bulgaria

Instrument	Number of requests received and processed for the period 01.01.2020-31.12.2020	Number of request (under Art. 55) received and processed for the period 01.01.2021-30.06.2021
Council Regulation (EC) No 2201/2003	76 ¹³⁸	19 ¹³⁹
Council Regulation (EC) No 4/2009	142 ¹⁴⁰	88 ¹⁴¹
Regulation (EU) No 655/2014 of the European Parliament and of the Council	4 ¹⁴²	0

Cross-border exchanges under Council Regulation (EC) No 2201/2003 are carried out mainly by e-mail, in some cases – by paper. The exchange of information and cooperation under Regulation № 4/2009 takes place mainly on paper at the time of initial communication. Information on the progress made is subsequently provided mainly by e-mail.

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 format¹⁴³. 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 additional one day);

¹³⁸ Number of request (under Art. 55) received and processed

¹³⁹ Ibid.

¹⁴⁰ For the period 01.01.2020 - 31.12.2020 there was correspondence on 142 applications under Art. 56, as 27 of the applications were new and 115 were from previous years. During the period, 67 requests for provision or receipt of information through the specific measures under Art. 53 were processed.

¹⁴¹ For the period 01.01.2021 – 30.06.2021 there was correspondence on 88 applications under Art. 56, as 14 of the applications were new and 74 were from previous years. During the period, 55 requests for provision or receipt of information through the specific measures under Art. 53 were processed.

¹⁴² Number of requests processed for the obtaining of account information (Article 14)

¹⁴³ Interview with the Prosecution office in Italy, carried out by DG JUST of the European Commission.

- 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, that means from up to 30 days to roughly 1 second. The prosecutor themselves would save approximately one hour per EIO case (so 22-23 hours per month). In what concerns costs, digitalisation would save 4-5 euro EIO 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 the data collected by the Commission through their September 2020 questionnaires to competent authorities and lawyers in Member States, Eurojust and EJM, 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 EJM 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 EJM 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 EJM 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 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 services, 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 what concerns 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.

The Royal Chamber of Bailiffs in the Netherlands explained that, according to a study carried out in 2019 by CEBON, to process a received cross-border communication they spend an average of 78 minutes, at a cost of EUR 110 (as of 2019). The majority of cross-border communication takes place via regular post; communication per e-mail is reportedly marginal.

When documents arrive at the Dutch Royal Chamber of Bailiffs, they are first provided with a date stamp. Next, an allocated staff member checks, whether the received documents are complete and in the correct language. After that, they search to see whether documents from this country have already been received, so that a previous file can be copied and modified. The sending authority is informed that the documents have been forwarded and to whom. The documents are then printed, signed and scanned with the certificate of the transmitting agency and stored in the folder. Finally, all the documents are prepared for dispatch, to the Dutch bailiff and to the transmitting agency. The mail is weighed, stamped and then sent. If the documents are received per e-mail, they can be forwarded or printed out first. It takes about 15 minutes to process a request.

When a document is sent abroad, the Btag rate (BTAG is a bailiff rates table) for of the document in question is charged, as well as the final cost of the foreign party. For a writ of summons the Btag rate is charged, and the costs of the foreign receiving agency. The costs and the time required therefore differ per writ. If the documents are sent per e-mail, the sending costs will be significantly lower. The downside, however, is that the receiving party will have to print the documents in duplicate. For all writs, specific forms should be filled out. For this purpose, an allocated staff member goes to the e-justice website, in which the necessary forms can be found. The necessary form is filled in and converted into a pdf file (it is then automatically adapted to the correct language) and printed. The form is then signed and stamped and eventually goes abroad with the documents in question. Finally, the writ is printed in two or four copies (depending on whether it is also sent directly to the other party) and the documents can be prepared for sending. Presumably the time involved in this process (starting from filling out the form) is also about 15 to 20 minutes.

Policy Option 0

If no action is taken, no improvement will likely occur in what concerns the efficiency of cross-border communication in civil/ commercial law matters. This conclusion is shared by all interviewed stakeholders and by the vast majority of online survey respondents (the majority of survey respondents believe that the administrative and budgetary implications of this policy option for their services would be neutral).

Policy Option 1

In those Member States which have not joined e-CODEX pilots so far, the implementation of this Option will be associated with moderate initial investments for public authorities that could be co-financed by the European Commission. Moreover, recurring operational expenditures are expected to be incurred by public authorities for the maintenance of the necessary hard- and software.

No additional costs will be borne by those Member States where e-CODEX is already in place. However, should e-CODEX be expanded to new procedures in civil/commercial and criminal law matters, initial and recurring costs will likely arise.

As regards the costs for Member States implementing e-CODEX, the impact assessment on e-CODEX¹⁴⁴ pointed out that e-CODEX is **cost-effective**. In this regard, Member States:

1. need to set up the gateway/connector to connect to their national system only once. Besides the usual maintenance costs and additional costs resulting from changes in the national system, no further investments are required for connectivity;
2. need only to follow a described and proven method to achieve digital support for a cross-border legal procedure;
3. e-CODEX seeks to connect existing national solutions instead of forcing Member States to install 'alien solutions' with all sorts of IT management and maintenance implications.

The cost of installing e-CODEX in the Member States could be estimated to a maximum of 80-100 person-days per Member State.

Furthermore, the above costs would be offset by **indirect positive economic impacts** on businesses of all sizes across the EU. e-CODEX simplifies and speeds up cross border judicial procedures and judicial cooperation, which in itself is of benefit to companies. As an example of the **positive economic impact** of digital communication in judicial procedures in particular for SMEs, the European Small Claims Procedure should be mentioned. The impact assessment on e-CODEX¹⁴⁵ found that the replacement of postal services with digital communication can generate **potential savings**, in terms of saved postage costs but more significantly by **reducing the time for the procedure**. Even though postal service is already cheaper than other methods of service used in ordinary proceedings in the Member States (e.g. bailiffs), it still generates comparably more costs and delays than the use of electronic service. If postal costs are estimated at between €2.78 and €7 for a given case¹⁴⁶, the total postal cost would amount to between €8 to €21 per case. In terms of delay in the procedure, each service/communication by post takes between 1 and 3 days, or for the whole procedure, between 3 to 9 days. As the average length of the proceedings is between 3 and 6 months, this constitutes a non-negligible part of the process. On average, if electronic communication with acknowledgment of receipt at a cost of €1 would be used instead of post, a party is expected to save between €5 to €18 and 3 to 9 days. In practice however, because many more communications are effected by post, the costs to the parties are higher.

The average cost for sending cross-border letter with acknowledgement of receipt is estimated at EUR 10.55. The calculation is based on an average of the costs of sending

¹⁴⁴ [e-codex-impact-assessment_en.pdf](#)

¹⁴⁵ Ibid.

¹⁴⁶ Impact assessment accompanying the proposal for a Regulation amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure (http://ec.europa.eu/justice/civil/files/com_2013_794_en.pdf).

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. In the case, the additional cost of having the letter picked up was computed, so as to account for the opportunity cost of sending the letter if an official would go to the post office for this sole purpose.

A question in the survey asks about the *time needed (in days) for a document to be sent by authority A and confirmed to be received by authority B in another Member State (in days)*. The results are outlined below.

Table 14: Time needed (in days) for a document to be sent by authority A and confirmed to be received by authority B in another MS

Time needed (in days) for a document to be sent by authority A and confirmed to be received by authority B in another MS	Civil/Commercial law matters	Criminal law matters
Paper-based	94.1 days	132.2 days
Digital	46.9 days	99.1 days

The data provided by respondents was scattered and many responses were incomplete. Therefore, in order to avoid inferring that a paper based communication would take 49% and 74% of the time that a paper-based communication would take for civil/commercial and criminal cross-border communications respectively, these ratios are analysed separately considering only the responses by respondents who provided data for paper-based and digital communications, either civil/commercial, or criminal, or both. The percentages of the percentage of the time it takes to send a communication digitally instead of through paper-based means is presented below. This method of calculation suggests that the reduction in time would be much greater, particularly for communications in the criminal law area.

Table 15: Percentage of time it takes to send a digital communication vs. paper-based communication

Percentage of time it takes to send a digital communication vs. paper-based communication	Civil/Commercial law matters	Criminal law matters
Unrefined	49.8%	74.9%
Refined	37.7%	25.3%

The table below presents results of analysis of the average time for processing a cross-border request (EIO, EPO etc) from Member State A to Member State B including time for posting the documentation¹⁴⁷.

¹⁴⁷ The average time 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 MS A to MS B. However, anecdotal evidence from Italy suggests the time is much longer – between 3 to 15 days depending on the destination.

Table 16: Average time for processing a cross-border request (EIO, EPO etc) from MS A to MS B 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 ¹⁴⁸	0.75 hrs	49.5 hrs
Digital	0.15 hrs	0 hours	0.15 hrs	0.3 hrs

Source: MS feedback to COM request (PT and IT)

Online survey respondents have a more positive opinion about the economic impacts of Policy Option 1, as compared to Policy Option 0. While the majority of respondents still believe the impacts of this option would be rather neutral for different stakeholder groups, a larger group of respondents see a potential for a rather positive impact. Namely, 22.2 % of stakeholders believe that this policy option would somewhat reduce the administrative burdens on National Authorities and legal and judicial professionals, as well as the budgetary implications for businesses. A possible reason for this is that digitalisation would simplify and speed up cross border judicial procedures and judicial cooperation, which would save time and costs for businesses.

Policy Option 2

While Option 2 will likely have positive economic impacts for certain categories of business, it will likely affect the revenue of others. Specifically, the introduction of an electronic channel of communication might have **negative economic impacts** on the following **businesses**: postal service providers; paper and office supply providers; transport service providers etc. The revenue of these businesses is expected to decrease marginally due to the use of a digital channel, videoconference and other distance communication means, foreseen by Option 2. As pointed out by the impact assessment on taking evidence¹⁴⁹, a comparison between transport services providers of three Member States¹⁵⁰ prices for domestic and cross-border travel with long distance bus, train, and aircraft, showed that cross-border travel is around 17% more expensive than domestic travel. By means of the electronic channel, parties to proceedings will likely travel to attend a hearing only within their own country (not abroad) or will not have to travel at all. This will likely result in a loss of revenue for transport service providers.

Conversely, **positive economic impacts** would arise for certain categories of **business**: providers of IT consulting services; manufacturers of videoconference and other distance communication equipment; internet and telecommunication service providers; cloud storage service providers; and archiving service providers. The revenue of these businesses is expected to increase. In line with the findings of the e-CODEX Impact Assessment,¹⁵¹ IT consulting service providers could gain around 1 million Euro per year for the implementation of CEF eDelivery (on which e-CODEX is based). Estimates from the impact assessment on taking evidence suggest that courts would have to spend approximately 36,000 Euro per year on videoconferencing. Since there are about 6,000 courts in the EU according to CEPEJ 2014 (of which a limited number already has video

¹⁴⁸ 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/>

¹⁴⁹ [IA on taking of evidence.pdf](#)

¹⁵⁰ Austria, Lithuania, and Spain.

¹⁵¹ [e-codex-impact-assessment_en.pdf](#)

conferencing facilities), manufacturers and service providers in the area of videoconferencing could gain as much as 216 million Euro across all Member States, if all courts were to be equipped with at least one videoconferencing facility.¹⁵²

Individuals/legal entities and professionals in legal proceedings are not expected to incur major costs under this Option. As for public authorities, there could be marginal costs related to **administrative burden** in relation to the organization of videoconferencing and other long-distance communication. In turn, lawyers would likely incur costs in relation to the understanding of the new EU instrument adopted under this initiative; however, these costs would be outweighed by an increased **legal certainty and clarity**.

To counter these costs, a range of benefits should also be taken into account: **time savings** due to more efficient procedures; **decreased legal fees for lawyers**. If public authorities communicate four times with each other on average by post within a given legal proceeding, communication related delays can amount to 4 to 12 days (i.e. 8 days on average). The implementation of CEF eDelivery (based on e-CODEX) could save this time for individuals and legal entities. This is of particular importance for businesses in the context of cross-border trade as the timely completion of a legal proceeding without undue delays can have implications in cases around financial or maintenance claims. If legal proceedings are delayed, businesses may not be paid or supplied on time which could lead to detriment for clients.¹⁵³

Moreover, individuals and legal entities will likely benefit from **decreased legal fees**. Through the implementation of CEF eDelivery (based on e-CODEX) and increased uptake of videoconferencing and other distance communication means, legal proceedings are expected to become more efficient. **Decreased travel costs** and, possibly the loss of professional income during the travel to and the time of a hearing, are also considered to be a benefit for individuals and legal entities. Finally, the implementation of this option is expected to lead to **less stressful legal proceedings**; this is considered to be an important **non-monetary benefit** for individuals.

Moreover, the investment into technical infrastructure and processes for the establishment of a digital channel is expected to make legal proceedings **more efficient** which, in turn, will likely decrease **labour costs**. This could mean that more legal proceedings could be handled by the same staff within the given time.

A representative of a national authority, speaking on his capacity as a former legal counsellor, highlighted that the compulsory use of digital tools would affect SMEs and larger corporations in different ways, due to the relatively high necessary initial investments for SMEs. A public authority consulted advised not to limit the estimation of the economic benefits of digitalisation to the monetary costs of paper-based communication (such as shipping fees) but to also consider the opportunity costs of errands associated to running errands related to paper-based communication. The authority indicated that the long-term effects of digitalisation in the economy must be considered, as digitalisation as a process has many aspects and is a long transition.

Based on analysis of results of the online survey, consulted stakeholders prefer Option 2. 44 % of survey respondents believe that for their preferred option, the possible benefits of digitalisation of cross-border communication in judicial cooperation would exceed the costs.

¹⁵² [IA on taking of evidence.pdf](#)

¹⁵³ Ibid.

26 % of respondents believe that the benefits of digitalisation would far exceed the costs. 13 % of survey respondents believe that the costs of digitalisation would be more or less equal to the benefits, while only 4 % of respondents think that the costs would far exceed the benefits.

Suboptions

2.1.a Legislative suboption- Optional use of a common, decentralised EU IT system

Although the positive impacts, outlined under Option 2, will likely occur under this suboption, the costs and administrative burdens involved in the establishment of a common/decentralised EU IT system will not be spread evenly across Member States, given that Member States will be free to decide whether to implement such EU IT system or not. Likewise, the benefits discussed under Option 2, will likely arise only in those Member States that decide to adopt such EU IT system. As a result, economic impacts will vary significantly across Member States.

2.1.b Legislative suboption- Mandatory use of a common, decentralised EU IT system

Under this suboption, the positive economic impacts, described under Option 2, will likely be more extensive and significant. Given that this suboption will create a uniform framework where all Member States will be required to use a common/decentralised EU IT system, it could be expected that costs and administrative burdens (related to the new infrastructure/equipment in some Member States), would be outweighed by higher benefits such as reduced labour costs, a higher legal certainty and clarity, compared to the other suboptions. The advantages of a coherent legal framework will likely produce greater monetary and non-monetary gains, including more significant time savings due to more efficient procedures and a reduction in legal fees. The positive economic impacts for certain categories of business (e.g. providers of IT consulting services) would be higher whereas the negative economic effects on other types of business (e.g. postal and paper services providers) will likely be more intense.

2.2.a Legislative suboption- Optional acceptance of electronic communication from individuals/legal entities

Under this suboption, Member States will be free to decide whether to accept or not electronic communication from citizens/businesses. Moreover, they will decide whether to develop a national solution for such submissions or use an EU developed solution (e.g. Small Claims submissions pilot via the European e-Justice Portal). This will likely result in different costs and administrative burdens across Member States based on the choice of each country to opt for a national or an EU solution. The costs and burdens will also depend on whether such national solution is already in place or not. Likewise costs and burdens of an EU solution will depend on what type of solution is adopted, for instance, if the e-CODEX system is chosen, this will have marginal economic implications given that this is a cost-effective solution (see considerations under Option 1). Also, for those Member States where e-CODEX is already adopted, no additional costs will likely arise.

Similarly, the advantages will vary across Member States based on the type of solution (national or EU) implemented. While in some countries, individuals and legal entities will benefit from time savings and reduced legal fees through electronic submissions, in others where the acceptance of electronic documents will be optional, such documents will continue to be transmitted mainly via the paper channel, with the risk of delays and legal fees associated with it.

The possibility to use videoconference or other distance communication technology for the participation in hearings would likely involve costs for those Member States where such tools are currently not in place, whereas no additional costs will likely arise in those countries where such technology already exists. The variance of economic impacts across Member States will be coupled with different benefits across countries due to decreased travel costs (deriving from the non-obligation to travel to courts), depending on whether distance technology is implemented or not.

2.2.b Legislative suboption- Mandatory acceptance of electronic communication from individuals/legal entities

Under this suboption **Member States will be required to accept electronic communication between individuals/legal entities and the competent authorities.** This will ensure a uniform framework across Member States that will result in time savings and reduced legal fees for individuals and legal entities filing a claim in cross-border procedures.

This suboption will consist in the adoption of EU instrument that will provide a legal basis for participation of parties to cross-border cases in oral hearings through videoconference or other distance communication technology. While this will likely involve initial costs for the Member States where such technology is not in place, these costs will be offset by high benefits due to decreased travel costs given that parties to cross-border proceedings will not be obliged to travel to the court of another country.

2.3.a Legislative suboption: Optional electronic trust services in accordance with the e-IDAS Regulation

In the absence of a commonly agreed assurance level 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.¹⁵⁴

Under this suboption, Member States will be free to: develop their own methods and standards with regard to the use of electronic signatures and seals; accept or deny communication coming from other Member States through the secure decentralised IT system, depending on national law and bilateral/multilateral trust agreements.

Costs and burdens will vary depending on which methods/standards are adopted at national level; however, given that Regulation (EU) 910/2014 is already implemented, they will be marginal in those countries where electronic identification frameworks are currently in place. However, to date only few Member States have the infrastructures or experience to facilitate qualified e-signatures within the judiciary.¹⁵⁵ Costs and burdens will be, thus, be associated with the establishment/reform of the existing systems to enable qualified e-signatures within the judicial sector.

¹⁵⁴ Commission Staff Working Document, Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

¹⁵⁵ Commission Staff Working Document, Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

Benefits will be limited given that Member States will be free to accept or not e-signatures and e-seals from other countries.

2.3.b Legislative suboption- mandatory electronic trust services in accordance with the e-IDAS Regulation

Greater benefits will likely arise from this suboption, compared to suboption 2.3.a, given that a coherent framework on the recognition of e-signatures and e-seals, in line with the e-IDAS standards, will be created. The initial costs/burdens due to the need to establish/reform the infrastructure in order to extend the use of electronic trust services within the justice system, will be offset by the high benefits resulting from one homogenous regime where e-signatures/seals used in one country are accepted in another.

5.2.6.EU added value

This section examines the added value of the proposed options by comparing what could be achieved under each option, with what could be attained by Member States alone, if no EU action is taken.

- **Policy Option 0**

No added value has been identified for this option given that the issues that affect cross-border cooperation in civil/commercial and criminal law matters today, will likely remain the same, if no EU action is taken.

- **Policy Option 1**

The EU added value of expanding and reinforcing e-CODEX and e-EDES by means of a Commission's Recommendation, is clear given that such objectives could not be fully achieved by Member States alone. While Member States alone, could decide to join e-CODEX pilot projects or expand the use of e-CODEX to other EU law instruments, the extent of positive effects on cross-border judicial cooperation would be much higher if a Recommendation addressed to all countries, is followed.

Through e-CODEX, participants have jointly developed interoperable software building blocks and have implemented them in real life settings through piloting work. The e-CODEX system is interoperable by design and works with national systems, without requiring changing those systems.¹⁵⁶ The evaluation carried out by the Commission at the end of the project grant for the e-CODEX large-scale pilot, confirmed that overall good progress had been made in developing the pilots and, in particular, in defining a methodology for ensuring semantic interoperability for each of the pilots.¹⁵⁷ This progress could be further increased by means of a Recommendation encouraging Member States to allow for the use of e-CODEX based systems in cases of authority-to-authority cross-border communication.

This option would, in part, tackle the current issues generated by the lack of interoperability between existing national systems, which have several negative effects for cross-border justice (e.g. 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 etc.).

¹⁵⁶ [e-codex-impact-assessment_en.pdf](#)

¹⁵⁷ Evaluation by the Commission (three external experts) of the e-Justice Communication via Online Data Exchange project (e-CODEX) submitted in the ICT Policy Support Programme within the Competitiveness and Innovation Framework Programme (CIP), grant agreement n° 270968.

Nonetheless positive effects will be limited given the non-binding effect of the recommendation.

Consulted stakeholders indicate that both Policy Option 1 and Policy Option 2 provide EU added value by increasing legal certainty, as both options would set provision for the communication between authorities through digital means that already occur in a less regulated framework, and these could not be achieved without EU intervention.

- **Policy Option 2**

The adoption of an **EU legal instrument** on the use of digital tools in the context of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, would have an **EU added value**, that could not be attained by Member States alone. The EU added value would lie in **improving the efficiency and speed of judicial procedures**, by simplifying and accelerating the cooperation mechanisms and improving the administration of and access to justice in cases with cross-border implications.

At present, where relevant legal provisions in the various EU instruments exist, they are often outdated, they do not foresee the use of existing interoperable solutions, and the use of the electronic channel. To give some examples of this fragmented legal landscape: a small claim application could be submitted by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced; an European Payment order could be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin; an application for Account Preservation order could be submitted by any means of communication, etc. This **diversity of the means** for communication between and with the authorities and of their implementation by Member States makes the need for synchronisation of the communication means and channels, offered by an **EU instrument**, more evident.

This is confirmed by legal review of EU instruments conducted for this study. According to it, it appears that the EU acts in criminal matters rarely prescribe or refer to the use of specific digital means. In the majority of cases, these instruments state that the transmission of documents or communications between competent authorities shall be done “by any means that can leave a written record”. While digital means can fulfil this requirement, very rarely digital means are expressly mentioned. In civil/commercial law matters, some EU legal instruments remain rather vague or general with regard to the means of communication and refer to “appropriate means” or “the swiftest means”. In such cases, the interpretation allows to conclude that digital means can also be used, but they are not explicitly foreseen nor required.

Based on these considerations, it is clear that **an EU instrument** establishing a secure electronic channel (based on e-CODEX), for the purposes of communication and exchange of information, data and documents between courts/competent authorities, where relevant the JHA Agencies and EU bodies, **would improve the current situation**. Benefits for access to justice and efficiency/ resilience of justice would arise in cross-border cases. The same benefits could not be achieved by countries alone given that the individual actions at national level will not be sufficient to facilitate cross-border cooperation.

Respondents to online national-level survey believe that Option 2 would have the highest level of EU added value (44.4 % believe that the EU added value of this option would be high, while 33.3 % believe that it would be medium). 33.3 % of respondents believe that

the EU added value of Option 2 would be high, while 48.1 % of respondents believe it would be medium. On the other hand, 46.2 % of respondents believe that the EU added value of Policy Option 1 would be low, 50 % believe it would be medium, and only 3.8 % of respondents believe it would be high.

5.3. How do the options compare?

5.3.1. Methodological approach

This section presents a comparison of the policy options, based on their impacts assessed as described in Section 1.1. In line with the Commission's Better Regulation Guidelines (Tool #12) the aim of this comparison is to identify whether one or more options stand out among the others when considering their impacts on the different dimensions and their strengths and weaknesses. This comparison enables policymakers to decide which option is preferred based on a weighting of political priorities. For this purpose, the policy options have been compared systematically, and their impacts presented in a user-friendly format, (see Table 11). 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 17: Criteria for 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 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.

Criterion	Key questions	Indicators/methods for comparison
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 benefits? - Which policy option would be most cost-effective?	- Comparison of potential costs and benefits borne by each stakeholder group under each policy option; - Identification of a preferred option, where possible.
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.

5.3.2. Comparison of options

• Coherence

Based on the considerations under Section 4.2.1, it can be concluded that while option 0 will likely impact negatively on coherence, option 1 will likely benefit coherence only to a limited extent. Conversely, option 2 will create a harmonized regime that will likely reduce legal fragmentation across Member States which today hampers cross-border judicial cooperation. Nonetheless, under Sub-option 2.1.a Member States will be free to use the digital channel or not, therefore different legal approaches will still remain in place. In contrast, Sub-option 2.1.b would likely have higher positive impacts on coherence by ensuring that differences across Member States, which are now one of the problems affecting cross-border judicial cooperation, are eliminated. This will be without prejudice to the competence of Member States on matters falling under national procedural laws. The adoption of an EU instrument requiring Member States to use an EU decentralised IT system would not prevent documents/evidence to be exchanged via paper channel in well-defined exceptions.

• Effectiveness

Achievement of the objectives

While under Option 0 no progress towards the achievement of the objectives of this initiative (the improvement of the efficiency and resilience of cross-border judicial cooperation and the improvement of access to justice for individuals, and legal entities) will likely take place, under Option 1, positive effects will be limited. More positive impacts will likely derive from Option 2 given that the adoption of an EU instrument, foreseeing a decentralised IT system, will benefit interoperability and swift cross border communication

between the authorities of Member States, and JHA agencies and EU bodies, where relevant.

Social/Fundamental Rights Impacts

It is expected that Option 2 will likely produce more positive impacts on social and fundamental rights, compared to Option 0 and 1, given that access to justice, fair trial rights, good administration and efficiency of justice will likely be improved.

Environmental impacts

Negative environmental impacts would arise from Option 0 whereas Option 1 will likely produce limited positive impacts. Conversely, the introduction of a digital channel of communication and the use of videoconference under Option 2, would likely benefit the environment.

- **Efficiency and economic impacts**

While option 1 would generate moderate costs, these will be offset by a range of indirect positive economic impacts. Option 2 will 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.

- **EU added value**

The EU added value of Option 2 will likely be higher than Option 0 and 1 given that by means of an EU instrument (allowing or requiring the use of the digital channel), an harmonized regime will be created across Member States. This will likely tackle the current legal fragmentation and gaps across EU instruments and, thus, enhance access to justice and resilience/efficiency of justice in cross-border cases.

- **Overall conclusions**

Based on the above considerations, it can be concluded that the following impacts will likely arise from the Options:

- **Option 0:** Negative impacts on the overall **coherence** would likely emerge, with some Member States joining voluntary initiatives (e.g. e-CODEX and e-EDES), while others not being involved. This would likely reinforce or maintain the current tendency to rely on a continued use of the paper channel which results in financial costs and negative environmental impacts.¹⁵⁸ In terms of **effectiveness**, no improvement will likely occur towards the achievement of the general objectives of this initiative. Negative **social impacts**, including procedural delays inherent to paper-based communications, will likely arise. Neutral **economic impacts** are expected whereas negative **environmental impacts** will be mainly due to the use of paper-based communication or the need to travel to attend hearings in person. If no action will be taken, no improvement will likely occur in what concerns the **efficiency** of cross-border communication under this option. No **EU added value** has been identified for this option.

¹⁵⁸ 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}.

- **Option 1:** While the advantages of e-CODEX and e-EDES would be significant in relation to **coherence**, they will also likely be limited in scope given that Member States, where such solutions are not in place, will remain free to adopt them or not. With regard to **effectiveness**, while some specific objectives will likely be achieved under this option (e.g. to ensure that the IT systems of Member States are interoperable), others will not be specifically addressed (e.g. the recognition of the legal validity of electronic documents and electronic signatures and seals); the positive impacts will, thus, be limited. Positive **social and fundamental rights impacts**, such as the recovery of fines and their enforcement, would likely arise; however, the extent of such impacts would be limited considering that Member States will not be obliged to use e-CODEX or e-EDES. Costs involved in this option would be offset by **indirect positive economic impacts** on businesses of all sizes across the EU. Besides, this option would likely have positive **environmental effects** given that e-CODEX is a paperless system; however, the magnitude of positive impacts would depend on how many Member States will likely comply with the Commission's recommendation. In terms of **efficiency**, this policy option would somewhat reduce the administrative burdens on National Authorities and legal and judicial professionals, as well as the budgetary implications for businesses. The **EU added value** is clear given that such objectives could not be fully achieved by Member States alone.
- **Option 2:** The use of a single electronic system, guaranteeing technical interoperability, coupled with a regulatory framework regarding validity, and securing sensitive data would increase **coherence**. Authorities would make use of a uniform system through which information can be validly and securely exchanged. If this were to be extended to EU citizens and businesses as end users of the judicial system (particularly in civil and commercial cases) this would have the advantage of unifying the use of digital tools for the purposes of access to justice, regardless of the Member State addressed and having jurisdiction. Significant progress towards the attainment of the general objectives of this initiative will be made with regard to **effectiveness**, with a strengthened principle of mutual trust. **Positive effects** on the ability to exercise the **right to an effective judicial remedy**, in conformity with Article 47 of the Charter of Fundamental Rights, will arise since electronic communication and document transmission enhances and reduces the time of the court proceedings.¹⁵⁹ While positive **economic impacts** will emerge for certain businesses (e.g. IT providers), negative economic effects will hit some categories (e.g. paper providers). Overall, costs will be offset by time savings and reduced legal fees. As for **environmental impacts**, modern electronic communication would lead to savings by reducing the costs of paper, toner or ink. It will not require additional materials, such as envelopes in the post office, fuel for transportation. Consequently, less gas emission will be produced by deliveries. The **EU added value** would lie in improving the **efficiency** and speed of judicial procedures, by simplifying and accelerating the cooperation mechanisms and improving the administration of justice in cases with cross-border implications.

Note for suboptions: The section below presents the analysis only for those aspects for which the assessment varies across suboptions; where the same considerations apply to all suboptions or where the analysis for Option 2 apply also to suboptions, no further analysis is included here. As for social and environmental impacts, no significant differences between 2.1.a and 2.1.b have been identified.

¹⁵⁹ [e-codex-impact-assessment_en.pdf](#)

- **suboption 2.1.a:** With regard to **effectiveness**, an EU instrument allowing Member States' authorities to use a common/decentralised EU IT system, would likely strengthen the achievement of the general objectives of this initiative by ensuring interoperability at EU level while, at the same time, allowing for flexibility of national solutions at Member States' level. Although the positive impacts, outlined under Option 2, will likely occur under this suboption, the **costs and administrative burdens** involved in the establishment of a common/decentralised EU IT system will not be spread evenly across Member States, given that Member States will be free to decide whether to use such IT system or not. Likewise, the benefits discussed under Option 2, will likely arise only in those Member States that decide to implement such EU IT system. As a result, economic impacts will vary significantly across Member States.
- **suboption 2.1.b:** The EU instrument would introduce a higher level of **coherence** (compared to option 2 and suboption 2.1.a), by reducing divergences of approaches across countries. This suboption would likely have significant positive effects on **effectiveness**, specifically on the achievement of the general objectives of this initiative by ensuring that all Member States are connected to a decentralised IT system and are, thus, interoperable with one another.
- **suboption 2.2.a:** Although the level of **coherence** will be high given that an EU instrument will be in place, the margin of discretion left to Member States will likely not guarantee a **coherent** approach across countries. As for **effectiveness**, the ability to lodge a complaint or produce evidence/information will likely be hampered if submissions can be made only in paper or if the possibility to submit digitally exists but such submissions are not accepted by other countries. **Different costs and administrative burdens** across Member States will likely arise based on the choice of each country to opt for a national solution or an EU solution. Similarly, the advantages will vary across Member States based on the type of solution (national or EU) implemented.
- **suboption 2.2.b:** The new EU instrument will ensure maximum **coherence** eliminating legal divergences across Member States. With regard to **effectiveness**, a legal instrument obliging Member States to accept electronic communication between individuals/legal entities and the competent authorities would highly benefit access to justice by allowing individuals and legal entities to file claims via digital means, without running the risk of seeing those claims not accepted. While the creation of an access point on the EU e-Justice Portal or national portals might involve some **initial costs and administrative burdens**, these are expected to be minor given that such portals already exist. These marginal costs/burdens will be offset by economic benefits including significant time savings for individuals and businesses/SMEs and decreased legal fees involved in the submission of claims via digital channel.
- **suboption 2.3.a:** The likely impacts of this suboption would be beneficial by creating a **coherent** framework where trust services are regulated by referring to the e-IDAS Regulation's standards. However, the **extent of coherence** will depend on the type of standards implemented by each Member State. Access to justice, resilience and efficiency of judicial cooperation would also likely be improved. **Costs and burdens** will vary depending on which methods/standards are adopted at national level.
- **suboption 2.3.b:** By creating a harmonised regime for the acceptance and recognition of electronic signatures and seals, this suboption would likely be beneficial for the access to justice and will promote legal **coherence**. More significant impacts comparing to suboption 2.3.a are expected. The initial **costs/burdens** due to the need to establish/reform the infrastructure in order to extend the use of electronic trust services

within the justice system, will be offset by the high benefits resulting from one homogenous regime, where e-signatures/seals used in one country are accepted in another in the context of the cross-border judicial cooperation and access to justice.

A summary of the comparison of the policy options against the criteria of coherence, effectiveness, efficiency and EU added value, is included below. The table visualizing the comparison of options should be read as follows: '0' if no new impact compared to the status a quo is expected; '-' if negative impacts will likely 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.

	Option 0	Option 1	Option 2	Suboptions					
				Voluntary use of digital channel	Obligatory use of digital channel	Voluntary acceptance of electronic communication from individuals/legal entities	Obligatory acceptance of electronic communication from individuals/legal entities	Non-regulation of trust services	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	+		++	+++	++	+++	++	+++

5.4. Preferred option

Based on the assessment of impacts and their comparison, it can be concluded that the preferred option is **Option 2**. This option complies with the principles of proportionality and subsidiarity. In fact, while some efforts will be required by Member States in implementing this option, these efforts will not go beyond what is necessary to achieve the objectives of the initiative. Moreover, the objectives will not be achieved by Member States alone, considering also the cross-border nature of communication in judicial cooperation.

The benefits of this option under the criteria of coherence, effectiveness, efficiency and EU added value are outlined in the table below. The benefits will equally apply to the areas of civil/commercial and criminal law.

With regard to suboptions, **2.1.b**, **2.2.b** and **2.3.b** would be preferable as they will result in a more *coherent EU framework* where Member States will be obliged to establish a secure

digital channel, in addition to the paper one; this will guarantee a higher level of *legal certainty and clarity* to the benefit of individuals and legal entities, including legal/judicial professionals. The *effectiveness* of the national justice systems will also likely increase by employing a common/decentralised EU IT system and a common legal basis for the use of distance technology. These measures will result in *swift, timely and effective communication* between courts/competent authorities of Member States. Individuals/legal entities will be able to submit claims electronically benefiting from simpler access to courts and other authorities, time savings and less costs. A harmonised regime on e-signatures/seals, under the e-IDAS Regulation, will also be highly effective allowing the acceptance and recognition of electronic trust services across Member States. Finally, the costs/burdens, involved in these suboptions, will be offset by high benefits such as positive effects on social/fundamental rights and positive environmental impacts .

Coherence	■ Reduced legal uncertainty through the adoption of an EU instrument establishing an (optional or mandatory) digital channel. The level of certainty will depend on whether the use of the electronic channel will be optional or mandatory. ■ Reduced legal fragmentation across Member States where different legal requirements for cross-border communication in judicial cooperation and the use of distance communication technology are currently in place. ■ Reduced legal fragmentation across EU instruments where at the moment only few instruments refer to the digital channel and interoperable solutions. ■ Higher synergies with existing initiatives (e-IDAS Regulation, new initiative on e-ID by the Commission etc). ■ Uniform system through which information can be validly and securely exchanged.
Effectiveness	
<i>Achievement of objectives</i>	• Improved response to national authorities' needs for exchanging (sensitive) data in an efficient, legally valid, and secure manner. • Improved efficiency of cross-border judicial cooperation and access to justice by regulating the digital channel, without excluding the use of the paper channel for individuals and legal entities. • More efficient and timely exchange of information/evidence between competent authorities of Member States and between these and the parties to proceedings. • Positive effects on mutual trust in judicial cooperation.
<i>Social & fundamental rights impacts¹⁶⁰</i>	■ Strengthened security and confidentiality of communication as well as data protection through the defining the responsibilities of data controllers and data processors. ■ Increased access to justice. • Strengthened right to an effective remedy.
<i>Economic impacts</i>	• Time savings. • Decreased legal fees and costs. • Decreased costs associated with travelling to a court <i>физькяе</i> do the use of distance communication tools. • Decreased labour costs. • Positive impacts on some types of business (e.g. IT service providers). • Marginal costs related to administrative burden in relation to the organisation of videoconferencing or other remote hearings. Costs will be offset by benefits (e.g. increased legal certainty etc.).
<i>Environmental impacts</i>	• Reduced carbon emissions because of the use of distance communication tools.

¹⁶⁰ Positive effects will depend also on whether sufficient safeguards and due process procedures are adopted within the EU instrument.

	• Reduced carbon footprint than equivalent standard post mail . • Savings by reducing the costs for paper, toner or ink.
Efficiency	• Increased efficiency due to the use of a common IT system, guaranteeing technical interoperability, coupled with a regulatory framework regarding validity of documents exchanged electronically. • More speedy and less costly exchange of documents enhancing communication and proceedings.
EU added value	• Improvement of efficiency, resilience and speed of cross border judicial procedures. • Simplification and acceleration of communication between national authorities of Member States and with individuals as well as with legal entities. • Improvement of the administration of justice in cases with cross-border implications.

5.5. How will actual impacts be monitored and evaluated?

A sound monitoring system of the proposed legal instrument should be put in place, including a comprehensive set of qualitative and quantitative indicators, as well as a clear and structured reporting and monitoring process. This is important to ensure that the instrument is implemented efficiently in the Member States and to verify if it is successful in achieving its specific objectives, as well as to identify specific problems in the implementation and operation.

In order to provide guidance in the monitoring process, the following table presents examples of indicators that may serve to analyse the achievement of the specific objectives. In terms of timing, an evaluation every year would be useful in order to closely monitor the evolution of the impacts and the context in which the instrument would operate.

The importance of both the European Judicial Network in civil and commercial matters (EJN civil) and the European Judicial Network in criminal matters (EJN-criminal) should be stressed as regards the implementation and application of the proposed instrument. These forums would be relevant in obtaining feedback from Member States (from the field) on the application of the instrument and in identifying the real practical problems as they bring together national stakeholders as well as the central authorities and agencies dealing with the implementation of the Regulations covered by the scope of the instrument.

Evaluation and monitoring framework

Assessment criterion	Indicator	Frequency
Horizontal aspects	Number of cases in which the Regulation is applied	Once per year
	Number of individuals and legal entities affected by the application of the Regulation	Once per year
	Costs of implementing and operating the IT system	For every evaluation
Further improving the efficiency and speed of judicial proceedings and reduce the burden for individuals and legal entities	Number of cases in which information, documents and data have been exchanged electronically	Once per year
	Number of cases in which the paper channel has been used	Once per year
	Number of cases where videoconference or other distance communication technology was used for oral hearings	Once per year
	Number of submissions made by individuals and legal entities via the European access point	Once per year
	Estimates on the length of proceedings in civil, commercial and criminal matters and reasons for undue delays	At least for every evaluation
	Estimates on the costs of proceedings in civil, commercial and criminal matters	At least for every evaluation
	Number of instances where established digital channel could not be used for communication and the reasons why	Once per year

Annex 1. CONTEXT

This Annex provides a review of EU-level legal instruments on judicial cooperation (See Annex 4 for the list of all EU instruments analysed). The review covers both civil/commercial and criminal law acts and is structured around the following aspects:

1. Participants to the communication process;
2. EU instruments which provide for digital channels/means or standardised forms of communication or have provisions harmonising communication in certain instances;
3. EU instruments for which the e-CODEX tool is being used or planned;
4. Exchange of classified information;
5. Strengthening digitalisation.

Overall, the review of EU acts shows that where relevant legal provisions in the various EU instruments exist, they are often not coherent, in many cases they are outdated and they do not use existing interoperable solutions.. To give some examples of this fragmented legal landscape: a small claim application could be submitted by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced; an European Payment order could be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin; an application for Account Preservation order could be submitted by any means of communication, etc.

In general, in civil/commercial law matters, several EU legal instruments remain rather vague or general with regard to the means of communication and refer to “appropriate means” or “the swiftest means”. In such cases, the interpretation allows to conclude that digital means can also be used, but they are not explicitly required nor mandatory.

In criminal matters, EU instruments rarely prescribe or refer to the use of specific forms of digital means. In the majority of cases, these instruments state that the transmission of documents or communications between competent authorities shall be done “by any means that can leave a written record”. While digital means can fulfil this requirement, very rarely they are expressly mentioned.

The diversity of the requirements for the communication between and with the authorities and their implementation by Member States (see Section 3.1) makes the need for synchronisation of the communication means and channels more evident.

Legal instruments in civil and commercial matters

Participants to the communication process

The EU legal instruments under review refer to various participants of cross-border communication exchanges (e.g. individuals, legal persons, judicial and other competent authorities etc.). The table below presents an overview of participants and relevant articles of the EU legal instruments foreseeing communication instances.

Table 18: Participants of cross-border communications as regulated in EU legal instruments in civil matters

Document title	Between competent authorities of MS	Between competent authorities and natural/ legal persons
Council Regulation (EC) No 1206/2001	Arts 2, 4-10, 15-17	Art 17, forms I and J
Council Regulation (EC) No 44/2001		Arts 30, 31, 33, 38, 39, 42, 43, 48, 53-55, Annexes V-VI
Council Decision of 28 May 2001 establishing EJC	Arts 3, 13	Arts 3, 14
Council Directive 2003/8/EC	Art 13	Arts 13, 15
Council Regulation (EC) No 2201/2003	Arts 15, 18, 54, 55, 56	Arts 15, 16, 21 29, 30, 32, 33,35, 36, 37, 39, 41, 45, 57
Regulation (EC) No 805/2004	Arts 29, 30	Arts 6, 9, 10, 13-17, 20, 21, 24, 25
Regulation (EC) 1896/2006		Arts 7, 9-16, 17, 18, 20, 21, 22,23
Regulation (EC) No 1393/2007	Arts 4, 6, 8, 10, 12	Art 7, 13-15
Regulation (EC) No 861/2007		Arts 4-9, 13, 17, 18, 20-22
Directive 2008/52/EC		Art 5, 6
Council Regulation (EC) No 4/2009	Arts 50, 51, 53, 58, 61, 62, 64	Arts 4, 9, 13, 14, 19, 20, 21, 23, 26, 27, 28, 31, 32, 33, 35, 36, 37, 40, 45, 46, 47, 48, 52, 55, 56
Regulation (EU) No 650/2012	Art 66	Arts 5, 6, 7, 14, 18, 19, 39,43, 46, 47, 49, 50, 51, 53, 54, 55, 59, 60, 61, 65, 66, 67, 70-73
Regulation (EU) No 1215/2012	Arts 29	Arts 30, 32,33, 34, 35, 36, 37, 42, 43, 45, 46, 47, 49, 53, 54, 60
Regulation (EU) No 606/2013		Arts 4, 5, 8, 9, 10, 11, 13, 14
Regulation (EU) No 655/2014	Arts 14, 23, 25, 28, 29	Arts 7, 8, 9, 10, 12, 14, 16-19, 21, 23, 24, 25, 27-29, 36, 38, 39
Regulation (EU) 2015/848	Arts 28, 29, 38, 41, 42, 46, 56, 57, 58, 59, 64, 68, 69	Arts 5, 27-29, 36-38, 45, 47, 53, 54, 55, 59, 63, 66, 68
Council Regulation (EC) No 2016/1103	Arts 16,18	Arts 14,16,18,19, 48,49, 52, 54
Council Regulation (EU) 2016/1104	Arts 16,18	Arts 14,16,18,19, 48,49, 52, 54
Regulation (EU) 2016/1191	Arts 14, 16	Arts 5,6
Directive (EU) 2019/1023		Arts 8, 9, 10, 11, 14, 16, 28
Council Regulation (EU) 2019/1111	Arts 12, 13, 15, 19, 23, 27, 28, 29, 78, 80-82, 86,87	Arts 12, 17, 21, 26, 28, 29, 31, 35, 36, 43, 46, 47, 49, 55, 59, 61, 62, 66, 67
Regulation (EU) 2020/1783	Arts 3, 7, 9-11, 16-20, 21	Art 13, 19
Regulation (EU) 2020/1784	Arts 8, 9, 10, 12, 14, 16	Arts 11, 12, 17-20

- **Digital communication channels and harmonised communication means**

Overview of EU Acts

Most EU legal instruments in civil/commercial matters contain provisions related to or encouraging the use of **digital** communication channels and means; the latter include a

variety of such communication channels/means (e.g. EJN network channels, e-CODEX, videoconference, email, fax, other appropriate digital means). These digital communications channels/means can be used between competent authorities of Member States and also between competent authorities and parties to proceedings (e.g. individuals, businesses etc.).

Only four of the examined EU legal instruments provide explicitly for the use of **videoconferencing or similar digital means for the taking of evidence** (Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial, Regulation (EC) No 861/2007 on a European Small Claims Procedure, Regulation (EU) No 655/2014 on a European Account Preservation Order procedure and Regulation (EU) 2020/1783 on the taking of evidence (recast)). Regulation (EC) No 861/2007 on a European Small Claims Procedure allows to hold the whole **oral hearing through videoconference** or other communication technology, if available. Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction refers to the possibility of using videoconference for hearing a party or a child in Recital 53.

Moreover, several legal instruments introduce **standard forms** and state these standard documents can exist in **electronic form** and be transmitted between authorities or between authorities and private parties through **digital means** (e.g. Regulation (EC) No 805/2004 creating a European Enforcement Order, Regulation (EC) No 1896/2006 creating a European Order for Payment, Regulation (EU) No 655/2014 establishing a European Account Preservation Order).

At the same time, some EU legal instruments remain rather vague or general with regard to the means of communication and refer to “**appropriate means**” or “**the swiftest means**”. In such cases, the interpretation (based on the preambles of the documents) allows to conclude that digital means can also be used, although they are not explicitly required.

Use of e-CODEX

For the vast majority of the examined EU legal instruments, no e-CODEX tool is used or planned. Specifically, the use of e-CODEX is foreseen under the EU Acts below.¹⁶¹ Since the e-CODEX Regulation is not yet adopted¹⁶², none of the EU instruments listed here exclusively requires the use of e-CODEX per legal act. While e-CODEX can be used and is used in practice, it is not required by law to date. Two recently adopted regulations foresee the establishment of a decentralised IT system possibly based on e-CODEX:

- Regulation (EU) 2020/1783 on taking of evidence in civil or commercial matters (recast)¹⁶³
- Regulation (EU) 2020/1784 on service of documents in civil or commercial matters (recast)¹⁶⁴

¹⁶¹ Based on the information from the [e-CODEX](#) website.

¹⁶² See [Communication on Digitalisation of justice in the European Union and Proposal for e-CODEX Regulation | European Commission \(europa.eu\)](#)

¹⁶³ 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), OJ L 405, 2.12.2020.

¹⁶⁴ 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), OJ L 405, 2.12.2020.

For the following legal instruments, e-CODEX is used voluntarily or in pilots:

- Regulation (EC) No 1896/2006 creating a European order for payment procedure¹⁶⁵
- Regulation (EC) No 861/2007 establishing a European Small Claims Procedure¹⁶⁶
- Council Regulation (EC) No 4/2009 maintenance obligations¹⁶⁷

Two additional EU instruments plan to use the e-CODEX tool in the future:

- Council Regulation (EC) No 2201/2003 on recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility¹⁶⁸
- Regulation (EU) No 655/2014 establishing a European Account Preservation Order¹⁶⁹

For further details on e-CODEX, please refer to Box 1 in Section 2.1.

EU legal instruments expressly referring to digital channels/means

Most EU legal instruments in civil/ commercial matters contain specific provisions on the use of digital means in different circumstances. These are described below.

Council Decision establishing a European Judicial Network (EJN)¹⁷⁰ foresees that this network shall take advantage of modern ICTs (Recital 12). The contact points of the network shall use the “most appropriate technological means” to reply to requests swiftly and efficiently (Article 8), and Member States must ensure that the contact points have sufficient and appropriate facilities in terms of resources and modern means of communication (Article 2a) and also notify the Commission about the communication facilities available (Article 2(5)). For the dissemination of information within the EJN, the Commission is tasked with the establishment of a “secure limited-access electronic information exchange-system” (Article 13(2)). For this, the restricted member section of the e-Justice portal and CIRCA intranet are used (although the use of the latter has recently been reconsidered).¹⁷¹ However, in 2019, a pilot project started to use the Internal Market Information System (IMI) instead as a secure, limited-access electronic register, based on the information supplied by the contact points.¹⁷² Article 14 foresees a creation of an Internet-based information system for the public.

Council Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility¹⁷³ foresees the EJN as a main information dissemination tool. By using the

¹⁶⁵ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006.

¹⁶⁶ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 399, 30.12.2006, as amended Regulation (EU) 2015/2421 of 16 December 2015.

¹⁶⁷ 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, OJ L 7, 10.1.2009.

¹⁶⁸ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003.

¹⁶⁹ Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, OJ L 189, 27.6.2014.

¹⁷⁰ Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC), OJ L 174, 27.6.2001.

¹⁷¹ See [European e-Justice Portal - Members' section \(europa.eu\)](https://european-courts.eu/e-justice-portal/members-section).

¹⁷² Commission Implementing Decision (EU) 2019/1253 of 22 July 2019 on a pilot project to implement the administrative cooperation provisions set out in Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters by means of the Internal Market Information System, OJ L 195, 23.07.2019.

¹⁷³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L 338, 23.12.2003.

EJN, the competent authorities shall communicate information on relevant national laws in procedures, relevant to the remit of the Regulation (Article 54). The competent authorities shall also communicate directly with each other to collect and exchange information on cases related to parental responsibility, facilitate communication between courts and provide them with information and assistance, as well as provide information and assistance to holders of parental responsibilities (Article 55). The Regulation introduces a number of standard forms for certificates that can be issued by competent authorities upon request by interested parties.

The **Council Regulation (EC) No 1206/2001 on cooperation of courts in the taking of evidence**¹⁷⁴ states that, when taking evidence, the requesting court can ask the requested court to use communications technology, in particular videoconferences and teleconferences (Article 10(4)). If these technical means are not available in one of the courts, they can be made available by mutual agreement among the courts. Article 17(4) also states that the central body or competent authority shall encourage the use of communications technology, such as video- and teleconferences, when the evidence is taken directly by the requesting court.

The **Regulation (EC) No 805/2004 creating a European Enforcement Order certificate for uncontested claims**¹⁷⁵ (i.e. standard forms) introduced minimum standards for uncontested claims procedures that may lead to the judgment in order to ensure that the debtor is informed about the court action against him; these refer to the service with and without proof of receipt by debtor. The document instituting the proceedings or an equivalent document may be served on the debtor by *electronic means* (e.g. fax, e-mail), attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor (Article 13 (1) (d)). In case of the service without proof of receipt, the same documents can also be served by *electronic means* attested by an automatic confirmation of delivery if the debtor has expressly accepted this method of service in advance (Article 14 (1) (f)).

Regulation (EC) 1896/2006 creating a European Order for Payment indicates that the procedure should be based to the largest extent possible on the use of standard forms (including the order for payment itself) in any communication between the court and the parties and enable automatic data processing (Recital 11). The application for a European Order for payment and the opposition to it can be submitted *by any means of communication*, including *electronic*, that is accepted by the State and court of origin (Article 7(5) and Article 16(4), respectively). In the case of an electronic application or opposition, an electronic signature needs to be provided on the document. However, an electronic signature shall not be required if the competent Member State has an alternative electronic communication system in place that is available to pre-registered authenticated users and that permits the identification of those users in a secure manner (Article 7(6) and Article 16(5)). The European Order for Payment can be served on the defendant by *electronic means* (e.g. fax, email), attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant (Article 13 (d)) or without such acknowledgement, if the defendant expressly accepted such method of service in advance (Article 14(f)).

¹⁷⁴ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001.

¹⁷⁵ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004.

The **Regulation (EC) No 861/2007 establishing a European Small Claims Procedure** enables the use of modern communication technologies in the context of oral hearings and evidence taking; the simplest and cheapest method is preferable (Recital 20). The standard form to launch the procedure can be lodged with the court or tribunal by *electronic means* (e.g. fax, email) (Article 4 (1)). The oral hearing ‘*shall be held by making use of any appropriate distance communication technology, such as videoconference or teleconference, available to the court or tribunal*’ (Article 8 of amending Regulation (EU) 2015/2421). The court or tribunal may admit the evidence taking by videoconference or other ICT means if available (Article 9 (1)).

The **Regulation (EU) No 655/2014 establishing a European Account Preservation Order** aims to increase the efficiency of procedures of the cross-border debt recovery and encourages Member States to make the greatest possible use of modern ICT (Recital 41). For instance, Member States should be able to permit the signing of the Preservation Order by means of digital certification, secure authentication or other means. It creates *standard document forms* to allow for electronic transmission. Specifically, the application for the Preservation Order and supporting documents may be submitted by *electronic means* (Article 8 (4)). The standard-form application for remedy can also be submitted by *electronic means* accepted under the procedural rules of the competent State (Article 36 (1)). The parties to the case may present their case by any appropriate ICT means (Article 36 (3)). The court may also allow the evidence taking (e.g. oral hearing of the creditor or witnesses) by videoconference or other ICT means if available (Article 9 (2)). Article 29 refers to the transmission of documents or acknowledgement of receipt that shall be sent by a competent authority employing the swiftest possible means and using the standard form. This can be understood as a possibility of using electronic means (e.g. scan sent by email), as long as the transmitted document is true and faithful to the original and all information is easily legible (Article 29 (1)).

The **Regulation (EU) 2015/848 on insolvency proceedings**¹⁷⁶ establishes a decentralised system for the interconnection of insolvency registers (via *e-Justice portal*) that should contain relevant information on insolvency procedures and be available to the public (Article 25). The requests for information by persons having a legitimate interest can be submitted *electronically*: through a standard form available on the e-Justice portal (Article 25).

The **Regulation (EU) 2016/1191 on public documents**¹⁷⁷ introduces standard multilanguage forms that can be used by the citizens across the EU in order to facilitate their free movement (translation aid) and that should be suitable for electronic exchange (Recitals 9, 28, 29; models available at e-Justice portal). The requirements of the Regulation cover also *electronic versions* of public documents that should be suitable for *electronic exchange*. The *Internal Market Information* system is chosen as a secure and reliable way for the exchange of the electronic versions of documents between public authorities in the context of verification requests in cases of reasonable doubt (Recital 33 and Article 13). Member States define under which conditions and how they accept electronic versions of documents. The Regulation requires that requests for information in cases of reasonable doubt shall be accompanied by the public documents at hands,

¹⁷⁶ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015.

¹⁷⁷ Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012, OJ L 200, 26.7.2016.

transmitted *electronically* by means on Internal Market Information system (Article 14) as well as replies to such requests and submission of actual information (Article 16).

Directive (EU) 2019/1023 on restructuring and insolvency¹⁷⁸ aims to reduce the length of procedure and facilitate the participation of parties in them. The use of *electronic means* of communication for filing claims by creditors, notification of creditors, lodging challenges and appeals would serve these objectives (Recital 90). Member States can make the use of electronic means mandatory and are allowed to choose the means of electronic communications (e.g. email, purpose built system) that should be used for different purposes (Recital 91). Article 28 specifically regulates the *use of electronic means in national and cross-border circumstances* stating that at least the following should be covered by them: (a) filing of claims by creditors; (b) submission of restructuring or repayment plans; (c) notifications to creditors; (d) lodging of challenges and appeals. Article 3 states that debtors need to have access to warning tools that can detect the likelihood of insolvency and signal the need to act. Member States may employ ICT solutions for such notifications and communications.

The **Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction**¹⁷⁹ encourages the use of videoconference or other communication technology for hearing a party or a child, if the use of such technology would be appropriate for fair conduct of proceedings (Recital 53). However, in its legal provisions that Regulation does not refer explicitly to the use of digital means for transmission of documents, information and communications, though it requires national central authorities to “act expeditiously” in cases of child abduction (Articles 23-24).

Two recent legal instruments foresee the use of digital means as a default means of communication. The first legal instrument, **Regulation (EU) 2020/1783 on taking of evidence in civil or commercial matters (recast)** requires the use of standard forms in the communication between the courts, to enable the use of ICT means (Recital 6). In fact, the Regulation states that all requests and communications within its scope (i.e. requests for taking evidence and the taking of evidence directly in another Member State) shall be transmitted through a secure and reliable *decentralised IT system*, based on an interoperable solution such as *e-CODEX* (Article 7(1)). If a transmission over the decentralised IT system is not possible due to its disruption, the nature of the evidence concerned, or due to exceptional circumstances, it shall be carried out by the swiftest, most appropriate alternative means that is also reliable and secure (Article 7 (4)). This might also be another electronic means. Documents transmitted through the decentralised IT system shall not be denied legal effect or considered inadmissible as evidence solely on the grounds that they are in electronic form (Article 8).

The requesting court may ask the requested court to use specific communications technology when taking evidence, in particular video- or teleconference (Article 12 (4)). Article 20 contains rules and conditions for the direct taking of evidence by the requesting court by means of videoconference or other distance communication technology.

¹⁷⁸ Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132, OJ L 172, 26.6.2019.

¹⁷⁹ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, OJ L 178, 2.7.2019.

To support the implementation application of the Regulation by the competent authorities, the Commission needs to take specific actions to establish the decentralised IT system (Article 25). By way of implementing acts, the Commission must set out:

- the technical specification defining the methods of communication by electronic means for the purposes of the decentralised IT system;
- the technical specifications for communication protocols;
- the information security objectives and relevant technical measures ensuring minimum information security standards for the processing and communication of information within the decentralised IT system;
- the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
- a steering committee composed of Member States' representatives to ensure the operation and maintenance of the decentralised IT system.

The second recent legal instrument, the **Regulation (EU) 2020/1784 on service of documents (recast)** also foresees the digital channel for communication between competent authorities as the default one. It mirrors the provisions of the Regulation 2020/1783 in relation to the transmission of judicial and extrajudicial documents in civil and commercial matters. The documents, based on the standard forms (Annex I of the Regulation), shall be transmitted through a *secure and reliable decentralised IT system*, based on an interoperable solution such as *e-CODEX* (Article 5 (1)). According to Article 6, documents that are transmitted through a decentralised IT system shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form. If a transmission over the decentralised IT system is not possible due to its disruption or due to exceptional circumstances, it shall be carried out by the swiftest, most appropriate alternative means that is also reliable and secure (Article 5 (4)). This might also be another electronic means. The service of judicial documents can also be carried out by any electronic means available for the serving of judicial documents in the domestic context (Article 19).

EU legal instruments in civil and commercial matters that do not expressly refer to digital channels/means

Some EU legal instruments do not contain express provisions on the use of digital channels/means for communication and exchange of documents. However, they encourage or require the “most appropriate”, “swiftest”, “modern” means or use a similar wording that can be interpreted as including digital means. The list below contains all relevant technologically-neutral provisions on communications in the examined EU legal instruments.

The **Council Regulation (EC) No 1206/2001¹⁸⁰ on cooperation between courts in the taking of evidence** states that for the transmission of requests and communications, the swiftest possible means shall be used among those that are indicated as acceptable by the requested State (Article 6). The means chosen should be appropriate, accurately reflect the content of the forwarded document and contain all legible information.

While the **Council Regulation (EC) No 2201/2003¹⁸¹ on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental**

¹⁸⁰ This will be phased out if the recast Regulation will be applicable.

¹⁸¹ A number of amendments have been made to this Regulation, see [Council Regulation \(EU\) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction \(europa.eu\)](#)

responsibility contains a possibility of using digital means for communications between competent authorities (i.e. using the EJN, it does not foresee such possibility for citizens communicating with or submitting documents to the authorities. The Regulation introduces a number of standard forms for certificates that can be issued by competent authorities upon request by interested parties; the digital form of these documents is also not considered.

Regulation (EC) No 1393/2007 on service of documents¹⁸² emphasises on many occasions the need and ambition of swift and efficient, yet secure transmission of judicial and extrajudicial documents (see Recitals 6, 7). Competent authorities can use “any appropriate means” for the transmission of documents, requests, confirmations, receipts, certificates and other papers (Article 4 (2)). The receipt of documents must be acknowledged by sending a standard form “by the swiftest possible means of transmission” (Article 6(1)). The same applies to the notifications about missing documents (Article 6 (2)). Exchange of requests and documents for the purposes of their service will be, however, digitalised once the recast **Regulation (EU) 2020/1784 on service of documents** enters into force as it foresees the digital channel between competent authorities as the mandatory one.

Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations¹⁸³ aims to facilitate, make cheaper and speed up the recovery of cross-border maintenance claims by, among other things, using standard forms. The use of standard forms also allows for electronic submission of documents. In general, the Regulation states that the use of “modern communication technologies”, particularly for hearing of parties, could limit the costs of procedure (Recitals 23, 39). The Regulation does not prescribe any specific means of digital communication for exchange of documents and information, but does state that the Central Authorities shall employ the most rapid and efficient means of communication at their disposal for the transmission, confirmation of receipt and processing of applications and cases (Article 58 (7)) and that submission of applications could be done electronically (Recital 39).

Similar approach is taken by the **Regulation (EU) No 650/2012 on a European Certificate of Succession**¹⁸⁴ that introduces standard forms for attestations of application for a declaration of enforceability of a decision, authentic instrument or court settlement, for the attestations of the application for a European Certificate of Succession and for the Certificate itself. The purpose of standard forms is to allow for the use of modern ICT (Recital 76). However, beyond this no specific means of digital communication are prescribed.

The **Regulation (EU) 2015/848 on insolvency proceedings** foresees exchange of communications between courts, between insolvency practitioners, between courts and insolvency practitioners and between courts and procedure coordinator are mentioned;

¹⁸² Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), OJ L 324, 10.12.2007.

¹⁸³ 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, OJ L 7, 10.1.2009.

¹⁸⁴ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27.7.2012.

however, there is no clear requirement for these communications to be conducted by any (specific) electronic means.

Council Regulation (EC) No 2016/1103 on recognition and enforcement of decisions in matters of matrimonial property¹⁸⁵ and **Council Regulation (EU) 2016/1104 on recognition and enforcement of decisions in property matters of registered partnerships¹⁸⁶** allow for the use of modern communication technologies (Recitals 68 and 66, respectively) but do not foresee any specific means of digital communications in relation to specific documents/ procedures. However, both Regulations foresee many instances of communications, in particular (same article numbers are used by both Regulations):

- Lodging an application to institute the proceedings (Article 14), appeal (Article 49) and other applications (Article 19);
- Service of documents on the defendant (Articles 14, 16) and of the declaration of enforceability on parties (Article 48);
- Transmission of the document instituting the proceedings between the courts of different Member States (Article 16);
- Communication between courts regarding seizing the proceedings (Article 18).

Further digitalisation of communication channels in civil and commercial matters

Exchange of classified information that may require accreditation of IT systems

From the legal analysis conducted for the purpose of this study, it is not possible to define a priori what information could be considered as 'classified' in the context of civil/commercial disputes and to assess the likelihood of a communication system being used for the transmission of secret or confidential information (e.g. commercial secrets or classified information due to the nature of the parties to the dispute). Therefore, classified information has been defined on the basis of: 1) the direct mentioning of classified information in the text of the EU legal instrument and/or 2) the direct mentioning of a government authority that is more likely than others to be involved in the exchange of classified information (e.g. Ministry of Defence). At the same time, it should be noted that all documents exchanged in civil and commercial matters contain sensitive personal data to which high standards of data protection apply.

Among the EU legal instruments reviewed, the following refer to the potential exchange of classified information (that is not identified as personal data but as something else) and would require the accreditation of IT systems.

Table 19: Provisions regarding the transmission of classified information in EU legal instruments in civil matters

Document title	Type of classified information	Comments / explanation
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¹⁸⁵ Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ L 183, 8.7.2016.

¹⁸⁶ Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, OJ L 183, 8.7.2016.

Regulation (EU) 2015/848	Personal data, Confidential information	Confidential information is mentioned several times in the context of exchanges between insolvency practitioners (Article 41 (2), 56 (2)) and courts (Article 42 (2), 57 (2))
Regulation (EU) 2020/1783	Personal data, confidential information	Confidential information is mentioned in the context of taking evidence (Article 30 (4))
Regulation (EU) 2020/1784	Personal data, confidential	Receiving agencies shall ensure confidentiality of information transmitted under this Regulation, in accordance with national law (Article 31 (4))
Regulation (EC) No 1393/2007	Confidential information	Receiving agencies shall ensure confidentiality of information transmitted under this Regulation, in accordance with national law (Article 22 (2)).
Council Regulation (EC) No 4/2009	Confidential information	The authority processing information of debtor or creditor under Article 61 shall ensure its confidentiality, in accordance with national law (Article 62 (4))

• Strengthening digitalisation

As explained in Section **Error! Reference source not found.**, some EU legal instruments do not require or allow explicitly the use of digital means of communication and information exchange (also due to the fact that they are outdated), but rather generically refer to “other means”, “any means” or “modern means of communication”, which may be considered too general in the context of the Commission’s initiative under the current study. In line with this initiative, the explicit reference to distance communication technology could be included in the provisions of these EU legal instruments as a general objective of digitalisation (in the preamble), or as a guide to interpretation of the Acts’ provisions. Another possibility is to foresee digital communication as a mandatory (subject to exceptions) following the example of Regulation (EU) 2020/1783 and Regulation (EU) 2020/1784 or introduce harmonised communication forms as it is the case under Regulation (EU) 4/2009.

Specific examples of recommended changes to strengthen digitalisation are provided below for some of analysed EU instruments.

Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters only refers to the use of “*modern means of communication*” by the contact points to fulfil their tasks (Article 2a). Member States shall ensure that the contact points have sufficient and appropriate facilities. An explicit reference to or requirement of digital communication facilities, in this regard, could be introduced.

Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes does not contain any specific requirements on the form of applications for legal aid and the way such applications, including supporting documents, are transmitted between competent authorities (Article 13). It provides that the applicant shall be fully informed of the processing of the application but does not specify in what way (Article 15). Recital 27 states that ePrivacy Directive should apply to the data transmitted pursuant to this Directive, which implies that data may be transmitted via electronic communication networks (i.e. digital means). It also establishes a standard form for legal aid applications and for the transmission of legal aid applications (Article 16). While it is not explicitly stated

that such form can be electronic or that the transmission can use ICT means, Article 17 states that such forms shall be made available via the EJN, which may imply that the forms can be digitalised. Also, Member States shall notify the Commission by which means they can receive applications for legal aid; these can include digital solutions. It would be advisable to explicitly provide for the possibility to use digital means of communication. This Directive would need to be changed to include specific requirements on digital means of communication during the procedure.

Directive 2008/52/EC on certain aspects of mediation does not contain any specific requirements or recommendations about the use of digital technological means in mediation processes. Recital 9 states that the Directive does not prevent the use of modern communication technologies in the mediation process. While this is a positive sign towards digital communications, it does not guarantee the digitalisation of the mediation process. Based on these considerations, the Directive could be amended to actively encourage or require the use of digital means, to recommend suitable digital channels and/or to call on Member States to enhance mediation procedures that incorporate digital means of communication.

Regulation (EU) No 606/2013 on mutual recognition of protection measures does not currently contain any provisions with regard to the form, in which the documents on the said protection measures can be communicated to competent authorities. As the Regulation establishes a standard form (Article 19), it should also be amended to ensure that this form can exist in an electronic form and can be submitted to competent authorities via digital means. The same refers to the certificate that can be requested by the protected person from competent authorities (Article 5). A possibility of presenting the certificate (Article 8) through digital means to the person causing the risk could also be foreseen, at least as an option. The communications between competent authorities (e.g. regarding the refusal, suspension or withdrawal of recognition or enforcement of the protection measure (Articles 13-14)) could also be conducted through digital means.

The requirement to use electronic communication means under the **Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction** could be beneficial, especially for child abduction cases. A default rule to use one of the existing communication channels (e.g. EJN, IMI) between the competent authorities could be introduced, to speed up the procedures.

Besides the changes indicated above, when **standard forms for requests and extracts** are used in the context of judicial cooperation, it can be recommended to **digitalise them and their transmission** (because in most cases this is not explicitly required or regulated). The list below contains all EU legal instruments in civil and commercial matters that foresee the creation or introduction of a standard form, but do not yet have an explicit requirement for digitalisation of such form:

- Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (standard form for legal aid applications, Article 16)
- Regulation (EC) No 1393/2007 (requests, receipts, notice of return, retransmission in Annex I, and refusal to accept a document in Annex II)
- Council Regulation (EC) No 4/2009 (extract forms in Annexes I-IV, request in Annex V, applications in Annexes VI-VII and IX, receipt in Annex VIII)

In addition, where **standard forms for certificates** and attestations are foreseen by EU legal instruments, the **requests for the issuance of such certificates** should be **digitalised** as this would facilitate and speed up this communication. This is the case for the following legal instruments:

- Council Regulation (EC) No 44/2001 (Annexes V and VI)
- Council Regulation (EC) No 2201/2003 (Annexes I-IV)
- Regulation (EC) No 1393/2007
- Regulation (EU) No 650/2012 (attestations and forms, Articles 45, 59-61, 65, 67)¹⁸⁷
- Regulation (EU) No 1215/2012 (Annexes I-II)
- Regulation (EU) No 606/2013 (Articles 5 and 19)
- Council Regulation (EC) No 2016/1103 (attestations, Articles 45, 58-60)¹⁸⁸
- Council Regulation (EU) 2016/1104 (attestations, Articles 45, 58-60)¹⁸⁹
- Council Regulation (EU) 2019/1111 (certificates, Annexes I-IX).

Legal instruments in criminal matters

All EU legal instruments in criminal matters mainly regulate the information exchange and communication between competent authorities of Member States. Only **Council Directive 2004/80/EC on compensation to crime victims**,¹⁹⁰ **Directive 2012/29/EU on victim's rights**¹⁹¹ and **Directive 2011/99/EU on the European protection order**¹⁹² contain extensive provisions regarding the means of communications used by authorities towards natural persons (victims of crimes, protected persons) and vice versa. The first Directive refers to informing victims on the decisions taken with regard to their applications. The second Directive refers to the possibility of admitting complaints and collect information from victims via digital means. The last Directive refers to protected person requesting the issuance of the European protection order and the communication of decisions related thereto.

Table 20: Participants of cross-border communications as regulated in EU legal instruments in civil matters

Document title	Between competent authorities of MS	Between competent authorities and natural/ legal persons
Convention drawn up on the basis of Article K.3 of the Treaty on European	Arts 13, 16	

¹⁸⁷ Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 359, 16.12.2014.

¹⁸⁸ See Commission Implementing Regulation (EU) 2018/1935 of 7 December 2018 establishing the forms referred to in Council Regulation (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, OJ L 314, 11.12.2018.

¹⁸⁹ See Commission Implementing Regulation (EU) 2018/1990 of 11 December 2018 establishing the forms referred to in Council Regulation (EU) 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, OJ L 320, 17.12.2018.

¹⁹⁰ See Articles 1, 5, 7-10 of the Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004.

¹⁹¹ See Articles 4-6, 10-12, 17 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.

¹⁹² Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, OJ L 338, 21.12.2011.

Document title	Between competent authorities of MS	Between competent authorities and natural/ legal persons
Union, relating to extradition		
Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure	Arts 4, 5, 8	
Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters	Arts 5-7, 10, 11, 18	Art 5
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	Arts 1-3, 5, 6	
Council Framework Decision 2002/465/JHA	Art 1	
Council Framework Decision 2002/584/JHA	Arts 9,10,15, 17, 22, 23, 25	
Council Framework Decision 2003/577/JHA	Arts 4-8, 10, 11	
Council Directive 2004/80/EC	Arts 6-10	Arts 5, 7, 8, 10
Council Framework Decision 2005/214/JHA	Arts 4, 7, 12, 14	
Council Framework Decision 2006/783/JHA	Arts 4, 8-10, 15, 17	
Council Framework Decision 2008/909/JHA	Arts 4-6, 9, 12, 15, 16, 20, 21	Art 6
Council Framework Decision 2008/947/JHA	Arts 5, 6, 9, 11, 12, 15-18	Art 5
Council Framework Decision 2009/829/JHA	Arts 9, 10-13, 15, 17, 19, 20, 22	Art 9
Council Framework Decision 2009/948/JHA	Arts 5-7, 10, 13	
Directive 2011/99/EU	Arts 8, 9, 10, 12-14, 16	Arts 6, 9, 10, 14
Directive 2012/29/EU		Arts 4-6, 10, 11, 17
Directive 2014/41/EU	Arts 6, 7, 9-13, 15, 16, 24, 25, 31	
Regulation (EU) 2018/1805	Arts 4-8, 10, 13-17, 19, 21, 22, 25, 32	Art 32
Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters	Arts 8, 9, 10, 15, 16	

- **Digital channels or harmonised means of communication**

Overview of EU legal instruments in criminal law

Based on the legal analysis conducted for this study, it appears that the EU legal instruments in criminal matters rarely prescribe or refer to the use of specific forms of digital communications. In the majority of cases, these instruments state that the transmission of documents or communications between competent authorities shall be done “by any means that can leave a written record”. While digital means are capable of fulfilling this requirement very rarely these legal instruments mention that such means can also be digital means.

The use of digital means for taking evidence from witnesses, experts and victims is a common requirement of the EU legal instruments in criminal matters. Many of the analysed legal instruments foresee the possibility to use digital means both for direct taking of evidence and when the requested authorities are to take evidence.

There is a contrast (and potentially a disbalance) between very specific prescriptions or recommendations to use digital means in case of communications related to evidence taking from natural persons and all other communications. In the latter case, as already indicated, the use of digital means is not expressly foreseen, and, probably, a less obvious choice for the competent authorities.

Only in three instances, the legal instruments in criminal matters refer to the use of the existing digital communication channels of the EJN-criminal (i.e. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant (EAW) and the surrender procedures between Member States, Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order (EIO) in criminal matters, and Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders). It could, thus, be argued that the use of existing digital communications capacities under the EJN-criminal could be encouraged more widely or a new secure communication channel is established.

Legal instruments expressly permitting or requiring the use of digital channels/means

This section lists EU legal instruments in criminal matters that contain provisions expressly permitting the use of digital means in specific circumstances. Out of the analysed EU instruments, **e-CODEX** is currently used for Directive 2014/41/EU on the European Investigation Order in criminal matters¹⁹³, and is planning to be used it in the future (if/when adopted) for the ‘Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters’.¹⁹⁴

The **Convention on Mutual Assistance in Criminal Matters**¹⁹⁵ states that requests for mutual assistance and spontaneous exchange of information shall be made in writing, or *by any means* capable of producing a written record under conditions allowing the receiving Member State to establish authenticity (Articles 6 in conjunction with 7). While Article 6

¹⁹³ According to the [e-CODEX](#) website.

¹⁹⁴ COM(2018) 225 of 17.04.2018.

¹⁹⁵ Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000.

does not provide explicitly for the use of digital means, some of the ICT means (e.g. email, fax) would satisfy this requirement and, thus, are covered by the provisions in question.

The Convention specifically permits giving witness or expert testimony via telephone (Article 11) or via videoconference to judicial authorities in another Member State, where it is not desirable or possible for the person to make a physical appearance to the authorities (Article 10). The use of videoconference is subject to the availability of technical means in the requested State and the observance of the fundamental principles of national law. At the same time, the requesting State can make the necessary technical means available. Member States of the Convention can extend the same conditions to the use of videoconference to the hearings involving accused persons.

The **Council Framework Decision 2002/584/JHA on the European arrest warrant**¹⁹⁶ states that the issuing judicial authority may use secure telecommunications systems of the EJN to transmit the EAW (Article 10). Likewise, **Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims** states that the deciding authority may request the competent authority of another Member State to hear the applicant, witness, expert or other persons directly, by using ICT means, such as telephone- or videoconference (Article 9 (1)), if the assisting authority agrees to it. On the contrary, there are no specific requirements for the communication of other information, however the decision on the application for compensation should be communicated using the standard form “as soon as possible” (Article 10) and the information to potential applicants should be provided by “any means Member States deem appropriate” (Article 4). The applications and any supporting documentation should be transmitted by the assisting authority to the deciding authority “as quickly as possible” (Article 6). In all these instances, especially where standard forms are used, the use of secure digital channels would be advisable.

The use of technological means is also required by **Directive 2012/29/EU on victims’ rights**. It encourages the use of ICT, such as telephone, videoconferencing or internet, for any interactions of victims with authorities, with the aim to prevent risks of secondary and repeated victimisation, intimidation or retaliation by the offender or as a result of the participation in the criminal procedure (Recital 53). Digital means (e.g. email, electronic forms) can be used for the reporting of crimes (Recital 63) and for participation in various procedural actions. For instance, victims’ testimony can be recorded on video- or audio carriers and used in the court proceedings (Recital 53). Also, unless otherwise required, it should be possible to communicate information to the victim by use of digital means (Recital 26). ICT means can be used to interpret and translate to the victim during criminal proceedings (Article 7 (2)), if the physical presence of an interpreter is not required. For hearing victims who are residents of another Member State, Article 17(1) provides for the possibility of telephone or videoconference.

The **Directive 2014/41/EU on the European Investigation Order (EIO) in criminal matters**¹⁹⁷ contains a provision on hearing of witnesses or experts by videoconference or other audio-visual means; this can be also done for a suspected or accused person (Article 24). The EIO may be transmitted between the competent authorities through ICT system of the EJN (Article 7 (4)), Eurojust or other channels used by judicial or law enforcement authorities (Recital 13).

¹⁹⁶ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002.

¹⁹⁷ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014.

The **Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters** encourages the use of digital means for the transmission of the said orders between competent authorities. More specifically, it does not preclude the authorities from using dedicated digital platforms that are already established by the authorities and requires that such platforms allow for the submission of European Production and Preservation Orders via them (Article 8).

The **Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions**¹⁹⁸ explicitly permits the use of videoconferencing for hearing the sentenced persons (Article 17 (4)). Similarly, **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**¹⁹⁹ allows to use telephone- or videoconference for hearing persons concerned (i.e. persons who are subject to criminal proceedings for the purposes of a hearing or a trial, Article 19 (4)).

Legal instruments that can be interpreted to include the use of digital communication means

In many instances, provisions of EU legal instruments do not expressly permit or require the use of digital means when exchanging documents or communicating across borders in criminal matters. This does not mean that they prohibit digital means. However, their wording – and especially the wording of their preambles – allows to interpret them as encouraging and including the use of digital means. A few legal instruments can be considered technology-neutral as they have no specific reference to means of communication at all. They only require that the communication means used is capable of producing a written record and establish the authenticity of the transmitted documents. Yet most legal instruments provide an exemplary list of communication means that satisfy these conditions and name e-mail or fax among them.

The list below provides the details on the relevant EU legal instruments, the exact provision, what type of communications or document exchange is at issue and what conditions the communication means must satisfy.

The **Council Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence**²⁰⁰ states that a freezing order and the certificate must be transmitted from one judicial authority to another directly by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity (Article 4).

Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders²⁰¹ refers to using digital means only in the context of correctly identifying the location of the property that is subject to confiscation order (Recital 12). Article 4 (2) states that a confiscation order and its certified copy must

¹⁹⁸ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ L 337, 16.12.2008.

¹⁹⁹ Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, OJ L 294, 11.11.2009.

²⁰⁰ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003.

²⁰¹ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, OJ L 328, 24.11.2006.

be transmitted from one competent authority to another directly by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity of the documents. A similar rule applies to the communication by the executing state about any postponement of the execution of the confiscation order, i.e. the communication means needs to be able to produce a written record (Article 10 (3)).

The **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**²⁰² regulates the transmission of judgments, transit requests and respective certificates as well as communications between competent authorities (Articles 5, 16, 21). The relevant provisions refer to the direct transmission between competent authorities by any means that leave a written record. Recital 18 specifies that such means include fax and email, provided the executing state can establish authenticity of the transmitted document.

The **Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions**²⁰³ does not explicitly require using digital means for the transmission of judgements, probation decisions and certificates as well as communications related to them between competent authorities (Articles 6, 11, 12, 18). However, it requires the transmission by any means that leave a written record.

Similarly, **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** does not explicitly require or permit to use digital means for the transmission of decisions on supervision measures, their copies, and communications related to them between competent authorities (Article 10). It requires instead the transmission to take place by any means that leave a written record. The same requirement applies to the information about the change of residence of the person in question and the maximum length of supervision (Article 20(2)).

The **Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings**²⁰⁴ stipulates that the judgment or its certified copy (with certificate) shall be forwarded to another Member State's competent authority by means that can produce a written record and under conditions that allow to establish the authenticity of the documents (Article 5(1)). Recital 18 clarifies that these means can be email or fax.

With regard to other communications between competent authorities, the Framework Decision asks to use the communication means that is capable of leaving a written record in the following situations (Article 21):

- forwarding of the judgment and the certificate to the competent authority responsible for its execution;
- Information that in practice it is impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the

²⁰² Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327, 5.12.2008.

²⁰³ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, OJ L 337, 16.12.2008.

²⁰⁴ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, OJ L 328, 15.12.2009.

- sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- Information of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- Information of any decision not to recognise the judgment and enforce the sentence;
- Information of any decision to adapt the sentence and the reasons for such decision;
- Information of any decision not to enforce the sentence and the reasons for such decision;
- Information of the beginning and the end of the period of conditional release;
- if the sentenced person escaped from custody;
- information of the enforcement of the sentence as soon as it has been completed, and also
- request to permit transit through a territory of a foreign state and relevant certification (Article 16 (1)).

The **Directive 2011/99/EU on the European protection order**²⁰⁵ advises that, where appropriate, electronic means should be used to put in practice the measures of the Directive (Recital 25). However, there are no specific references to the use of digital means to this end. For the transmission of the European protection order between competent authorities, any means that leave a written record should be used (Article 8 (1)).

The **Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders**²⁰⁶ states that certificates of freezing and confiscation orders shall be transmitted between competent authorities by using means leaving a written record (Articles 4, 7, 14). Recital 24 explains that secured email can be used and states that secure ICT system of the EJN, Eurojust could be used as well.

• Further digitalisation of communication channels

Use of standard forms and their digitalisation

Besides the changes indicated above, similarly to the legal instruments in civil/commercial matters when **standard information** is laid down to be provided as a request or **standard forms for requests, decisions and notifications** are used to convey information in the context of judicial cooperation, it can be recommended to **digitalise them and their transmission** (as the country research shows, this is not always the case – see Section 3.1). The list below contains all EU legal instruments in criminal matters that foresee the creation or introduction of a standard form, but do not yet have an explicit requirement for digitalisation of such form:

- 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 (minimum information for the request for transit, Article 16)

²⁰⁵ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, OJ L 338, 21.12.2011.

²⁰⁶ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, OJ L 303, 28.11.2018.

- Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union (minimum information in the request, Article 4)
- Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (content and form of the European Arrest Warrant, Article 8)
- Council Directive 2004/80/EC relating to compensation to crime victims (applications and decisions, Article 14)²⁰⁷
- Council Framework Decision 2008/909/JHA on mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement (notification of the sentenced person, Annex II)
- Council Framework Decision 2008/947/JHA on mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (notice of findings, Annex II)
- Council Framework Decision 2009/829/JHA on mutual recognition of decisions on supervision measures as an alternative to provisional detention (notice of findings, Annex II)
- Directive 2011/99/EU on the European protection order (European Protection Order, Annex I, and notification of breach, Annex II)
- Directive 2014/41/EU regarding the European Investigation Order (EIO) in criminal matters (EIO, Annex A; confirmation of the receipt, Annex B; Notification about interception of telecommunication, Annex C)

In addition, where **standard forms for certificates** and attestations are foreseen by EU legal instruments, they should be **digitalised** as this would facilitate and speed up this communication. This is the case for the following legal instruments:

- Council Framework Decision 2003/577/JHA on orders freezing property or evidence (certificate to freezing order, Article 9 and Annex)
- Council Framework Decision 2005/214/JHA on mutual recognition of financial penalties (certificate to decisions on financial penalties, Annex)
- Council Framework Decision 2006/783/JHA on mutual recognition of confiscation orders (certificate to confiscation order, Annex)
- Council Framework Decision 2008/909/JHA on mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement (certificate to judgments, Annex I)
- Council Framework Decision 2008/947/JHA on mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (certificate to judgments, Annex I)
- Council Framework Decision 2009/829/JHA on mutual recognition of decisions on supervision measures as an alternative to provisional detention (certificate to decision, Annex I)
- Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders (certificates, Annex I and II)

²⁰⁷ Commission Decision of 19 April 2006 establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC relating to compensation to crime victims (2006/337/EC), OJ L 125, 12.5.2006.

Exchange of classified information that may require accreditation of IT systems

All exchanges of documents and communications under the EU legal instruments in criminal matters contain sensitive personal data. In addition, many of the information exchanges and communications would also entail transmission of what could be considered as classified information, namely information related to ongoing investigations and operative information. Access to such information needs to be restricted to competent persons and protected, while its exchange should be ensured at a high level (fast/ real-time, efficient and complete transmission).

While none of the examined legal instruments contains a definition of, or direct reference to, classified information, several of them speak of confidentiality while transmitting documents or otherwise communicating. These legal instruments are summarised in the table below.

Table 21: Provisions regarding the transmission of classified information in EU legal instruments in criminal matters

Document title	Type of classified information	Comments / explanation
Convention on Mutual Legal Assistance in Criminal Matters	Confidential information	Requests on interception of telecommunications to remain confidential (Article 18(9))
Protocol to the Convention on Mutual Legal Assistance in Criminal Matters	Confidentiality	Confidentiality of requests to banks on banking transactions and accounts of persons (Article 4)
Directive 2014/41/EU	Confidentiality	Confidentiality of investigations in relation to the European Investigation Order (Article 19)
Regulation (EU) 2018/1805	Confidentiality	Confidentiality of investigations in relation to the freezing order (Article 11)

Strengthening digitalisation

Considering that only few legal instruments in criminal matter explicitly refer to digital means/channels for the transmission of documents, exchange of information and communication, express reference to digital communication or harmonised communication forms could be introduced. As indicated above, most legal instruments refer to “other means” or “any means”; this wording is too vague and general and does not contain an aspiration to increase the digital capacities of competent authorities of Member States when cooperating across the border. Therefore, it would be advisable that **the EU legal instruments that currently do not expressly require or allow the use of digital means (see the list in Section Error! Reference source not found.) are amended to this effect.**²⁰⁸ At the very least, suitability of digital means for these legal instruments should explicitly be mentioned, for instance, by way of example or in the preamble or in a separate Recommendation or Guidance document. This would raise awareness of the potential of digital means but ensure also a more sensible and cautious use of them. If communication means are not expressly foreseen, they are a less obvious choice for competent authorities who would stick to the known paper-based procedures. This could also encourage the use of encryption techniques, special communication channels in existing portals and other innovations.

²⁰⁸ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union, OJ C 78, 30.3.1995.

As mentioned in Section **Error! Reference source not found.**, the requirement could be introduced that **all standard forms should be digitalised and transmitted through digital channels**. For this, the documents listed in Section **Error! Reference source not found.** would need to be amended.

There are also a few, older legal instruments that would need to be amended to include digital channels of communication, for example, the **Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States**²⁰⁹ and the **Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States**. Both legal instruments do not foresee any specific digital means, but state that Member States can define the arrangements for the information exchange (Article 10 of both Conventions). Digital means should be added as a possible communication means that Member States might use. Similarly, the **Protocol to the Convention on Mutual Assistance in Criminal Matters**²¹⁰ does not contain any requirements or recommendations that the requests for information and responses to them are sent via digital means. Such a provision should be introduced to ensure a more efficient and swift communication in the matters covered by the Protocol.

Likewise, the **Council Framework Decision 2002/465/JHA on joint investigation teams**²¹¹ does not contain provisions on using digital means for the exchange of information and communications within the joint teams. The use of dedicated secure digital communication channels or even platforms would be highly beneficial for the work of such cross-border teams, allowing them a better, more efficient, real-time strategical and operational planning and activities. It would enhance exchange of operational information. National stakeholders mentioned that a secure communication system for joint investigation teams is desirable.

Similarly, **Council Framework Decision 2009/299/JHA 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 absence of the person concerned at the trial** does not contain any reference to digital means. Instead, there is a reference to “other means” of receiving information about the time and place of the trial by the persons summoned (Recital 7, Article 4a). This could be rendered more precise to include digital means, provided it satisfies all procedural safeguards.

²⁰⁹ 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, OJ C 313, 23.10.1996.

²¹⁰ 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 Member States of the European Union, OJ C 326, 21.11.2001.

²¹¹ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, OJ L 162, 20.6.2002.

The use of the existing digital channels could be encouraged more widely through the EU legal instruments. For instance, only four of the examined legal instruments in criminal matters refer to the use of the existing digital communication channels of the EJN (i.e. Council Framework Decision 2002/584/JHA on the European arrest warrant, Directive 2014/41/EU regarding the European Investigation Order, Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders, and Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters). The use of the EJN could be explicitly recommended (in a routine manner) for all legal instruments on cross-border cooperation. For the Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters, the expansion of e-CODEX and SIRIUS platforms for this purpose shall be considered.

Synergies with existing initiatives

The aim of this section is to present the main findings from the Digital Criminal Justice Study of 2020²¹² while at the same time identifying synergies between the current initiative and other existing initiatives in this area. . The 2020 study proposed the several solutions for the exchange of information and communication between competent authorities across the EU; however, it did not consider the communication channels between the competent authorities and citizens or legal entities.

According to this study, the re-use of eDelivery (with e-CODEX connector) over the TESTA EuroDomain is preferred for **secure communication** between competent authorities to exchange non-classified and classified information. Alternatively, for classified information, SIENA can be used. Regardless of the option chosen, the communication channel should allow for the recording of all communication activities and provide in-depth tracking to comply with data protection requirements.

As a **communication tool to enable the secure electronic exchange** of judicial cooperation requests and mutual recognition/mutual legal assistance forms, information, messages and evidence, the study recommends e-EDES (e-Evidence Digital Exchange System) and its underlying digital infrastructure (e-CODEX and eDelivery). These tools are based on common open standards/ specifications and open-source implementations (i.e. e-CODEX connector and the Domibus Gateway). The study underlines that e-EDES meets the transport-level security objectives. For the application layer, an additional risk assessment should be performed in order to identify potential risks at that level. From a data protection perspective, it should be examined to what extent the functionalities of the platform should be further developed to ensure that applicable data protection principles and procedures can actually be taken into account.

The study also recommends a **Redesigned Eurojust Case Management System (CMS)** that should include five components: Core CMS, Counter-Terrorism Register, Joint Investigation Teams (JIT) Admin Portal, Action Day Collaboration Platform and Integration Layer.

It suggests that a combination of commercial of the shelf (COTS) products should be used to create a **JIT Collaboration Platform**. The JIT Collaboration Platform is necessary to set up, plan and coordinate JIT operations, allowing easy communication, as well as the electronic sharing of large amounts of information and evidence between JIT partners.

²¹² EC, Cross-border Digital Criminal Justice, Final Report, 2020.

However, none of the individual commercial off the shelf (COTS) products can satisfy all the needs of JIT, hence a combination of them is recommended. The security assessment highlights the need to ensure the confidentiality of data exchanged by interested parties using this solution. Strong cryptographic algorithms must be used to encrypt the data, at a minimum in the transport layer. In addition to this, the solution should also establish patch and vulnerability management processes and should be integrated with the target architecture. A business impact assessment and risk assessment must be carried out before pursuing design choices.

For the **exchange of information between competent authorities**, including EU-level bodies (Eurojust, Europol, Frontex, EPPO and OLAF), and with other EU-level systems (SIS II and ECRIS-TCN), the study does not offer a technical solution. Instead, it suggests setting up a task force to identify such solutions and further define the hit/no-hit concept, which can be done manually (i.e. triggered by users) or as an automatic database cross-check. In addition, the task force should take into account the measures and requirements to ensure that the hit / no-hit system and the subsequent exchange of information comply with the data protection principles and requirements.

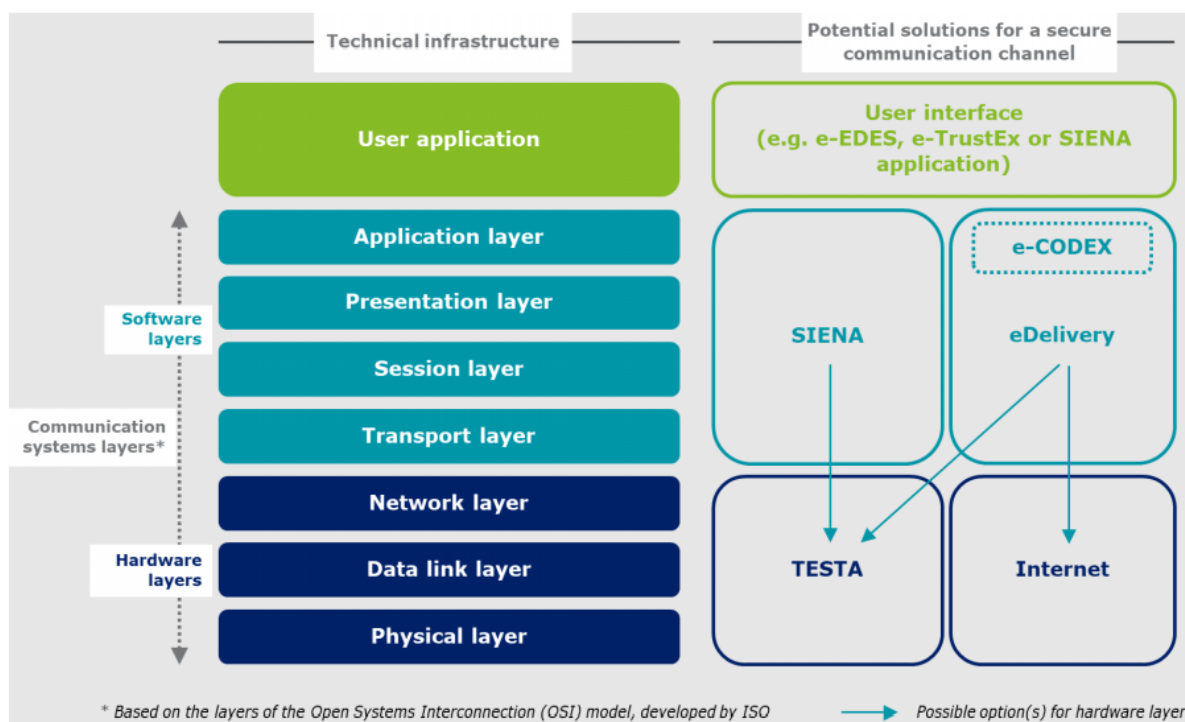
Similarly, for a **Judicial Cases Cross-Check facility**²¹³ and for a **Large Files Solution**²¹⁴ also no technical solutions were identified. The Judicial Cases Cross-Check facility allows the search for case-related information and the identification of links among cases that are being investigated in other Member States or by JHA agencies and EU bodies. A Large Files Solution needs to allow the exchange of large amounts of information electronically. However, all examined scenarios presented some disadvantages in terms of hosting, governance of the solution and data storage.

The figure below presents all proposed solutions for secure communication channels in combination, demonstrating how they complement and, partially, build on each other.

²¹³ This facility should allow a search through case-related information and identify links among cases investigated in other Member States, by JHA agencies and EU bodies. The 2020 Digital Criminal Justice study suggested a decentralised solution and a central repository of metadata. For details see: Deloitte (2020). Cross-border Digital Criminal Justice. Study for DG JUST, pp. 200-214.

²¹⁴ The Large Files Solution was proposed by the 2020 Digital Criminal Justice study to address the problem of the current communication facilities that cannot exchange large amount of data electronically. Here, also, a centralised and decentralised solutions were suggested, see for details Deloitte (2020). Cross-border Digital Criminal Justice. Study for DG JUST, pp. 214-223.

Figure 8 Potential solutions for secure communication channels between competent authorities



Source: Deloitte (2020). Cross-border Digital Criminal Justice. Study for DG JUST.

The recommendations by the 2020 Digital Criminal Justice study on the wider use of e-CODEX are already being implemented. Several Member States (e.g. AT, ES, DE, FR, MT, NL, PL, RO, SE, SK) have participated in pilots on the use of e-CODEX in both criminal (European Investigation Orders, financial penalties, electronic exchange of evidence) and civil matters (European Orders for payments and small claims). In civil and commercial matters, e-CODEX is used for the Europe-wide interconnection of Business Register Interconnection System (BRIS). The system iSupport²¹⁵ based on e-CODEX and compliant with the eIDAS Regulation is applied for the cross-border recovery of maintenance obligations (under Council Regulation (EC) No 4/2009 on maintenance obligations). The extension of iSupport to new uses and applications is being investigated, though not to EU legal instruments. The latter option should be considered and tested (e.g. extension to electronic transmission of procedural documents). Some Member States are willing to expand the use of e-CODEX. For example, the Netherlands is discussing its extension to traffic fines (with Belgium and France). Sweden seems to be in favour of a more general application of e-CODEX across all areas.²¹⁶

The consulted stakeholders for this study put forward suggestions in relation to synergies and reuse of the existing systems and initiatives to further digitalise cross-border judicial cooperation. To partially close the gap of providing citizens with digital channels of communication with competent authorities, it is suggested **enhancing the scope and the use of the Online Dispute Resolution (ODR) platform**²¹⁷ that is currently used for

²¹⁵ Information relevant to iSupport can be found on the official website: <https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support/isupport1>.

²¹⁶ 'Förordning Om E-CODEX Fakta-PM Om EU-Förslag 2020/21:FPM48 COM(2020) 712 Final, Annexes To COM(2020) 712 Final, SWD(2020) 541 - Riksdagen' (Riksdagen.se) <https://www.riksdagen.se/sv/dokument-lagar/dokument/fakta-pm-om-eu-forslag/forordning-om-e-codex_H806FPM48> accessed 25 May 2021.

²¹⁷ On the ODR platform, see <https://ec.europa.eu/consumers/odr/main/?event=main.trader.register>.

disputes between traders and consumers. The platform works well, is free and available in all languages. Currently, a 'negotiation channel' in the ODR platform is in the making, it will be a chat system (without video) allowing parties to communicate. This will be a low-key way to communicate and could increase trust of consumers and citizens in the system.

Moreover, the **Swedish initiative**²¹⁸ aims at streamlining the exchange of information and investigative insights between the prosecution authorities (tax investigators) of EU Member States. This should be revived and or scale-up if possible, according to the stakeholders.

Many stakeholders (BG, DE, HR, HU, IE, IT, LU, LV, PL) indicated the **synergy** of the current initiative (under this study) **with the eIDAS Regulation** as the most important one as it ensures that electronic documents and communications can be authenticated and verified. The challenges linked to the cross-border recognition of electronic signatures and seals across Member States must be resolved, and any IT system of communication channel in development should be able to handle all types of authentication means provided by the eIDAS Regulation. A wider use of the eIDAS Regulation by authorities and citizens should be promoted, nationally and across borders. Synergies with the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014, announced on 3 June 2021, and establishing a framework for a European Digital Identity, also come to attention. This initiative aims to re-enforce safety while simplifying online services across Europe, as well as giving EU citizens more control over their digital information and privacy. Blockchain²¹⁹ is seen as an advanced technology that could support the implementation of the European e-identity.

In addition to the EU initiatives, **initiatives by other international organisations** should be considered. For example, the Camden Assets Recovery Interagency Network (CARIN)²²⁰ (an informal network of law enforcement and judicial practitioners as well as specialists in the field of asset tracing, freezing, seizure and confiscation) extends beyond the EU and includes some international organisations. Its established contact points, documents and procedures should be considered in any development in the field by the EU. The initiatives and tools developed by the Council of Europe (CoE) should also be examined to determine whether they can be adopted by the EU. For example, the various mutual legal assistance forms²²¹ can be mandated as standard forms, the work of the existing thematic CoE Committees (cybercrime experts²²² and others) could be better incorporated in EU legal instruments.

Most importantly, before the EU-wide solutions are developed, the interoperability of the existing national systems and channels should be established or reinforced. The national systems are likely to stay in any case and would need to be interconnected with the EU-wide ones (Estonia). Gigantic (centralised) systems for the whole EU are considered not viable, also due to the need to preserve independency of the judiciary in the single Member States and would inhibit innovation. Thus, a decentralised solution is preferable; this should be ensured through interoperability and interconnection of national systems (Sweden). The

²¹⁸ Anna Fiodorova (2018). Swedish initiative, in: Information Exchange and EU Law Enforcement, Routledge.

²¹⁹ A blockchain is a growing list of records, called blocks, that are linked using cryptography. Each block contains a cryptographic hash of the previous block, a timestamp, and transaction data. By design, a blockchain is resistant to modification of its data. This is because once recorded, the data in any given block cannot be altered retroactively without alteration of all subsequent blocks.

²²⁰ [CARIN - the asset recovery network](#) .

²²¹ See [MLA - Tools for implementation \(coe.int\)](#) .

²²² For example, the Cybercrime Convention Committee has recently approved a protocol on electronic evidence, see the press release of 31 May 2021: <https://www.coe.int/en/web/cybercrime/-/e-evidence-protocol-approved-by-cybercrime-convention-committee> .

European Interoperability Framework (EIF)²²³ provides for recommendations on how to improve interoperability in the administrative area; the latter should be considered as a model also for legal cross-border cooperation. According to a Dutch stakeholder,²²⁴ the EIF forms the shared core between the various national governments and the cross-border domains (also pointed out by Ireland). If national and domain-specific systems are compatible with the EIF, they can interconnect and an EU-wide (decentralised) solution can be built based on them.

The findings from the national legal mapping point out that several national digital initiatives and solutions can be integrated in the Europe-wide systems or should at least be considered in order not to duplicate efforts at EU level. In general, national communications systems and tools were created with the EU legal framework in mind and, thus, comply with all requirements thereof.

In **Spain**, for communication in domestic judicial cases, the national IT tools “LexNet” and “Minerva” are mainly used. They are similar in their functionality to the planned channels of communication in EU cross-border judicial cases. LexNet allows (and mandates) the electronic communication between Spanish judicial authorities and legal practitioners (lawyers and “procuradores”) or between the judicial authorities and other administrations. Minerva is an IT tool for the electronic management of judicial proceedings files. These two tools present synergies with EU tools (e.g. e-CODEX).

Finland is establishing AIPA (judicial data management system) and HAIPA (data management for administrative and special courts) which, when operational, will make case handling (and archives) completely paperless and connect all competent national authorities. These national systems are meant to be interoperable with the case management system of the European Public Prosecutor's Office. The possibility of interoperability of the Finnish systems with e-CODEX and eJustice is currently being assessed.

Several Member States have well-functioning national digital ID systems. In the **Netherlands**, a digital identification tool DigiD, similar to the new initiative on European digital identity by the European Commission, exists.²²⁵ DigiD allows to log in to numerous government services and will be used to access courts in the future, like the European digital identity is supposed to do. **Estonia** has digital ID and authentication solutions with similar functionalities that are widely used by citizens, residents, e-residents and authorities. It is expected that these can be interconnected with any EU-wide solution and be a gateway across the border. **Croatia** has implemented an electronic identity card (eOI) that can be used by citizens and EU citizens. **Greece** is in the process of simplifying its identification system and digital ID.

²²³ All materials on the EIF can be found here: https://ec.europa.eu/isa2/eif_en.

²²⁴ Digitaaloverheid.nl ‘Nieuwe versie European Interoperability Framework’, <https://www.digitaaloverheid.nl/nieuws/nieuwe-versie-european-interoperability-framework/>

²²⁵ European Commission (2021). Commission proposes a trusted and secure Digital Identity for all Europeans. Press release of 3 June 2021: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2663.

Annex 2. IMPLEMENTATION OF EU LEGAL INSTRUMENTS BY MEMBER STATES WITH REGARD TO COMMUNICATION MEANS

Table 22: National purpose-built IT systems and access to them

	Are there national IT systems?	Purpose description	Interoperable across border?	Access for non-citizens/ residents?	Access for non-established attorneys?
	Y (names) /N		Y /N	Y /N	Y /N
Austria	WebERV	civil and commercial cases	No	No	No
	eAe	court files	No	No	NO
Belgium	e-Deposit		No	N/A	N/A
	DPA-Deposit	Attorneys	No	N/A	N/A
Bulgaria	Yes (names undisclosed)		No	No	No
Croatia	eFile		N/A	No	No
	e-Communication		N/A	Yes	Yes
Cyprus	No information		N/A	N/A	N/A
Czechia	Yes (names undisclosed)		No	No	No
Estonia	x-road	Cooperation with Finnish authorities	Yes	N/A	N/A
	e-File		No	Yes	Yes
	e-Justice		No	No	No
	e-Police		No	No	No
	KIS	courts	No	No	No

Finland	AIPA	judicial data	No	Yes	Yes
	HAIPA	administrative courts	No	Yes	Yes
	SAKARI	prosecutors	No	Yes	Yes
France	Virtual Private Network for Lawyers (RPVA)	attorneys	No	N/A	No
	ATLAS	Judicial authorities	No	N/A	No
Germany	No				
Greece	No				
Hungary	General Form Filling Program		No	Yes	Yes
	E-Paper System		No	Yes	Yes
	Order for Payment System		No	Yes	Yes
	Justice Support System		No	Yes	Yes
	Customer File Access System		No	Yes	Yes
	Registry Office Access System		No	Yes	Yes
Ireland	courts.ie		No	No	No
	PEXIP	remote hearings	No	No	No
	Trialview	commercial hearings	No	No	No
Italy	SPID		No	Yes	No
Latvia	Portal	courts	N/A	Yes	Yes
	e-lietas	Criminal proceedings	N/A	N/A	N/A
Lithuania	LITEKO/ e.teismas.lt	Courts (different proceedings)	No	Yes	Yes
	Integrated Criminal Procedure Information System (IBPS)	Criminal proceedings and files	No	No	No
	epolicija.lt	police	No	No	No
	antstoliai.lt	Bailiffs	No	No	No

	teisis.lt	state guaranteed legal aid and mediation	No	No	No
	enotaras.lt	Notaries	No	No	No
Luxembourg	MJECI	Documents exchange btw different authorities	N/A	N/A	N/A
	JANGA.ES	Administrative courts	N/A	N/A	N/A
	JUCHA.ES	Criminal courts	N/A	N/A	N/A
	JUCIV.ES	Civil and commercial courts	N/A	N/A	N/A
Malta	Tascam	videoconferencing	Yes	Yes	Yes
	Denon		Yes	Yes	Yes
	Polycom	Videoconferencing	Yes	Yes	Yes
Netherlands	Mijn Kennisomgeving (MKO)	courts	No	No	No
	DIVOS	judiciary	No	No	No
	COMPAS	judiciary	No	No	No
	GPS	judiciary	No	No	No
	Mijn Strafdossier	Criminal attorneys	No	No	No
	Mijn Zaak	civil procedure	No	No	No
Poland	Yes (names undisclosed)		No	N/A	N/A
	PROK-SYS (in development)	prosecutors	Yes	No	No
Portugal	CITIUS	case file exchange	N/A	N/A	N/A
Romania	Yes (names undisclosed)	Criminal records other	Yes	Yes	Yes
Slovakia	Insolvency register (IRI)	insolvency	Yes	Yes	Yes
	PATRICIA	prosecutors	Yes	Yes	N/A
	Business Register	commercial	Yes	Yes	N/A
	eŽaloby	Filing actions	N/A	N/A	Yes

	ESSp – Elektronický súdny spis	Court files register	N/A	N/A	Yes
Slovenia	e-sodstvo	courts	N/A	Yes	Yes
Spain	Electronic Judicial Site		Yes	Yes	No
	LexNet	attorneys	Yes	No	No
Sweden	Yes (names undisclosed)		Yes	Yes	Yes

Table 23: Regulation of conversion from paper-based to electronic documents in Member States

	Document title	Process description / definition of conversion
Austria	§ 20 Law on e-Government (e-Government-Gesetz)	A printout of an electronic document of a public authority has the probative force of a public document, if the electronic document has been issued with the “Amtssignatur” (official public signature) and if document can be validated by re-digitalisation of the print out. Thus, the document shall “contain a notice to the reference on the Internet, where the procedure of returning the printout to the electronic document and the applicable verification mechanisms are included, or a notice to the procedure of verification.”
Belgium	Law implementing and supplementing 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, inserting Title 2 into Book XII “Law of the Electronic Economy” of the Code of Economic Law and inserting the definitions specific to Title 2 of Book XII and the provisions for the application of the Act specific to Title 2 of Book XII, into Books I, XV and XVII of the Code of Economic Law of 21 July 2016	The law introduces a definition of electronic archiving service as being a trust service additional to those referred to in Article 3(16) of Regulation 910/2014, which consists of the storage of electronic data or the digitalisation of paper documents, and which is provided by a trust service provider within the meaning of Article 3(19) of Regulation 910/2014 or which is operated on its own behalf by a public sector body or a natural or legal person. A qualified electronic archiving service is an electronic archiving service provided by a qualified trust service provider within the meaning of Article 3(20) of Regulation 910/2014 complying with the provisions of Title 2 and Annex I of Book XII or operated on its own account by a public sector body or a natural or legal person and complying with the provisions of the same title and annex, with the exception of e), i), j) and k).

	Document title	Process description / definition of conversion
Bulgaria	Art. 360g (1) and (2) Bulgarian Judiciary Act	Statements and acts, submitted to the members of the Judiciary in paper form, and all other documents and information in paper form, shall be entered into the information system of the members of the Judiciary, via creation of an electronic image in a type and manner, which allows their reproduction. Documents and information, presented on electronic device, filed electronically or entered in the information system of the judiciary, shall be processed and kept in a manner that ensures protection from errors, forgery and loss.
Croatia	There are no documents specifically on conversion, only practice.	Paper documents are scanned when uploaded into eFile system. In case the court doubts their validity, the court may request the originals of the documents to be submitted for inspection. In criminal cross-border procedures, the documentation is signed and stamped in wet ink and simply scanned and sent to the corresponding counterparty via email.
Cyprus	N/A	N/A
Czechia	Sections 22 to 26 of Act No 300/2008 Coll. on Electronic Acts and Authorized Conversion of Documents	Conversions are performed by certain public authorities (e.g. postal services, notaries etc.)
Estonia	N/A	N/A
Finland	N/A	N/A
France	Article 1379 Civil Code Decree No 2016-1673 of 5 December 2016 on the reliability of copies and taken for the application of Article 1379 of the Civil Code Article 50 Law No. 2019-222 of 23 March 2019 on programming 2018-2022 and reform for justice	In the civil procedure, any copy resulting from an identical reproduction of the form and content of the document, the integrity of which is guaranteed over time by a process that complies with the technical conditions laid down by Decree No 2016-1673, is presumed to be reliable until proven otherwise In the criminal procedure, any document drawn in written form may be converted to the digital form.

	Document title	Process description / definition of conversion
Germany	§ 298 and § 298a Code of Civil Procedure	If files are kept in a paper form, a printout of an electronic document shall be made for the record. If this cannot be done or can be done only with disproportionate effort in the case of attachments to preparatory pleadings, a printout may be omitted. In this case, the data shall be stored permanently; the storage location shall be recorded in the files. In cases where an electronic document needs to be submitted by secure means of transmission, the fact of insecure transmission has to be recorded in the file. For electronic documents provided with a qualified electronic signature, but submitted via insecure means, the printout shall contain a note stating: 1. what the result of the integrity check of the document shows, 2. who the signature verification shows to be the owner of the signature, 3. what time the signature check shows for the application of the signature.” A submitted electronic document should be deleted after six months. From 1 January 2026, the use of electronic files is mandatory. If files are kept electronically, documents available in paper form and other documents shall be transferred into an electronic form in accordance with the state of the art to replace the original. It shall be ensured that the electronic document corresponds visually and in terms of content to the existing documents and other records. The electronic document shall be provided with a proof of transmission documenting the procedure used for the transmission and the visual and content conformity. If a court document signed by hand by the persons responsible is transmitted, the proof of transmission shall be provided with a qualified electronic signature of the clerk of the court registry. The paper documents and other records may be destroyed six months after the transfer unless they are required to be returned.
Greece	Law 4727/2020	The digitalized copies of paper documents have to bear an approved electronic time stamp, the approved electronic stamp of the public body or the approved electronic signature of the body proceeding to the conversion and a certificate of identification with the printed document.
Hungary	Act CCXXII of 2015 on the general rules for trust services and electronic transactions and Government Decree 451/2016	The converted document must contain a certificate indicating that it is identical to the original document, as well as the certifier's name and the date of the certification. During the conversion process it must be ensured that the original document and the copy correspond in image or content and that any alterations made to the copy after the certificate has been affixed are perceptible. The electronic copy of a paper-based document must contain a certificate with a qualified electronic signature/stamp or an advanced electronic signature/stamp based on a qualified certificate.

Document title		Process description / definition of conversion
		Additional requirements for the automatic process refer to the electronic service provider. It must hold detailed documentation of the conversion process that demonstrates compliance with the requirements, or a certificate of compliance issued by the system developer/distributor. It must prepare a conversion policy containing the procedural and technical conditions of the process which must also be disclosed publicly. If the conversion complies with these provisions, the converted document is deemed to have the same evidentiary effect as the original document.
Ireland	N/A	N/A
Italy	Art. 20 et seq of the Digital Administration Code	N/A
Latvia	N/A	N/A
Lithuania	N/A	N/A
Luxembourg	Act of 25 July 2015 on electronic archiving	This legal framework gives a digital copy the same evidential value as the original document, provided that the copy has been made by a dematerialisation or preservation service provider with PSDC-D or PSDC-C (i.e. special technical standards) status respectively, as defined by the law.
Malta	N/A	N/A
Netherlands	N/A	N/A
Poland	N/A	N/A
Portugal	Article 12A of the Ordinance 280/2013 of 26 August 2013	Paper documents presented to the court regarding procedural issue must be digitalized by the Court's secretariat.
Romania	N/A	N/A
Slovakia	No documents identified, only practice.	In case of cross-border judicial cooperation, the Slovakian Ministry of Justice maintains a parallel file in electronic form for the purposes of a registry, but this is not a communication scheme (rather a form of case management system).
Slovenia	Article 24 of the Rules on electronic operations in civil procedures and in criminal procedure	N/A
Spain	Chapter II of Law 18/2011 regulating the use of information technologies and the communication with the Justice Administration	Digitalisation of paper documents and the creation of electronic judicial proceedings file ("Expediente Judicial Electrónico") are possible through digitalisation processes that ensure the authenticity, integrity and version of documents converted into a digital format, which may be done by automatised systems with the corresponding electronic seal.

Document title		Process description / definition of conversion
Sweden	N/A	N/A

Means of communication foreseen in the national legislation implementing EU legal instruments of cooperation in civil and commercial matters

The Tables below provide an overview of the implementation of EU legal instruments by Member States with regard to communication means. Empty cell means that no such implementing national rules were identified.

Table 24: Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x										x									
Digital																			x				x		x	
Videoconference																										
Email																										
Fax																										
Purpose-built IT																										
Phone / Audio																										
Post																										

Table 25: Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
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Not specified/ Neutral		x	x				x									x									
Digital				x							x			x			x				x	x	x		
Videoconferenc e				x	x			x		x	x	x			x									x	
Email																									
Fax	x				x					x		x									x				
Purpose-built IT																									
Phone / Audio								x																x	
Post	x				x					x		x									x				

Table 26: Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x										x									
Digital																									x	
Videoconferenc e																										
Email																										
Fax																										
Purpose-built IT																										
Phone / Audio																										
Post																										

Table 27: Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
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[illegible]

Table 28: Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

[illegible]

Table 29: Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x										x		x			x				x
Digital				x	x	x									x	x									x	
Videoconferenc e												x								x						
Email						x																				
Fax																										
Purpose-built IT						x						x								x						
Phone / Audio																										
Post					x																					

Table 30: Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x										x					x				x
Digital				x		x			x				x		x	x								x	x	
Videoconferenc e												x								x						
Email					x	x																				
Fax	x				x																			x		
Purpose-built IT						x										x										
Phone / Audio																										
Post	x				x								x			x			x							

Table 31: Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

[illegible]

Table 32: Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)

[illegible]

[illegible]

Table 33: Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)

[illegible]

Table 34: Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

[illegible]

[illegible]

Table 35: Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

[illegible]

Table 36: 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

[illegible]

[illegible]

Table 37: Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

[illegible]

Table 38: Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

[illegible]

[illegible]

Table 39: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

[illegible]

Table 40: Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

[illegible]

Videoconferenc e																			X							
Email					X																					
Fax					X																					
Purpose-built IT											X				X				X							
Phone / Audio					X																					
Post					X																					

Table 41: Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		X					X										X		X							X
Digital				X								X			X										X	
Videoconferenc e																										
Email					X								X													
Fax					X								X													
Purpose-built IT																X						X		X		
Phone / Audio													X													
Post					X								X													

Table 42: Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		X					X										X		X							X
Digital					X							X										X		X	X	

Videoconferenc e												X													
Email																									
Fax																									
Purpose-built IT																									
Phone / Audio																									
Post					X																				

Table 43: Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x										x		x							x
Digital					x																	x	x		x	
Videoconferenc e																										
Email																										
Fax																										
Purpose-built IT																										
Phone / Audio																										
Post					x																					

Table 44: Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x										x		x							x

[illegible]

Table 45: Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

[illegible]

Table 46: Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
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[illegible]

Table 47: 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)

[illegible]

Table 48: 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)

[illegible]

Means of communication foreseen in the national legislation implementing EU legal instruments of cooperation in criminal matters

Tables below summarise the implementation of EU legal instruments by Member States with regard to communication means. Empty cell means that no such implementing norm was identified.

Table 49: 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

[illegible]

[illegible]

Table 50: Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union

[illegible]

Table 51: Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union

[illegible]

[illegible]

Table 52: 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 Member States of the European Union

[illegible]

Table 53: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

[illegible]

Email							x					x						x		x	x		x			
Fax	x											x				x		x	x		x	x		x		
Purpose-built IT				sis , ej n					sis, ejn, inte rpol			sis, ejn, siren e, euroj ust, euro pol								ej n				sis		
Phone Audio /																		x						x		
Post	x						x			x									x						x	

Table 54: Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

[illegible]

Table 55: Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	LT	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x															x				x
Digital				x	x	x		x								x									x	
Videoconference									x			x	x													
Email																		x	x							
Fax																x			x							
Purpose-built IT																ej n										
Phone / Audio																										
Post					x											x			x						x	

Table 56: Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x									x		x	x							x
Digital												x													x	
Videoconference								x														x				
Email												x										x				
Fax					x							x										x				
Purpose-built IT																										
Phone / Audio												x										x				
Post					x																	x			x	

Table 57: Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

[illegible]

Table 58: Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

[illegible]

Email												X	X													
Fax	X											X	X													
Purpose-built IT												sis, ejn, Sirene, Eurojust, europol														
Phone / Audio																										
Post	X				X								X												X	

Table 59: Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	HU	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x																x				x				x
Digital	x				x	x	x					x												x	x	
Videoconference												x														
Email							x					x							x							
Fax	x											x							x							
Purpose-built IT												Sis, ejn, Sirene, Eurojust europol														
Phone / Audio																										
Post	x						x			x									x					x	x	

Table 60: Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

Communicati on means	A T	B E	B G	H R	C Y	C Z	E E	FI	F R	D E	E L	HU	IE	IT	L V	L T	L U	M T	N L	P L	P T	R O	SI	S K	E S	S E
Not specified/ Neutral		x					x											x								x
Digital	x				x	x						x												x	x	
Videoconfere nce					x				x			x												x		
Email												x							x			x				
Fax	x											x							x			x				
Purpose-built IT												sis, ejn, sirene, euroju st europ ol														
Phone Audio																										
Post	x									x									x					x	x	

Table 61: 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 absence of the person concerned at the trial

[illegible]

[illegible]

Table 62: Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	HU	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		x					x		x				x					x				x				x
Digital					x	x						x													x	
Videoconference					x							x									x			x		
Email												x							x							
Fax												x							x							
Purpose-built IT												sis, ejn, sirene, eurojust, europol														
Phone / Audio																					x			x		
Post																			x						x	

Table 63: Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings

[illegible]

Table 64: Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

[illegible]

Email											x							x									
Fax	x										x							x									
Purpose-built IT				sis , ej n							sis, ejn, sirene, eurojust , europol																
Phone Audio	/																										
Post	x																	x								x	

Table 65: 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

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
Not specified/ Neutral		X					X		X									X								X
Digital					X							X	X	X		X			X						X	
Videoconferenc e				X	X							X				X				X	X	X		X		
Email												X				X										
Fax												X														
Purpose-built IT																										
Phone / Audio												X									X			X		
Post					X																					

Table 66: Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

Communication means	A T	B E	B G	H R	C Y	C Z	E E	F I	F R	D E	E L	H U	I E	I T	L V	L T	L U	M T	N L	P L	P T	R O	S I	S K	E S	S E
---------------------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

Not specified/ Neutral		x						x								x	x			x				
Digital	x		x		x	x				x	x				x						x	x	x	
Videoconfer ence	x			x	x	x	x	x			x			x		x						x		x
Email											x				x									
Fax	x										x													
Purpose- built IT	ej n			si s, ej n				ej n			sis, ejn, sirene, euroju st, europo l			ej n		x		ejn						
Phone Audio	/	x						x									x					x		
Post	x														x							x	x	

Table 67: Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders

[illegible]

Exchange of classified information			Accreditation of IT systems for exchange of classified information	
Cyprus	Law 216(I)/2002 on the security rules for classified information, which implements Council Decision 2001/264/EC (replaced by Council Decision 2013/488/EU on the security rules for protecting EU classified information) and Commission Decision 2001/844 (replaced by Commission Decision 2015/444 on the security rules for protecting EU classified information)	N/A	N/A	A unit within Ministry of Defence is the national security accreditation authority.
Czechia	Act No 412/2005 Coll. on the Protection of Classified Information and on Security Competence	N/A	N/A	N/A
Estonia	N/A	N/A	N/A	N/A
Finland	Instructions for sending secure emails of 27 April 2020, based on the Act on Electronic Services and Communication in the Public Sector (13/2003)	Confidential material and sensitive documents can be sent to the Ministry for Justice or agencies within its administrative branch by using the secure email. This method is used in domestic cases, however it is not clear whether it is also used in cross-border cases.	N/A	N/A

Exchange of classified information			Accreditation of IT systems for exchange of classified information	
France	Bilateral agreements on the exchange and reciprocal protection of classified information (for example, Decree No. 2012-867 of 6 July 2012 publishing the Agreement between the Government of France and the Government of the Republic of Cyprus on the reciprocal exchange and protection of classified information)	Article 9.5 of the Agreement states that electronic transmission of classified information has to be made in encrypted form, using cryptographic methods and devices mutually agreed between the respective National Security Authorities. In practice, French Central Authorities also use the ATLAS platform to transmit procedural documents to other Member States' authorities (e.g. minutes of hearings). ATLAS is a secure exchange platform for large documents operated by the Ministry of Justice.	N/A	N/A
Germany	Instruction sheet on the handling of classified information, based on the Security Screening Act of 1994	Information transmitted both online and via postal mail between authorities inside Germany and between authorities and courts of Member States might be considered "VSNFD" (equals to the European Category "Restricted") in exceptional cases (e.g. in certain criminal law cases). This type of information can only be exchanged in a work context with competent co-workers/ Member State authorities for up to 30 years, otherwise being punishable with prison sentence up to 30 years.	§§ 34ff. General Administrative Regulation on the Material Protection of Secrets (VSA)	Federal Cyber Security Authority (Bundesamt für Sicherheit in der Informationstechnik (BSI))
Greece	N/A	N/A	N/A	N/A

Exchange of classified information			Accreditation of IT systems for exchange of classified information	
Hungary	Act CLV of 2009 on the protection of classified information and Government Decree 90/2010	The regulation forbids the transmission of foreign classified data electronically. A consignment containing classified data with a "Confidential" or higher classification level may only be transported abroad by a military courier, diplomatic or consular courier. The regulation also lays down specific rules for the packaging of consignments.	N/A	N/A
Ireland	N/A	N/A	N/A	N/A
Italy	Legislative decree 148/2018 transposing Directive (EU) 2014/55	Refers only to reception and processing electronic invoices by Central Administrations: they must comply with the European standard EN 16931-1 on electronic invoicing in public procurement and CEN/TS 16931-2 specification	N/A	Agenzia per l'Italia Digitale (AgID)
Latvia	N/A	N/A	N/A	N/A
Lithuania	No documents identified, but practice is described on e-services site e.teismas.lt (can be also used for cross-border submissions in civil and commercial matters).	Regarding the confidential information in civil and commercial matters that has to be provided electronically using e.teismas.lt, it is advised to provide the confidential information to the court separately from non-confidential information. In this case, a non-disclosure mark may be placed in court during registration and the confidential document will not be visible in the accounts of the participants of the electronic services portal processes. In practice, documents with confidential information are often presented as annexes to the main document in a single adoc format document folder. Then it is technically difficult for the court not to disclose confidential annexes to the main document.	N/A	N/A

Exchange of classified information			Accreditation of IT systems for exchange of classified information	
Luxembourg	Bilateral agreements and Law of 8 May 2013 approving the Agreements between the Government of the Grand Duchy of Luxembourg and certain countries on the exchange and reciprocal protection of classified information	N/A	Act of 28 May 2019 transposing Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 on measures intended to ensure a common high level of network and information system security in the European Union	State Information Technology Centre High Commission for National Protection
Malta	N/A	N/A	N/A	N/A
Netherlands	N/A	N/A	N/A	N/A
Poland	Act of 5 August 2010 on the protection of classified information	N/A	Act of 5 August 2010 on the protection of classified information	Internal Security Agency (ABW) or Military Counterintelligence Service (SKW)
Portugal	Bilateral agreements (for instance, Decree no 3/2021 of 8 of August 2021 publishing the agreement between Portugal and Hungary)	N/A	Article 8 and 9 of Decree-Law no 12/2021 of 9 of February 2021	Portuguese Institute of Accreditation (IPAC)
Romania	Law no. 182 from 12 April 2002 on the protection of classified information	N/A	Law no. 182/2002	Romanian Information Service
Slovakia	Procedures set down by the National Security Office	Classified information is not the subject of communication through IT systems. If video/teleconferencing is needed during which the exchange of classified information should take place, the Ministry of Justice will apply ad hoc technical issues with its own IT experts.	N/A	N/A

Exchange of classified information			Accreditation of IT systems for exchange of classified information	
Slovenia	Article 1 of the Rules on electronic operations in civil procedures and in criminal procedure	Classified information is exchanged via a secure electronic route, the technical conditions for obtaining authorisation for secure electronic service and the secure electronic mailbox	Articles 4 and 8 of the Rules on electronic operations in civil procedures and in criminal procedure	Minister of Justice
Spain	N/A	Classified information cannot be used in judicial proceedings. In order to use it, it must be declassified in advance.	Article 22 of Law 18/2011 regulating the use of information technologies and the communication with the Justice Administration	Justice Administration
Sweden	A special Memorandum to the Criminal Data Act (proposal by the Ministry of Justice)	Classified information is sent through the police authority which has secure tunnels (i.e. encryption). EURAS is used by the prosecutors. Phone is the most common tool. The easiest way is to encrypt the content and send the code over the phone. Regarding high profile cases, the exchange of information at personal meetings is preferred. The proposal by the Ministry of Justice is that Sweden can fully participate in the European exchange of information.	N/A	Swedac (national accreditation body)

Annex 3. ANALYSIS OF THE OPEN PUBLIC CONSULTATION

We can make the following main observations from the extraction of the 89 returns to the open public consultation. The most frequent (43) returns were from EU citizens, followed by public authorities (21). Their six main countries of origin were Spain and Germany (11), Belgium (7) Italy, Portugal, and Romania (6).

Table 1: Feedback by stakeholder category

Stakeholder type	Number of replies
Academic/research institution	5
Business association	1
Company/business organisation	7
Consumer organisation	1
EU citizen	43
Non-governmental organisation (NGO)	7
Other	7
Public authority	21
Total	92

Table 2: Feedback by country of origin/affiliation

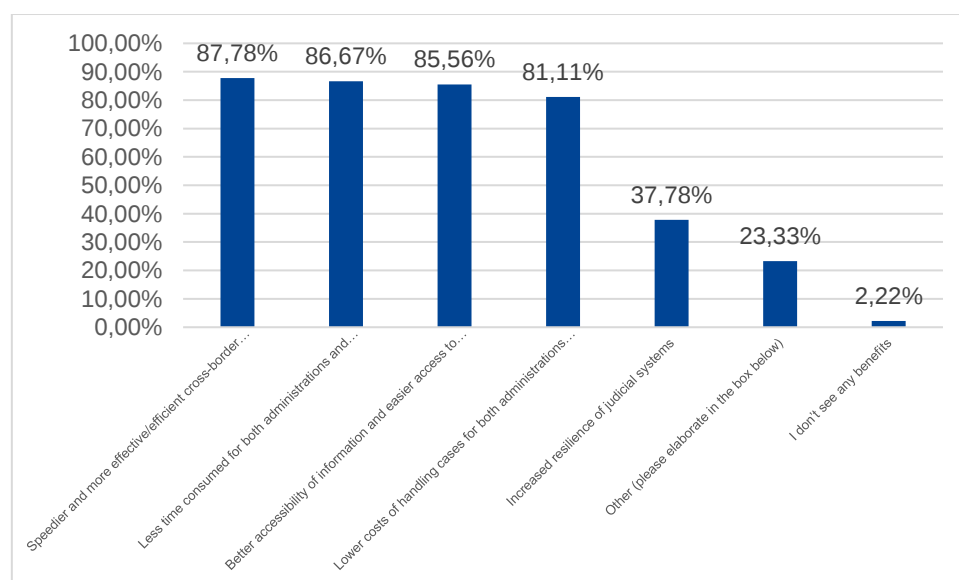
Country	Number of replies
Austria	5
Belgium	7
Bulgaria	4
Croatia	3
Cyprus	1
Czechia	2
Estonia	1
Finland	1
France	5
Germany	11
Greece	2
Hungary	1
Ireland	1
Italy	6
Latvia	1
Lithuania	5
Luxembourg	1
Malta	2
Netherlands	2
Poland	3
Portugal	6
Romania	6
Slovakia	2
Slovenia	1
Spain	11
Switzerland	1
United Kingdom	1
Total	92

The analysis below focuses on the main questions that can be analysed from a purely quantitative approach. The feedback received to qualitative, open ended questions is less structured and cannot be subject to the same analysis as the quantitative analysis. The qualitative findings are integrated in the relevant sections of the main body of the report. 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 ($\approx 98\%$), with only very few stakeholders ($\approx 2\%$) indicating that they 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 ($\approx 88\%$), cause less time to be consumed for both administrations and citizens or businesses ($\approx 87\%$), that it will lead to better accessibility of information and easier access to judicial procedures ($\approx 86\%$), and to lower costs of handling cases both for administrations and citizens/businesses ($\approx 81\%$).

A minority of stakeholders believe that it will increase the resilience of judicial systems ($\approx 38\%$) or lead to any other type of benefit.

Figure 9: Question 2 What would be, in your view, the benefits of the digitalisation of EU cross-border?

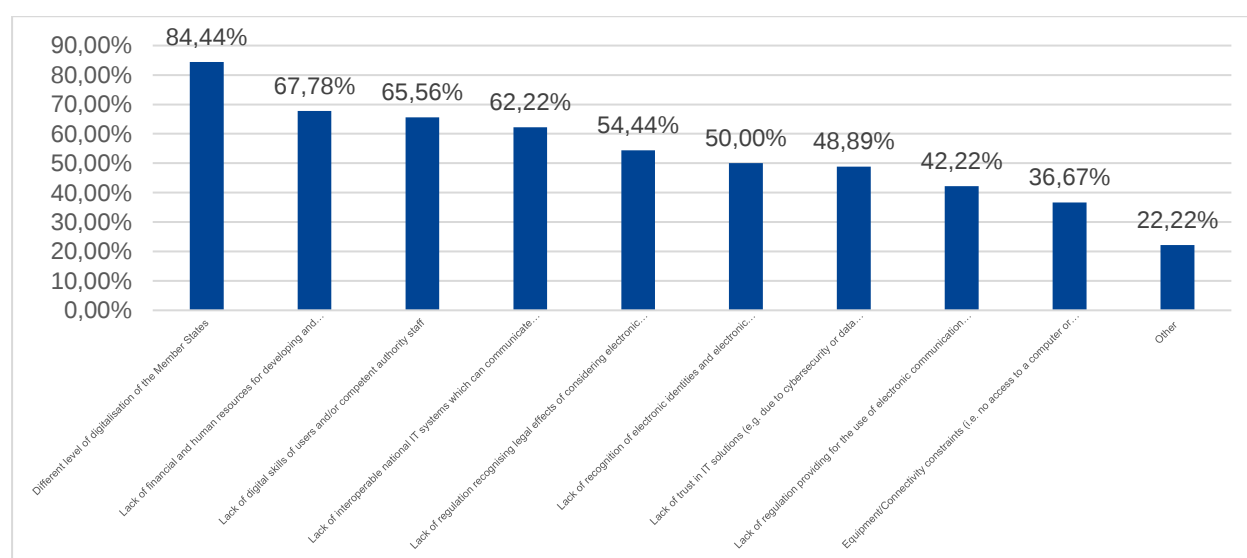


N=90

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 are the different level of digitalisation of the Member States ($\approx 84\%$), followed by the lack of financial and human resources for developing and maintaining IT systems ($\approx 68\%$), the lack of digital skills of users and/or competent authority staff ($\approx 65\%$), lack of interoperable national IT systems which can communicate with each other ($\approx 62\%$), the lack of regulation recognising legal effects of electronic evidence ($\approx 54\%$), and the lack of recognition of electronic identities and electronic signatures/seals between Member States (50%).

Figure 10: What do you consider as key barriers to the digitalisation of cross-border judicial cooperation?



N=90

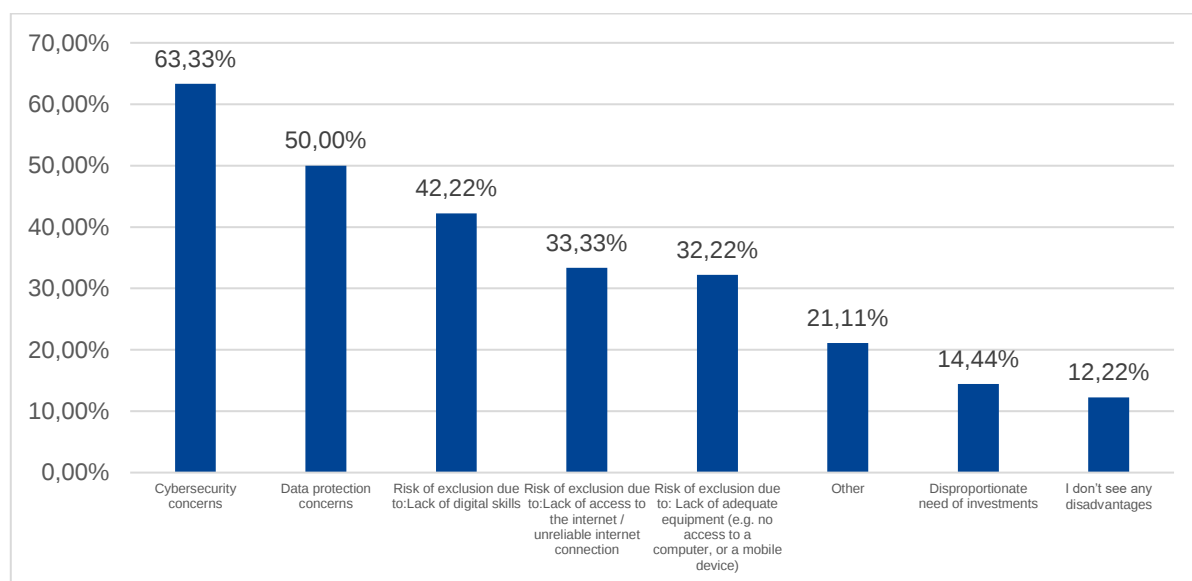
Disadvantages of the digitalisation of EU cross-border judicial procedures

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, $\approx 63\%$ of the stakeholders express cybersecurity concerns. Data protection is a concern for 50% of the respondents, and so is the risk of exclusion due to different factors,

including lack of digital skills ($\approx 42\%$), lack of access to the internet/unreliable internet connection ($\approx 33\%$) or due to lack of adequate equipment ($\approx 32\%$).

Figure 11: Disadvantages of the digitalisation of EU cross-border judicial procedures

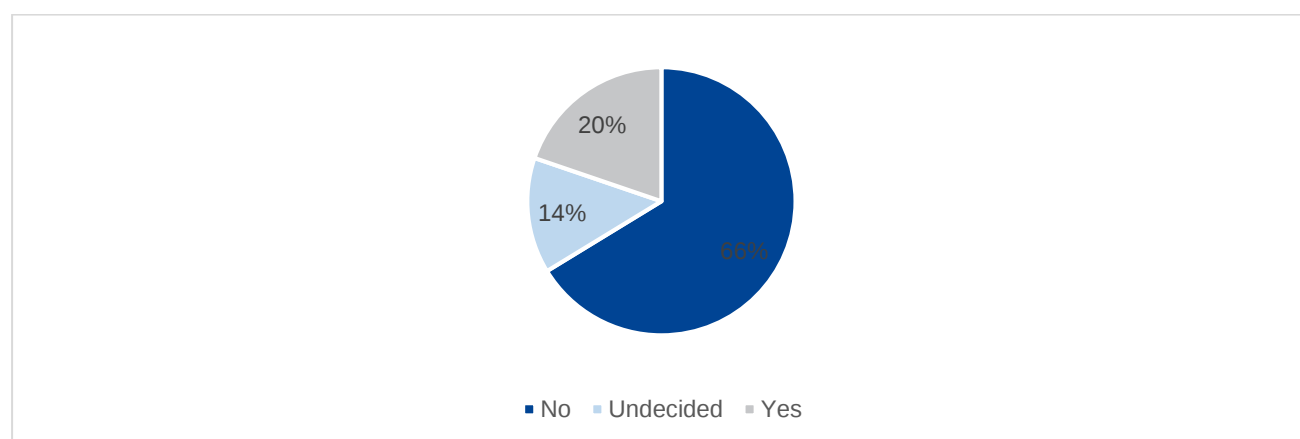


$N=90$

Right to a fair trial and defence

More than two thirds ($\approx 66\%$) of the stakeholders do not see in the digitalisation of cross-border judicial cooperation a threat to the right to a fair trial and defence rights. A fifth of the respondents ($\approx 20\%$) perceive a threat to these rights.

Figure 12: Question 5: Could digitalisation of cross-border judicial cooperation adversely affect the right to a fair trial and defence rights?



$N=86$

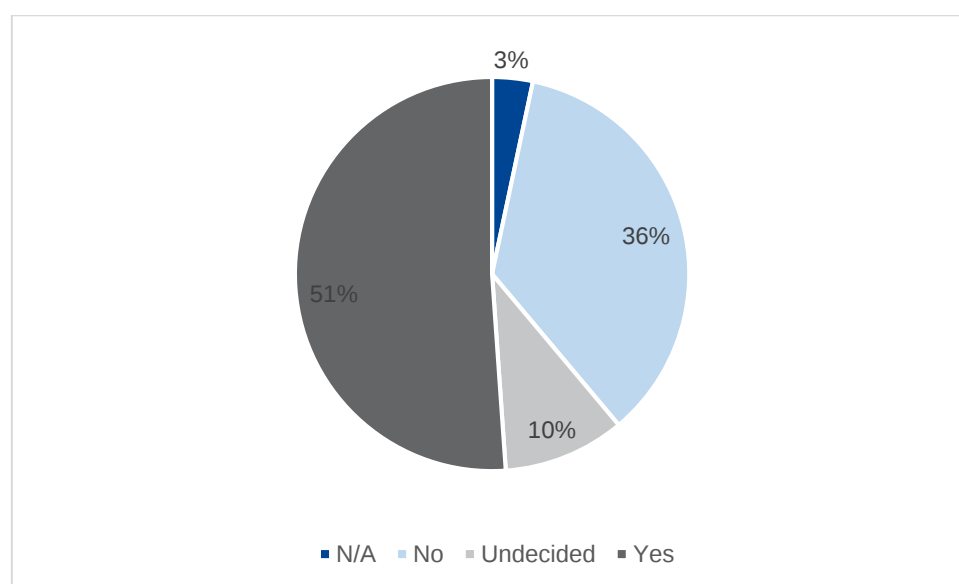
EU cross-border judicial cooperation – areas where digitalisation could be prioritised Respondents were asked to provide an

open-ended answer to legal instruments or areas where digitalisation of cross border judicial cooperation could be prioritised. 62 respondents provided answers with a varying degree of detail. For 6 of the respondents, all forms of cooperation should be prioritised, and for 3 none of them. Civil and family law procedures (11) are the most mentioned area where digitalisation could be implemented, followed by criminal, which is mentioned as an area as a whole 6 times. The European Arrest Warrant is mentioned by 6 respondents, cooperation in relation to terrorism twice. The sharing of evidence is mentioned by 8 respondents, and digitalisation of mutual recognition instruments is mentioned by 6 respondents.

Risk of exclusion of individuals and businesses, including SMEs

A majority (≈51%) of the respondents to the question below identify that digitalisation of cross-border judicial cooperation could exclude individual and businesses, including SMEs.

Figure 13: Question 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)?



N=87

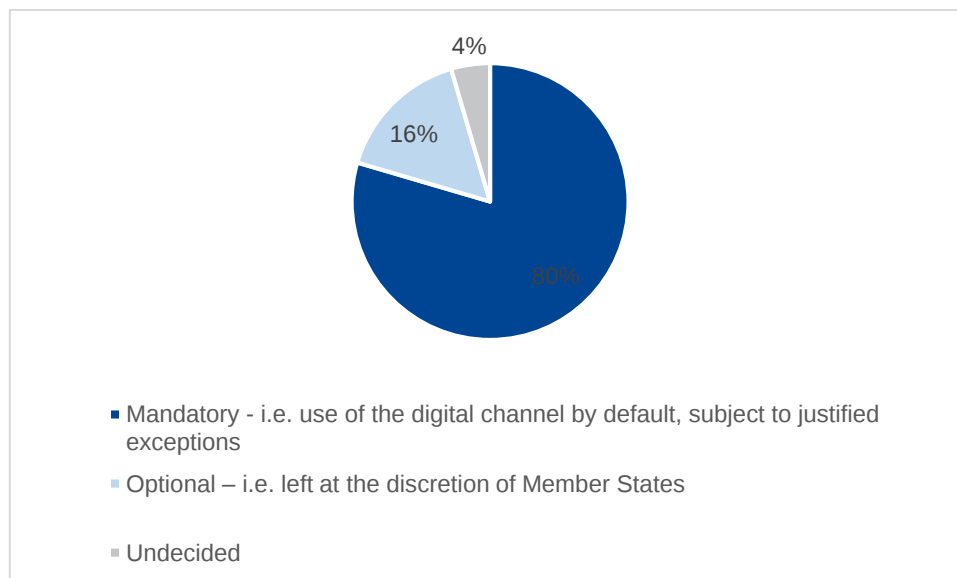
Respondents were asked further questions on other challenges that should be considered during the transition to digitalisation of cross-border judicial cooperation. 57 respondents provided open-ended responses. The most frequently mentioned challenge (13 respondents) was the need to secure harmonised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

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 ≈16% that would prefer it to be optional. Support is lower among public authorities, as only ≈68% of them would like to have mandatory digitalisation for ≈26% of them that would prefer this to be optional.

Figure 14: Question 8b: Electronic communication of individuals/businesses with the courts and other competent authorities of the Member States should be...

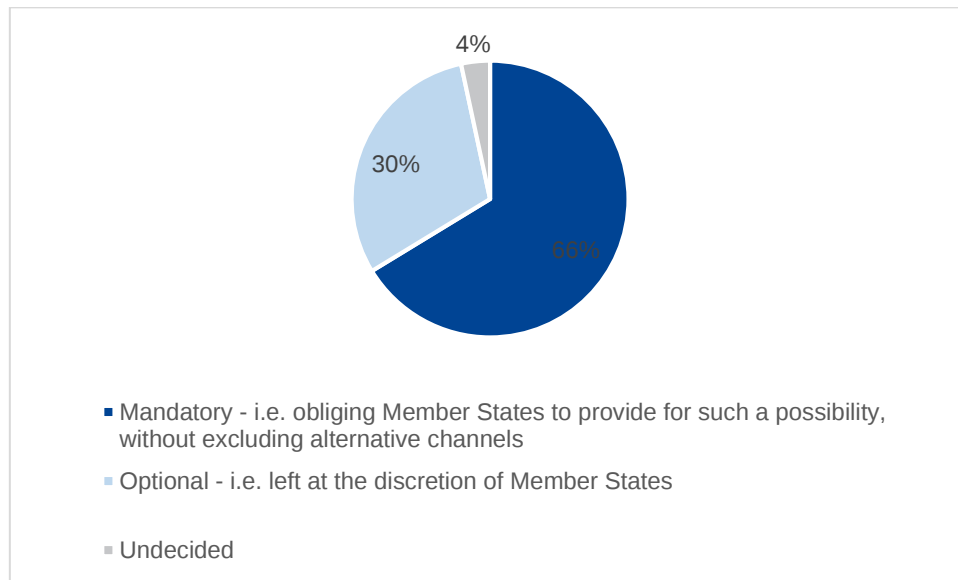


N=88

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

Support for mandatory cross-border electronic communication of individuals and businesses with the courts and other authorities is relatively smaller, but majoritarian, with two thirds (≈66%) of the respondents support this option.

Figure 15: Question 8b: Electronic communication of individuals/businesses with the courts and other competent authorities of the Member States should be...

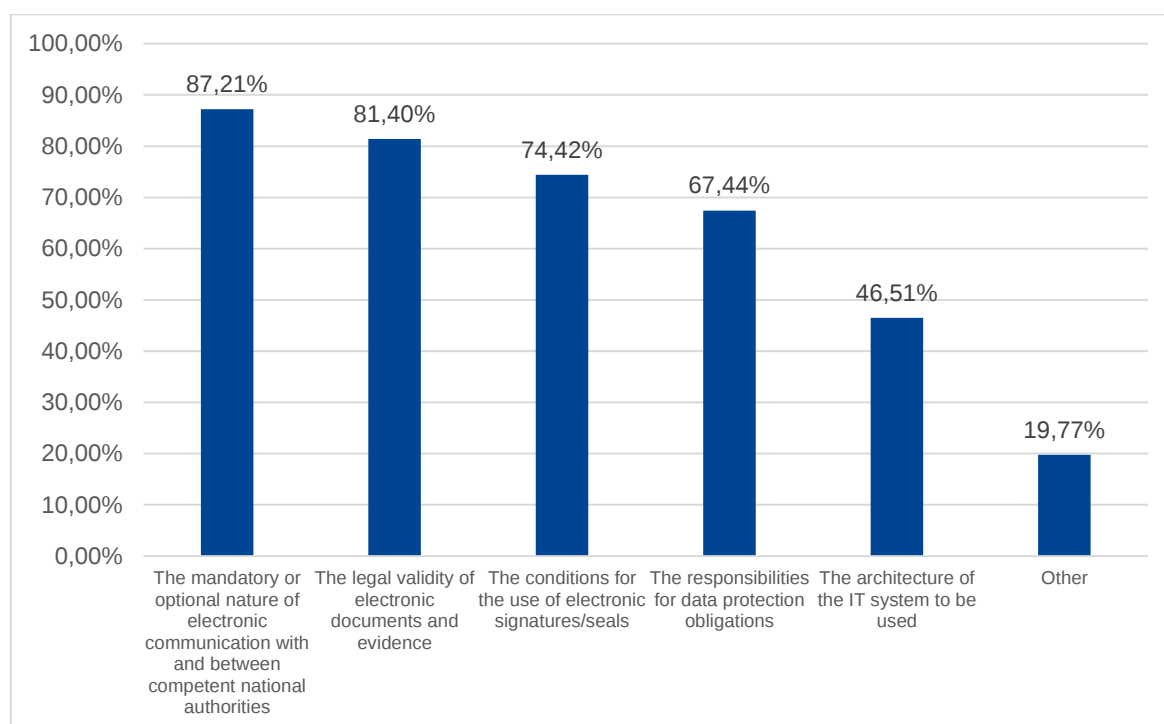


N=90

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

A majority of the stakeholders support for the regulation of four aspects of digitalisation of cross-border judicial cooperation to be regulated in a new EU legal instrument, namely, the nature of electronic communication with and between competent national authorities, the legal validity of electronic documents, the conditions for the use of electronic signatures & seals, and the responsibilities for data protection obligations.. A large majority of consulted stakeholders ($\approx 87\%$) 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 four fifth of the respondents ($\approx 81\%$). The regulation of the conditions for the use of electronic signature/seals ($\approx 74\%$) and the responsibilities for data protection obligations ($\approx 67\%$) also enjoy wide support.

Figure 16: Question 9: In case it is decided to propose a new EU legal instrument, what aspects of digitalisation should it regulate?



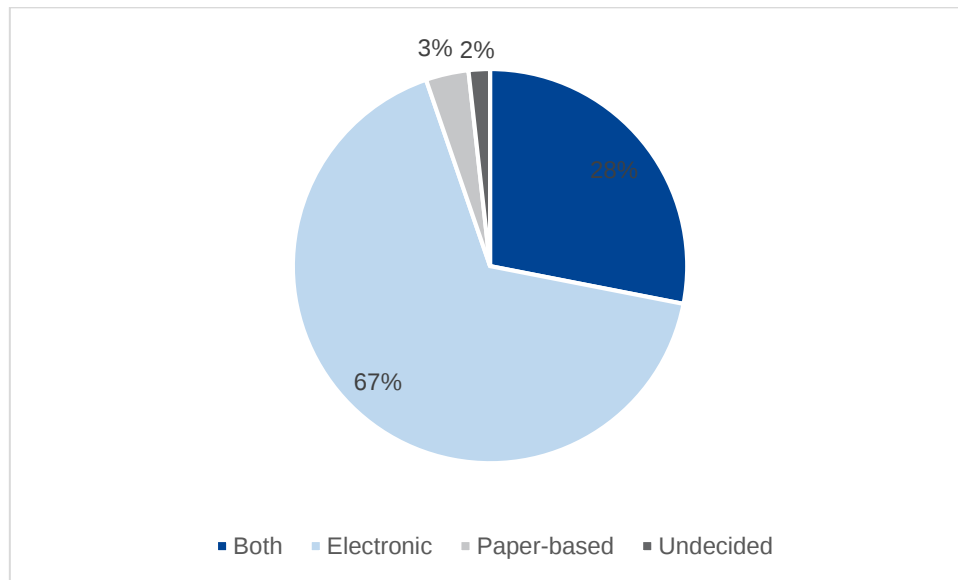
N=89

Most adequate legal channel for communication between authorities across borders

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 think that the combination of paper-based and electronic communication is preferred. Therefore, 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 total number of respondents for this question was lower than for other questions, as only 57 respondents provided an answer.

Figure 17: Question 11: Which communication channel do you think is most appropriate for communication between judicial and other competent authorities across borders?



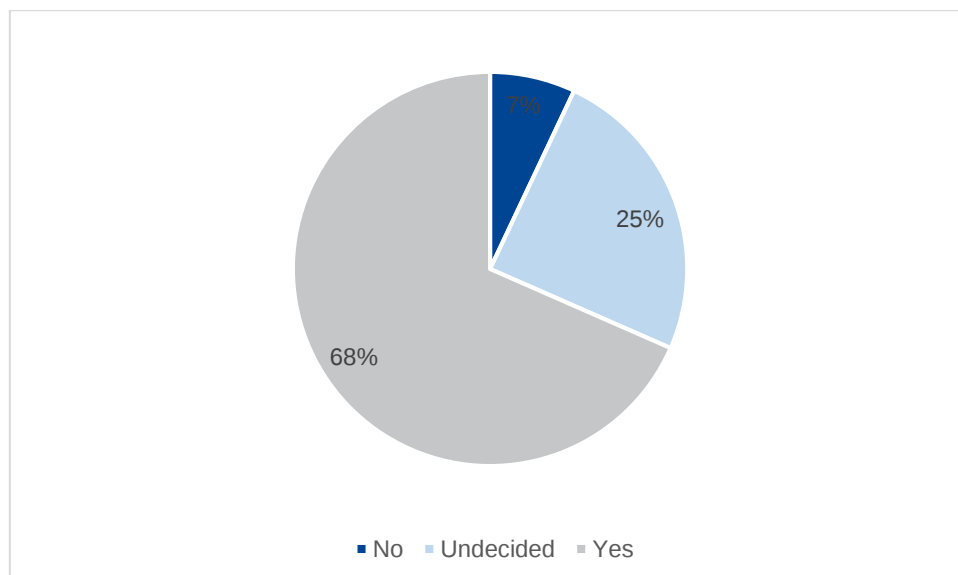
N=57

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 ($\approx 68\%$).

The total number of respondents for this question was lower than for other questions, as only 57 respondents provided an answer.

Figure 18: Question 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?



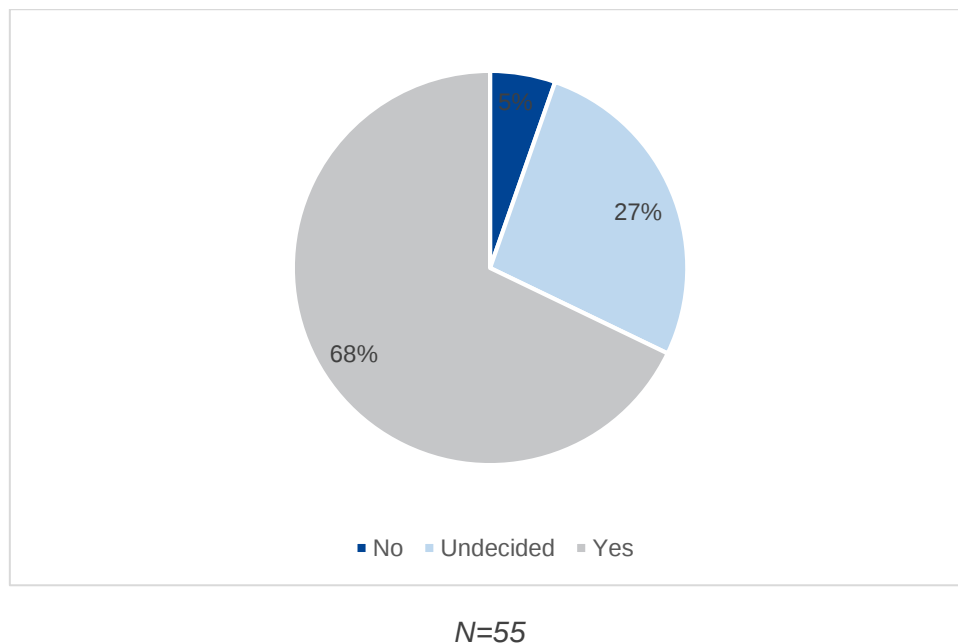
N=57

Benefits of from an EU-developed IT solution

Roughly two-thirds of the respondents to the question below indicate that they would directly benefit from an 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.

The total number of respondents for this question was lower than for other questions, as only 55 respondents provided an answer.

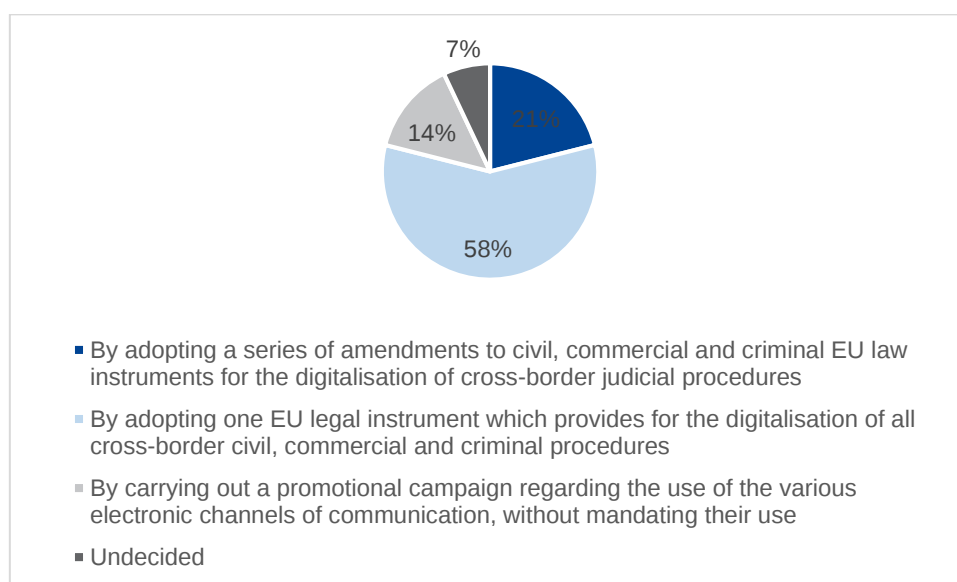
Figure 19: Question 13: In the context of a possible transition to an electronic channel of communication



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

A majority of the respondents (≈58%) 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. Over a fifth (≈21%) of the respondents are in favour of 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. 35 (≈38%) respondents of the OPC did not answer to this specific question.

Figure 20: Question 14: What would be the best way to achieve full digitalisation of cross-border judicial procedures at the European level?



N=57

Annex 4. LIST OF ANALYSED EU JUDICIAL COOPERATION INSTRUMENTS

Instruments in the area of judicial cooperation in civil and commercial matters

- (1) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- (2) Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters
- (3) Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC)
- (4) Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
- (5) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility
- (6) Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
- (7) Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
- (8) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
- (9) Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
- (10) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)
- (11) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
- (12) Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
- (13) 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
- (14) Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation
- (15) Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession
- (16) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)

(17) Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters

(18) Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

(19) Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings

(20) Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

(21) Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

(22) Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

(23) Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)

(24) 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)

(25) 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)

Instruments in the area of judicial cooperation in criminal matters

(26) 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

(27) Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union

(28) Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union

(29) 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 Member States of the European Union

(30) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

(31) Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

(32) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

- (33) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
- (34) Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
- (35) Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders
- (36) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
- (37) Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
- (38) 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 absence of the person concerned at the trial
- (39) Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention
- (40) Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings
- (41) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
- (42) 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
- (43) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
- (44) Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders
- (45) Proposal for a Regulation (EU) on European Production and Preservation Orders for electronic evidence in criminal matters

Annex 5. LIST OF CONSULTED STAKEHOLDERS

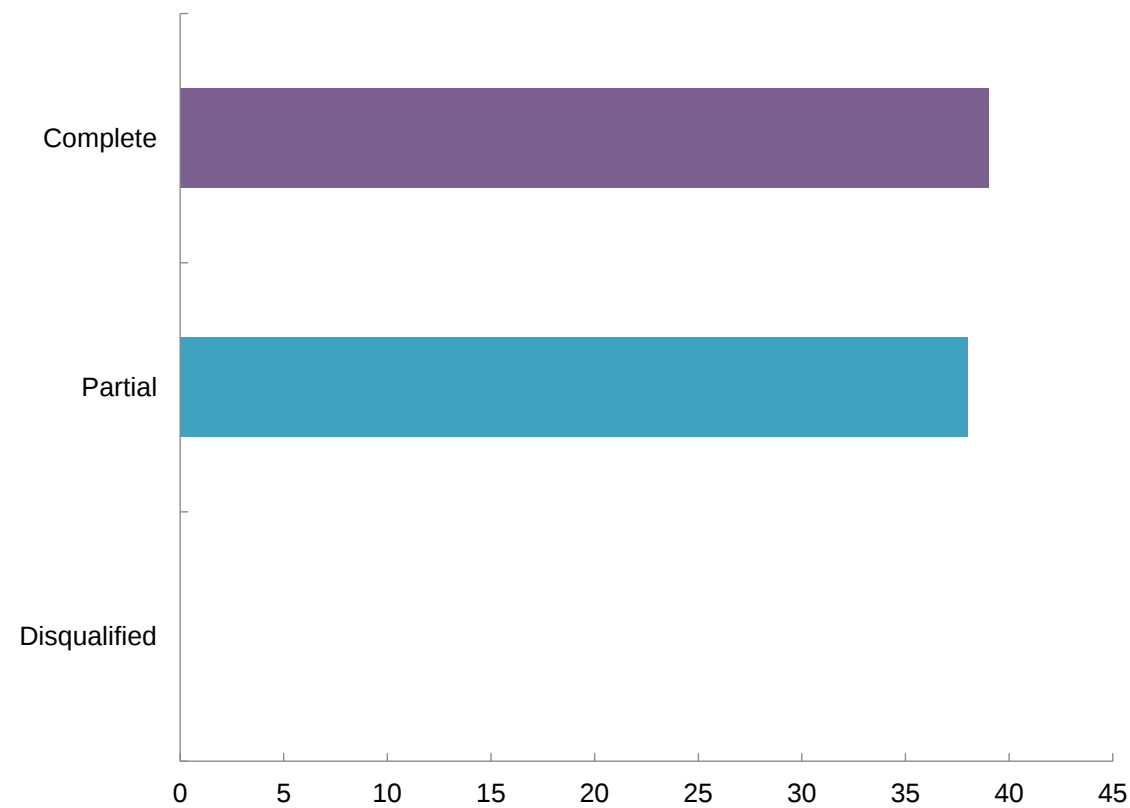
Participants of the EU-level focus group (4 May 2021)

1. Representative of Eurojust
2. Representative of European Judicial Network in criminal matters (EJN)
3. Representative of European Judicial Network in civil matters (EJN)
4. Representative of EU-Lisa
5. Representative of EU-Lisa
6. Representative of EU-Lisa
7. Representative of FRA
8. Representative of the e-CODEX consortium
9. Representative of the E-Evidence group
10. Representative of the E-Evidence group
11. Representative of the Victim's right platform
12. Representative of the European Consumer Organisation (BEUC)
13. Representative of the Council of the Notaries of the European Union (CNUE)
14. Representative of the Council of the Notaries of the European Union (CNUE)
15. Representative of the European Criminal Bar Association
16. Representative of the Council of Bars and Law Societies of Europe (CCBE)
17. Representative of the European Bailiffs' Foundation (EUBF)
18. Representative of the Hague Conference on Private International Law (HCCH)
19. Representative of the European Networks of Councils for the Judiciary (RECJ)
20. Representative of the European Union of Judicial Officers (UEHJ)
21. Representative of Terre des Hommes

Report for QUESTIONNAIRE FOR NATIONAL STAKEHOLDERS - DIGITALISATION INITIATIVE

QUESTIONNAIRE FOR NATIONAL STAKEHOLDERS - DIGITALISATION INITIATIVE

Response Statistics



	Count	Percent
Complete	39	50.6
Partial	38	49.4

Totals	77	100
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The barriers most often identified as highly relevant in civil and commercial law were related to lack of interoperability, be it Lack of cross-border interoperability: Domestic IT solutions may not be designed for cross-border exchanges of data (61%) and lack of interoperability at international level (e.g. with the IT systems of the courts of other Member States) (58%). Lack of trust in the judicial system of another country (e.g. insufficient safeguards to guarantee the same standards of procedural rights or identification of parties f or video conferencing purposes) was the fact was the barrier identified most often as not relevant (27%), followed by the potential barrier that National legislation may prevent the use of videoconference or other distance communication technology f or the participation of parties to oral hearings in crossborder proceedings (25%)

Annex 6. QUANTITATIVE ANALYSIS OF THE NATIONAL-LEVEL ONLINE SURVEY

1. Current situation

6.What are the key barriers that hamper the use of digital solutions in the communication between the competent authorities of Member States and between those authorities and parties to the proceedings (e.g. individuals, businesses etc.) in civil/commercial law EU cross-border proceedings? Please tick the relevant boxes in the table below according to whether the barrier is: highly relevant; relevant to a limited extent; not that relevant.

	Highly relevant		Relevant to a limited extent		Not relevant		Undecided/I don't know		Total Checks
	Checks	Row Check %	Checks	Row Check %	Checks	Row Check %	Checks	Row Check %	Checks
Voluntary participation: Member States are free to decide whether they wish to use digital means for cross-border	25	40.3%	29	46.8%	2	3.2%	6	9.7%	62

communication (e.g. as it is the case for the e-CODEX tool).									
The legal validity and admissibility of documents transmitted electronically in another Member State may be called into question.	28	45.9%	21	34.4%	7	11.5%	5	8.2%	61
The electronic signatures/seals used by the issuing Member State may not be recognized by the receiving Member State.	32	52.5%	18	29.5%	9	14.8%	2	3.3%	61
Lack of cross-border interoperability: Domestic IT solutions may not be designed for cross-border	38	61.3%	15	24.2%	4	6.5%	5	8.1%	62

exchanges of data.									
Lack of interoperability at international level (e.g. with the IT systems of the courts of other Member States).	36	58.1%	16	25.8%	4	6.5%	6	9.7%	62
Different level of digitalisation across Member States.	34	55.7%	19	31.1%	4	6.6%	4	6.6%	61
Lack of IT equipment at national level (e.g. limited court rooms for the use of video-conference).	26	42.6%	18	29.5%	14	23%	3	4.9%	61
Insufficient guarantees of security (e.g. information transmitted by electronic means is not	25	41.7%	19	31.7%	11	18.3%	5	8.3%	60

considered secure).									
National legislation may prevent Member States from using digital means of communication by the judiciary.	23	38.3%	19	31.7%	13	21.7%	5	8.3%	60
National legislation may prevent the use of videoconference or other distance communication technology for the participation of parties to oral hearings in cross-border proceedings.	22	36.1%	19	31.1%	15	24.6%	5	8.2%	61
Limitation on type of evidence that can be transmitted electronically (e.	23	38.3%	19	31.7%	9	15%	9	15%	60

g. DNA, blood sample)									
Lack of IT skills of legal, judicial and other professionals involved.	23	37.7%	26	42.6%	9	14.8%	3	4.9%	61
Lack of trust in the judicial system of another country (e.g. insufficient safeguards to guarantee the same standards of procedural rights or identification of parties for video conferencing purposes).	14	23.3%	22	36.7%	16	26.7%	8	13.3%	60
Lack of information on the legal system, procedure and rights of another Member State.	19	31.7%	23	38.3%	9	15%	9	15%	60

Linguistic barriers.	21	35%	25	41.7%	11	18.3%	3	5%	60
Lack of electronic payment of court fees	17	28.3%	19	31.7%	11	18.3%	13	21.7%	60
Total Checks	406		327		148		91		972
% of Total Checks	41.8%		33.6%		15.2%		9.4%		100%

The key barriers to the use of digital solutions in the communication between the competent authorities of member States and between those authorities to the proceeding parties in criminal law were the lack of cross-border interoperability, as domestic IT solutions may not be designed for cross-border exchanges of data (53%), following by the different level of digitalization across Member States (49%) and the lack of interoperability at international level (48%).

8.What are the key barriers that hamper the use of digital solutions in the communication between the competent authorities of Member States and between those authorities and parties to the proceedings (e.g. individuals, businesses etc.) in criminal law EU cross-border proceedings? Please tick the relevant boxes in the table below according to whether the barrier is: highly relevant; relevant to a limited extent; not that relevant.

	Highly relevant		Relevant to a limited extent		Not relevant		Undecided/I don't know		Total Checks
	Checks	Row Check %	Checks	Row Check %	Checks	Row Check %	Checks	Row Check %	Checks
Voluntary participation: Member States are free to decide whether they wish to use digital means for cross-border communication (e.g. as it is the case for the e-CODEX tool).	26	42.6%	19	31.1%	4	6.6%	12	19.7%	61

The legal validity and admissibility of documents transmitted electronically in another Member State may be called into question.	22	36.1%	23	37.7%	5	8.2%	11	18%	61
The electronic signatures/seals used by the issuing Member State may not be recognized by the receiving Member State.	26	42.6%	17	27.9%	8	13.1%	10	16.4%	61
Lack of cross-border interoperability: Domestic IT solutions may not be designed for cross-border exchanges of data.	33	53.2%	14	22.6%	4	6.5%	11	17.7%	62
Lack of interoperability at international	30	48.4%	14	22.6%	4	6.5%	14	22.6%	62

level (e.g. with the IT systems of the courts of other Member States).									
Different level of digitalisation across Member States.	31	49.2%	16	25.4%	5	7.9%	11	17.5%	63
Lack of IT equipment at national level (e.g. limited court rooms for the use of video-conference).	18	29.5%	18	29.5%	15	24.6%	10	16.4%	61
Insufficient guarantees of security (e.g. information transmitted by electronic means is not considered secure).	23	37.7%	12	19.7%	12	19.7%	14	23%	61
National legislation may prevent Member	24	40%	12	20%	11	18.3%	13	21.7%	60

States from using digital means of communication by the judiciary.									
National legislation may prevent the use of videoconference or other distance communication technology for the participation of parties to oral hearings in cross-border proceedings.	18	29.5%	24	39.3%	9	14.8%	10	16.4%	61
Limitation on type of evidence that can be transmitted electronically (e. g. DNA, blood sample)	22	35.5%	20	32.3%	6	9.7%	14	22.6%	62
Lack of IT skills of legal, judicial and other	19	30.6%	23	37.1%	10	16.1%	10	16.1%	62

professionals involved.									
Lack of trust in the judicial system of another country (e.g. insufficient safeguards to guarantee the same standards of procedural rights or identification of parties for video conferencing purposes).	12	19.7%	21	34.4%	15	24.6%	13	21.3%	61
Lack of information on the legal system, procedure and rights of another Member State.	16	25.8%	13	21%	20	32.3%	13	21%	62
Linguistic barriers.	14	23.3%	23	38.3%	12	20%	11	18.3%	60
Lack of electronic	11	18%	19	31.1%	11	18%	20	32.8%	61

payment of court fees									
Total Checks	345		288		151		197		981
% of Total Checks	35.2%		29.4%		15.4%		20.1%		100%

9. Other reasons, please explain in the box below:

ResponseID	Response
50	--
68	The biggest barrier to the development of IT technologies in Croatia are laws and CEO persons of institutions.
164	
325	I do not practice criminal law so I cannot answer any of your questions.
440	No
467	no other reasons known
503	At the moment we have no specific data available on the level of relevance of the different possible barriers mentioned in civil, commercial, or criminal law. We consider the following as key barriers: X Different level of digitalisation of the Member States 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

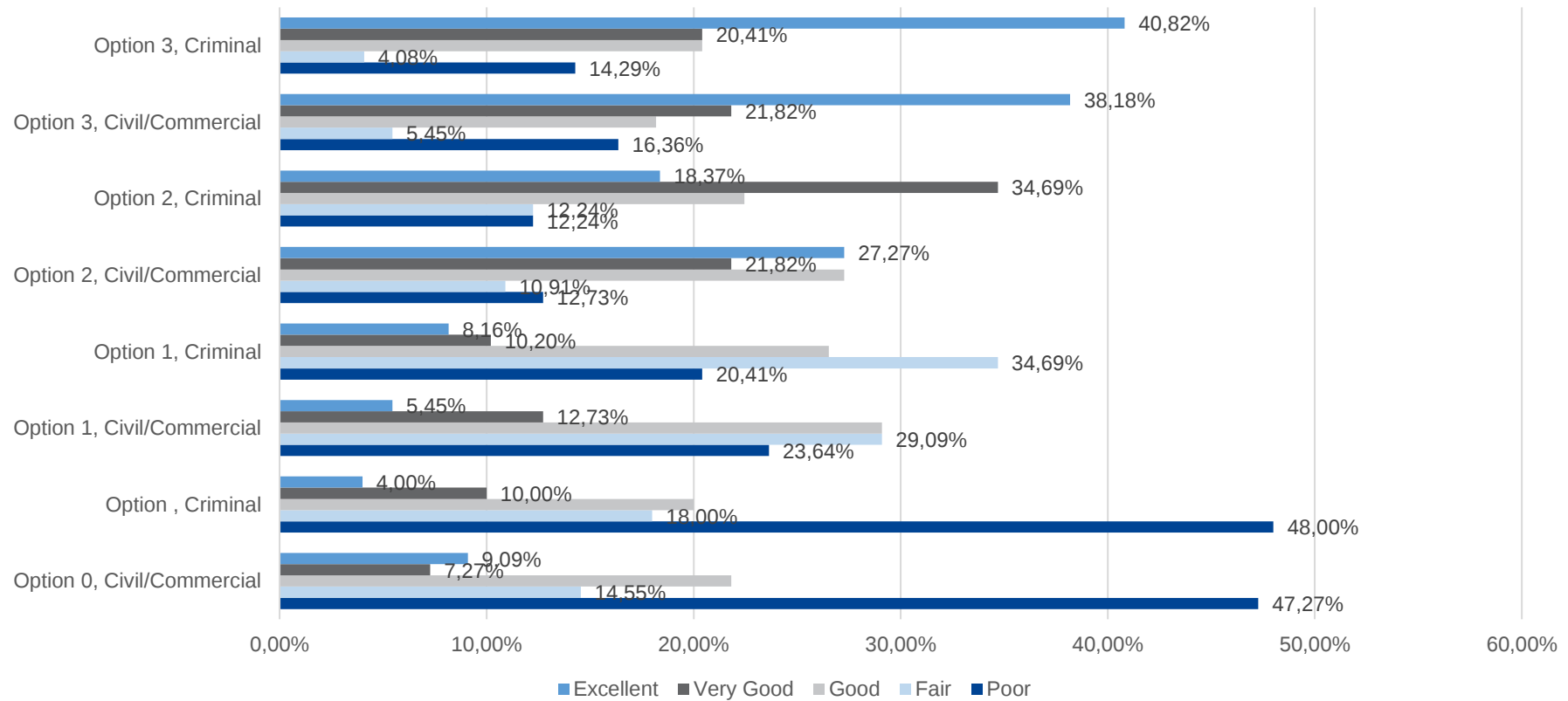
	effects of considering electronic evidence admissible under national law (e.g. if there is a requirement under national law for an original paper document, when a scanned electronic version is more easily available) X Lack of recognition of electronic identities and electronic signatures/seals between Member States X Lack of interoperable national IT systems which can communicate with each other
516	-
535	no experience in criminal law
555	I never handled criminal cases as a judge
563	The absence of harmonisation of the electronic signature in the cross-border cooperation, lack of IT staff and the staff for making requests for funding from the EU schemes etc.
567	See supra 7.
578	Aucun élément à communiquer.

2. Policy options

10. Please indicate in the table below your preferred scenario for the cross-border communication between competent authorities of Member States in the areas of civil/commercial and criminal law. Please rate each option below according to a scale 1 to 5 where: 1 = Poor. 2 = Fair. 3 = Good. 4 = Very Good. 5 = Excellent.

The graph below shows that a large minority of respondents regard Policy Option 0 as poor (48% for criminal law, 47 for civil/commercial law) whereas a sizeable minority regards Policy Option 3 as excellent (41% for criminal law, 38% civil/commercial law).

Preferred scenario for each policy option (N= 55 Civil/commercial, N=49 - 50 Criminal)



11.Explain the reason of your preferred option(s) in the box below:

Response ID	Response
33	If there is no mandatory use of digital channel, the measures wouldn't have much effect.
50	Availability of tools should be ensured, as competent authorities may choose when/ if to use it.
76	electronic by default
82	Bolja digitalizacija.
86	Voluntary use represents a risk in using such communication do to the fact of uncertainty of acceptance of the preferred digital communication and form by other states. Us such, could lead to avoidance of it in general, more so if member states accept different modes of digital use, what obliges more actions to even know the concrete legislation and modes of use by the relevant member state.
112	I've got nothing else to add.
154	Member States must use secure electronic channel.

164	The best under frame of reality.
166	I am a professional in civil law so my answers are only valid for civil law as I don't have too much experience in criminal law.
192	A legal basis for the use of digital communication in judicial procedures must be prescribed on EU and national levels. Judicial procedures are highly regulated by national law, especially criminal proceedings, and every action in said procedures of a court must have a legal basis. The use of digital technologies should be obligatory because judicial systems are often very static and resist change.
217	In practice, it has been shown that when something is not prescribed by legislation, it is used much less often.
240	In my opinion only the legislative options should have an positive result.
282	Digital channels represents the best option to have a swift execution of the EIO/MLAs in criminal matters and easier way of communication
287	Option 3, which is the mandatory use of digital channel, obliging all the Member States to secure an electronic channel for communication between each other, is the preferred scenario. In this way, all the Member States will be required to establish

	the same level of technical support and will have to use the same channel for cooperation. This means that the standard of the electronic channel would be set by a Regulation and as such all member states would be bound by it. So no one could claim that a system is lacking of technical/electronic support. Also, by making it mandatory you avoid and eliminate the unwillingness of using, maybe a voluntary or optional platform. Thus you secure justice and access to justice for everyone.
291	I would always prefer optional over mandatory solutions.
292	electronic by default
294	I don't have some specific explanation, except all of these procedures must be done to make an excellent security of digital procedures.
304	To avoid any possibility for a person found guilty to escape justice Bern served
328	Optional use of digital channel is the best way for acceptance.
330	Unless Member States are forced to do so and have a good working infrastructure for this cooperation, users will suffer from lack of cross-border access and no Member State may necessarily feel the user problem as their own

	problem (but as a problem of another state's citizen).
350	xxx
359	Mandatory use of digital channel between competent authorities of MS will speed up the process of digitalization, especially in the MS where the administration is not so well organized and where the reforms and changes are slowly put in practice.
382	1
440	establishing a secure electronic channel for communication and exchange of information, data and documents between each other which must use will increase trust between Member States authorities
442	1
452	3333
464	Option 1 - if existing canals cannot be used, there is a need to establish new, safer ones. Option 2 - the Courts has the possibility to use it or not, also, it is not necessary to create a new tool, if the courts will not use it.

467	Option 2 and 3 provide more legal certainty compared to the other options given.
476	fgkuhzloipá
477	zukunftzk
487	It is not necessary to make the use of digital channels mandatory. If there is a reliable, secure and easy to use possibility to communicate across borders and send requests and evidence in digital form, this will be used by judicial and law enforcement authorities. Communicating on paper must always be possible because sometimes electronic communication might not be possible or even take more time. There are always exceptional cases which require flexibility. Therefore all forms of communication have to be available.
492	The use of a digital channel is more secure and may unify the cooperation in practice. However, Member States should have the liberty to chose when to use this option or not.
493	I doubt that a solution that does not require the establishment of a digital channel will be relevant in practice. An obligation to use such a channel might not be justified in all cases, but is worth being considered. Actual technical availability is the main predondition in my opinion.

496	For a secure electronic channel is most important issues.
500	Legal professionals do not need obligatory instruments in this field.
502	For processing of an application for cross border legal aid we prefer digital communication.
503	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.
509	Optional use of digital channel, there should always be alternatives.
510	Due to the fact that reliable solutions already exist, it is necessary to do "PR" on them continuously. It

	can be assumed that Member States will voluntarily opt for the existing solution, as building new systems would be uneconomical and unnecessary.
516	Option 1 – if existing canals cannot be used, there is a need to establish new, safe ones. Option 2 – the Courts has the opportunity to choose (voluntarily) whether to use electronic channel for communication between the other authorities.
521	reason is good
528	dobrovoljna uporaba digitalnih kanalov država članica
529	Option 2 for criminal matters is considered to be optimal. The practice is very diverse, therefore Option 3 with mandatory use of digital channel and justified exceptions could be problematic, unless the exception did not stipulate that digital channel would not be used if this is not possible, given the circumstances. For civil/commercial law matters: We support the idea of obliging Member States to maintain such digital channels and to promote their use. At the same time, we are aware that allowing only digital communication could be a burden on some groups (especially individuals) and it would also require extensive changes in national legislation. In our opinion, it is necessary to provide the possibility of digital communication while maintaining alternative channels.

530	It is the best way to speed up cooperation and, at the same time, to be sure about the content of the answers
532	option 2 is the most suitable, on the one hand, to ensure efficiency by imposing on MSs the obligation to make available electronic means of communication to collect evidence, on the other hand, to safeguard the independence of Courts, which should be competent to conduct the procedure in the most appropriate way as the case may be and to decide when and if it is appropriate to use electronic means of or others provided for by national law.
535	optional use is best to start no experience in criminal law
537	The biggest problem for the adaptation of digitalization is the lack of harmonization of law. The classic mistake is being made to start with digitalization instead of answering the question: what are we trying to achieve? That question is a hard one in the EU because it differs per member state. If we're able to answer this question, the next step is to investigate which technical solution is applicable for the process at hand and which technical solution is likely to be adapted by a majority of member states. E.g. the use of eEDES in SoD cases in The Netherlands will never work because bailiffs in The Netherlands are highly digitalized. a system2system and straight trough processing solution is needed. For other member

	states, a user interface from the EC is ideal. But, in SoD the trust question is not answered. even if we manage to make a good technical system, the bailiffs will probably not use it because the business/functional side is not or partially addressed. We have to learn lessons from EAPO; it looks like a good solution but it is hardly used because of the same issues as mentioned above.
538	Option 3 is acceptable only when it will be negotiated in each instrument. Justified exceptions can vary for each instrument.
551	Only the mandatory use of digital channel will make the change and unify the international standards.
553	Efficient legislative solutions respecting the principle of subsidiarity.
555	At the end of the day it must be the judge who decides what or which channel she or he accepts
558	It is important for CA Netherlands that documents can be sent digitally and no longer by post. And digital signing is therefore highly desirable. a file can be started so much faster
559	n/a

561	The unification of practices is necessary and for reasons of legal certainty.
563	The free choice for the practitioners should be the key criterion. If the solutions are good and effective, practitioners will choose the digital means. Even in voluntary system (option 0), there is a need for a legislative solutions (e.g. e-signature) to achieve the trust into the system and the security necessary. It is also important to have legal basis at least for introducing digital tools as well as financial and other support from the EU side. The risk with the option 2 is that a lot of investments may lead to the situation of no/limited use of secure electronic channels, if it would be too complicated, not reliable and user friendly. Since the level of technical means and skills is different in Member States and between Member States (age, financial, legislative, personal resources etc. as the decisive factors), option 3 seems to be very difficult even to consider.
567	Vorangestellt werden darf, dass auch eine Digitalisierung auf europäischer Ebene nur im Rahmen der von den Verträgen eingeräumten Kompetenzen und unter Achtung der Verfahrensautonomie der Mitgliedstaaten erfolgen kann. Überdies ist auf ein verhältnismäßiges Vorgehen, insbesondere bei verpflichtenden Maßnahmen, zu achten. Unter diesen Vorzeichen wäre eine verpflichtende elektronische Kommunikation aber grundsätzlich - unter Berücksichtigung entsprechender Ausnahmen in begründeten Fällen - vorzuziehen. Für den Bereich

	des Strafrechts ist zudem darauf hinzuweisen, dass mangels einer elektronischen Übermittlung gleichzeitig neue Ablehnungsgründe konstituiert werden könnten. In beiden angeführten Alternativen erscheint es wichtig, dass Mitgliedstaaten (bedingungslos) die digitale Übermittlung von Dokumenten als ersuchter Staat akzeptieren. Problematisch wäre es, wenn sich Mitgliedstaaten scheuen, Standards/verbindliche Vorgaben zu akzeptieren. Technische Vorgaben müssen dann im Einzelfall diskutiert werden, was aufwendig ist und zu Verzögerungen führt. Im schlimmsten Fall entsteht eine heterogene Situation, was für den IT-Einsatz die ungünstigste aller Voraussetzungen ist. Im Falle einer freiwilligen Digitalisierung sollte auf die Bedürfnisse des Ausstellungsstaats abgestellt werden. Es kann unterschiedliche Gründe haben (nicht nur technischer Natur, sondern etwa auch solche, die aus der Vertrauenswürdigkeit oder Sensibilität der Daten herrühren), warum dieser auf die digitale Übermittlung eines Ersuchens verzichten will oder der ersuchte Staat die Beantwortung von Ersuchen im digitalen Wege ablehnt. Sofern diesen Gründen nicht Rechnung getragen werden kann, sollte es die Möglichkeit für den Ausstellungsstaat geben, Vorgaben an den ersuchten Staaten zu machen, in welcher Weise die Antwort zu übermitteln ist.
568	Estonia strongly supports the digitalisation of judicial cooperation in civil/commercial and criminal law matters. Cross-border cooperation and information exchange would be simpler and

smoother through efficient digital tools and electronic information exchange. Digital tools would make court proceedings less resource-intensive, which contributes to the efficiency of proceedings and the reduction of costs. In our view, electronic communications between courts, competent authorities and central authorities should be mandatory (in both civil/commercial law matters and criminal law matters). There is no need for exceptions for communication between authorities. However, for individuals with weaker digital capabilities, it is necessary to provide for justified exceptions and sufficient flexibility. Optional use of digital channel will result in many Member States not using it and thus the judicial cooperation does not improve for the Member States who are using digital channels either. This has been the experience of Estonia so far. Access to justice is an important fundamental right which must constantly be improved and ensured, including through making the judicial system more efficient. Digital solutions, including those using artificial intelligence, can help us to improve efficiency and functioning of our justice systems. Thus, digitalisation and the use of new technologies is a way to strengthen judicial cooperation and improve access to justice. In order to enable faster and securer judicial proceedings, to gain a better overview of the state of proceedings and to facilitate cooperation between Member States, digital solutions should domestically be developed simultaneously for the whole life cycle for the judicial proceedings. This means that digitalisation should be pursued not only in relation to court proceedings, but also in

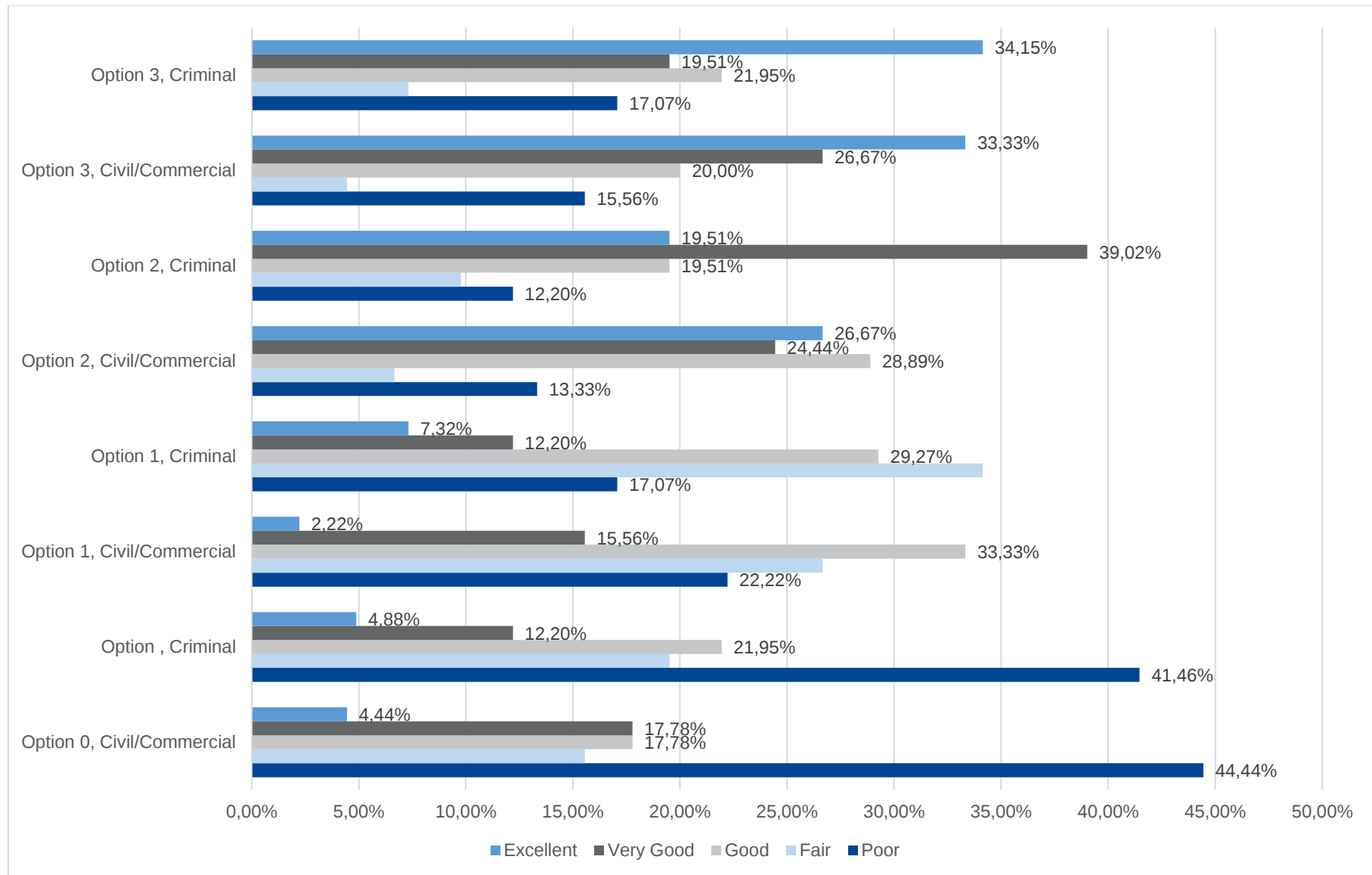
	relation to pre-court proceedings and the enforcement of judgements. Such solutions should, as far as possible, be interoperable with each other.
573	Without obligation, because of different interests and priorities in the Member States there will be no significant advancement or improvement in the field of digitalisation of justice.
578	En matière pénale, il semble indispensable de mettre en place des systèmes de communication électronique/ transmission électronique sécurisés. Rendre leur utilisation obligatoire pourrait cependant être un frein à la coopération pénale, dès lors que les acteurs concernés pourraient ne pas tous être en capacité d'utiliser ces nouveaux outils immédiatement. Une période de transition / adaptation serait nécessaire. Dans ces conditions, l'option 2 apparaît donc la plus adaptée. En matière civile/commerciale, de la même manière le recours à la transmission électronique doit être favorisé mais là aussi un temps d'adaptation et de mise à niveau est nécessaire, justifiant que pendant un temps le système soit obligatoire pour sa mise en place mais son utilisation seulement encouragée. A terme, le système devrait devenir obligatoire sauf exception. La Commission européenne doit donner les moyens aux Etats de passer à cette communication électronique en mettant en place un outil à son niveau qui assure l'interopérabilité des systèmes.

580

Use of digital and IT centralised system should be left at the discretion of Member States since issues may arise at national level with regards to having a distinct Central Body and Receiving/Transmitting Agencies from its National Courts, which use paper based acts and within which every act passes.

12. Please indicate in the table below, where channels of cross-border communication between competent authorities of your country and JHA agencies & EU bodies are already established under the relevant EU instruments, what would be your preferred scenario for such communication? Please rate each option below according to a scale 1 to 5 where: 1 = Poor. 2 = Fair. 3 = Good. 4 = Very Good. 5 = Excellent.

The graph below shows the assessment of the policy options for the question above. Sizeable minorities regard Option 0 as poor and Option 3 as Excellent.



13. Please explain the reason of your preferred option(s) in the box below:

ResponseID	Response
33	If there is no mandatory use of digital channel, the measures wouldn't have much effect.
50	same as above. Communication with agencies could be justified by their supportive role.
76	electronic by default
86	Voluntary use represents a risk in using such communication do to the fact of uncertainty of acceptance of the preferred digital communication and form by other states. Us such, could lead to avoidance of it in general, more so if member states accept different modes of digital use, what obliges more actions to even know the concrete legislation and modes of use by the relevant member state.
164	The best under frame of reality.
192	Same reasons as in Question 11.
240	In my opinion only the legislative options should have an positive result.

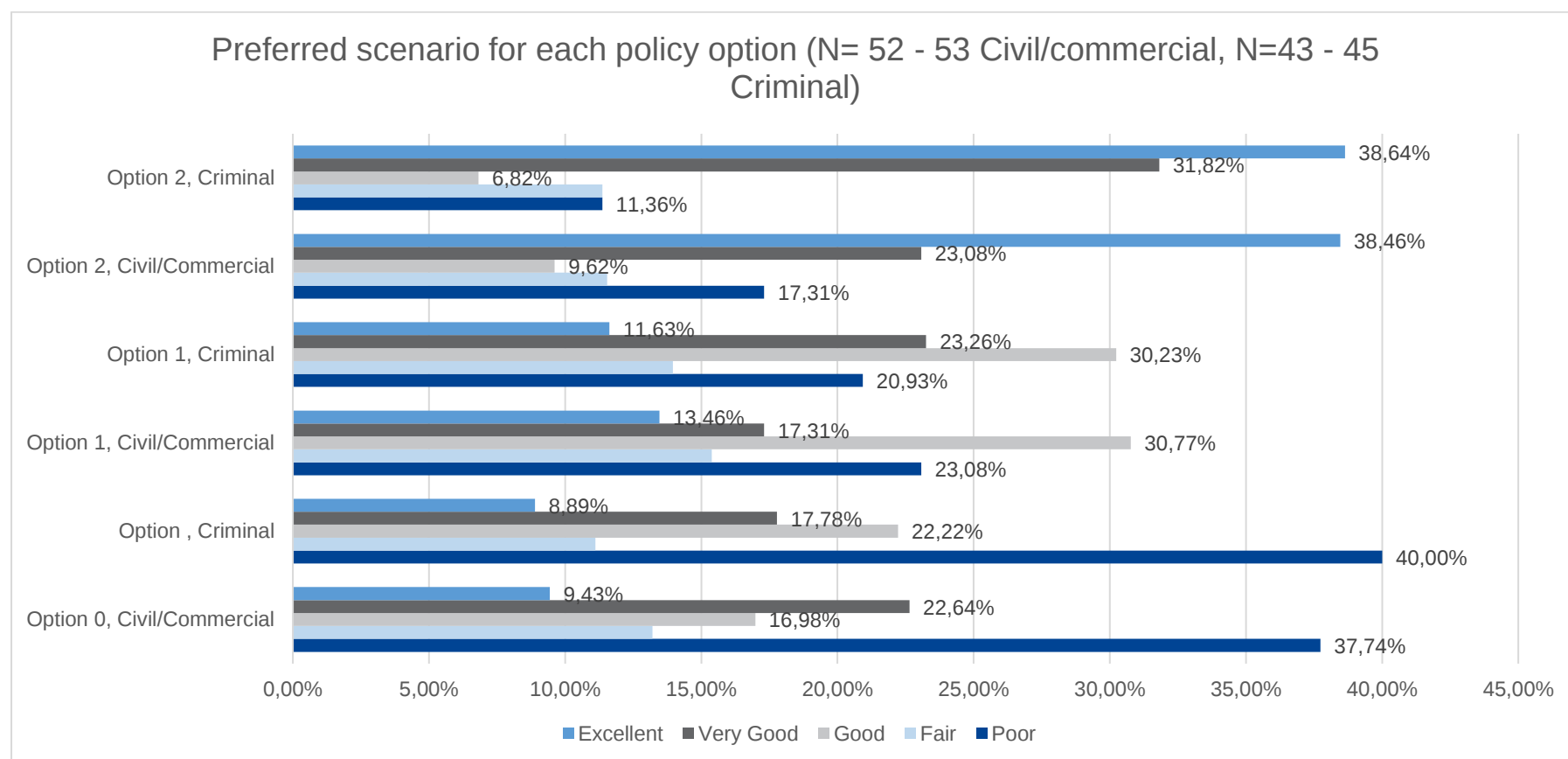
282	We already use the secure channel with Eurojust and classical way of communication with other MS, but digital channels represents the best option
291	s. above
292	eletronic by default
330	Same as in answer 11
350	xxx
382	1
440	Currently There is no above mentioned electronic communication
452	333
467	See 12.
477	utzutztzu
492	The optional use of digital channel may enhance cooperation, speed up transmission/execution of requests and also set up a unified manner of interaction, but also give Member States the opportunity to chose when to use it or alternate with the classical way

500	see above
502	Not relevant in our workfield.
503	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.
510	x
516	electronic by default
521	Reason is good
528	dobrovoljna uporaba digitalnih kanalov država članica
529	Option 2 for criminal matters is considered to be optimal.
530	A legislative regulation is the best way to ensure a liable data transmission in order to use them before the Court
532	I refer to the explanation given in point 11

535	optional use is best to start no experience in criminal law
538	Option 3 is acceptable only when it will be negotiated in each instrument. Justified exceptions can vary for each instrument.
553	EU bodies should be the ones to start and become an example of electronic cross-border communications.
555	I have no specific experience with those existing channels, only with contacts by e-mail
567	See supra 11.
573	As explained above
578	De la même manière, l'établissement de moyens de communication électroniques entre les autorités judiciaires et les agences européennes doit être une priorité mais il pourrait être contreproductif d'en imposer l'utilisation. L'utilisation d'un système de communication électronique devrait être facultative dans un premier temps, puis rendue obligatoire.

14. Please indicate in the table below your preferred scenario for the cross-border communication between competent authorities of Member States and parties to the proceedings (individuals, legal entities, businesses etc.) in the areas of civil/commercial and criminal matters. Please rate each option below according to a scale 1 to 5 where: 1 = Poor. 2 = Fair. 3 = Good. 4 = Very Good. 5 = Excellent.

The graph below shows the assessment by the stakeholders of the options. Large pluralities, between 30% and 40%, regard Option 0 as poor, Option 1 as good and Option 2 as excellent.



15.Please, explain the reason of your preferred option(s) in the box below:

ResponseID	Response
33	Citizens should have the possibility to use electronic means.
50	The interest of the parties should be main factor.
76	electronic by default
86	Voluntary use represents a risk in using such communication do to the fact of uncertainty of acceptance of the preferred digital communication and form by other states. Us such, could lead to avoidance of it in general, more so if member states accept different modes of digital use, what obliges more actions to even know the concrete legislation and modes of use by the relevant member state.
164	The best under Frame of reality.
217	Communication between competent authorities of Member States and parties to the proceedings should be through electronic channels.
240	In my opinion only the legislative options should have an positive result.

282	Legislative option for direct communication at international level will allow us to have a similar procedure as at national level
287	Option 2 and Option 3, by which the Member States are obliging to accept electronic communication via an access point on the European e-Justice portal or via existing portals at national level, allowing participation of parties upon request through distance communication technology, is the preferred scenario. In this way, all the Member States will be required to establish the same level of technical support and will have to use the same channel for cooperation. This means that the standard of the electronic channel would be set by a Regulation and as such all member states would be bound by it. So no one could claim that a system is lacking of technical/electronic support. Also, by making it mandatory you avoid and eliminate the unwillingness of using, maybe a voluntary or optional platform. Thus you secure justice and access to justice for everyone.
291	s. above
292	electronic by default
294	System has to be transparent to the parties as much as it can be, with the exceptions regulated by GDPR regulation.
330	Same as answer to 11

350	xxx
382	1
440	The communication will be faster
442	1
452	33
467	Might have a big impact (effort, costs, ressources) on national systems.
477	htzjzt
487	It would be good to have options for all forms of electronic and non-electronic communication to be able to act with flexibility.
492	Such option may lead to speeding up all proceedings, while ensuring the access to justice and also taking advantage of the benefits of using the technologies, shorten the duration of proceedings and lead to more efficient cooperation between Member States. It is a real challenge connecting parties to a secure channel.
493	Infrastructure is already (partly) in place. However, accessibility of justice must be guaranteed even for citizens without any technical competence or

	equipment, so actual usage needs to be voluntary at least for non-professional parties in legal proceedings.
500	see above
502	Not relevant in our workfield.
503	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.
510	I suppose there will probably be legal barriers, but from an IT perspective, we live in a digital age, and that requires digital solutions for easier and, above all, faster access to justice.
516	electronic by default
521	Reason is good
528	dobrovoljna uporaba digitalnih kanalov država članica
529	It is important to bear in mind that not all individuals are able to communicate electronically. Therefore it is not possible to impose the

	mandatory digital communication in all cases. E. g. in CZ we have so called „data box" which is electronic storage of a special type intended for the delivery of electronic documents between public authorities on the one hand and natural and legal persons on the other. When such a system is established in the EU, we may think about solution under Option 2 and 3 for communication between authorities and individuals. However, still not all individuals are obliged to have a data box. Further it is not acceptable to stipulate that an individual could require oral hearing via videoconference in criminal proceedings. He/she may suggest that, however, the decision is up to the competent authority.
530	to speed up proceedings
532	To ensure the rights of defense and prevent the abuse of fictitious notices that may hamper the exercise of procedural rights, the use of the electronic channel for communication with individuals and private legal entities (not public) shall always depend on their previous authorization and complete information.
535	optional use is best to start no experience in criminal law
537	As stated above; If you don't know what to achieve in a functional perspective it is not a good idea to make technical solutions obligatory. And if with

	portals user interfaces are meant it is certainly not a good idea.
553	Due to the fact that options 2 and 3 are not separated, this would be the best option, since IT tools are interoperable and paper communications are not excluded.
555	Direct mandatory communication between parties and the court would change the way of dealing with cases in a uncontrolled way. It would involve much more staff etc and would be highly inefficient (based on experience in cases where individuals can proceed themselves, like in GDPR cases)
561	It facilitate communications, save costs and speed
563	As regards the criminal law issues, it is difficult to prioritize at the moment. It is unclear what the cross-border means in this scenario. Does it mean the communication in the MLA/EIO situation or does it mean other communication or communication out of the MLA/EIO schemes? In my opinion there is no general answer to the question. Instead the types of actions should be indicated here since there are national and international rules that regulate various issues of cross-border communication between the authorities and parties to proceedings (e.g. involvements of the authorities of the executing state etc.) .

567	Ergänzt wird, dass die Verwendung elektronischer Kommunikationsmittel für Bürger*innen grundsätzlich nur auf freiwilliger Basis vorgesehen werden soll. Es sollte nämlich berücksichtigt werden, dass aus faktischen Gründen, etwa langsame Internetverbindung in ländlichen Regionen, nicht alle Menschen gleichermaßen Zugang zu elektronischen Kommunikationstools haben. Außerdem darf nicht außer Acht gelassen werden, dass es Bürger*innen gibt, für die der Umgang mit neuen Technologien schwierig ist, z.B. weil sie bereits älter und nicht mit diesen Technologien aufgewachsen sind, weil sie zur Gruppe der „schutzwürdigen Erwachsenen“ (vulnerable adults) gehören oder etwa, weil bereits mangels entsprechender finanzieller Ressourcen kein ausreichender Zugang zu Kommunikationstools besteht. Es könnte aber überlegt werden, ob bezüglich bestimmter Gruppen (z.B. „große“ Unternehmen) differenziert werden könnte, ohne diese unverhältnismäßigen Mehrkosten auszusetzen. Zu den Bedenken, die sich bei Verwendung von Videokonferenztechnologien im Strafverfahren in Verbindung mit dem Grundsatz der Unmittelbarkeit ergeben, siehe unten.
568	There should be possibility to treat differently cross-border communication 1) between competent authorities of Member States and 2) with the parties to the proceedings (individuals, legal entities, businesses etc.). Regarding digitalisation, in our view, electronic communication between courts, competent

authorities and central authorities should be mandatory. There is no need for exceptions for communication between authorities. Individuals, legal entities etc. should be able to initiate judicial proceedings by submitting electronic documents and communication from the competent and central authorities to the parties should be electronic by default. In addition, they should also be able to submit documents in court proceedings directly to the court through digital channels and communicate with the court using electronic means. In our view, this should be general rule. In order to be able to initiate proceedings electronically, it should be possible to verify the identity of the applicant digitally. In Estonia, the verification of identity is possible through digital signature related to the universal personal identification code. It is of course essential that digitalisation of cross-border judicial cooperation is implemented in full compliance with fundamental rights, such as rights to the protection of personal data, to a fair trial and to an effective remedy. The right to access justice should be fully respected also for disadvantaged groups and vulnerable people. Individuals with weaker digital capabilities should not be overlooked. They, too, must be guaranteed access to justice and a fair trial, which is why it is necessary to provide for justified exceptions and sufficient flexibility for individuals with weaker digital capabilities. Communication inside a Member State between an individual, legal entity etc. and a competent authority (e.g court) is mainly a domestic matter, meaning that if a Member State decides to maintain traditional means of communication between competent

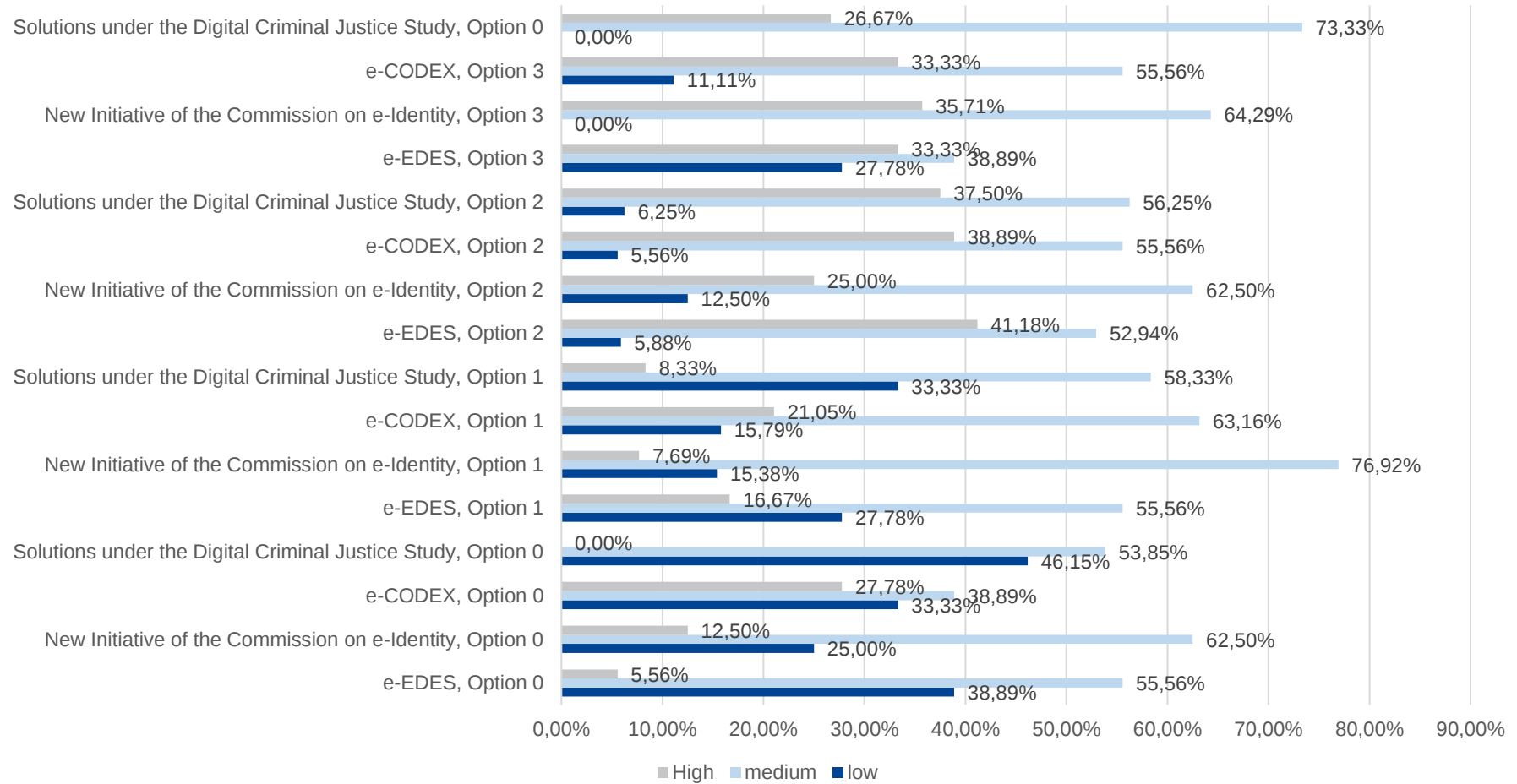
	authorities and parties to the proceedings (in case of individuals with weaker digital capabilities) and the competent authority itself digitalises the necessary information (for cross-border communication as no paper should travel across borders) then that opportunity should be available. If we take into consideration the scenario where a claimant can directly turn to another Member State's competent authority then in that case the claim should be submitted only electronically and the subsequent proceedings should be carried out electronically as again no paper should travel across borders.
573	As explained above
578	En matière pénale, les communications entre les autorités judiciaires et les particuliers dans le cadre de la coopération transfrontalière sont résiduelles. Il n'apparaît donc pas utile de légiférer sur cet aspect. En matière civile/commerciale en revanche, les communications et gestion/suivi des demandes seraient facilitées et plus rapides.

3. Coherence

16. Please assess the coherence between the Policy Options and other relevant initiatives in the area of cross-border judicial cooperation (e-EDES, New initiative of the Commission on e-Identity, e-CODEX), and Solutions under the Digital Criminal Justice Study) in the table below. Coherence refers to overlaps, synergies OR contrasts and discrepancies between options and existing initiatives. Please assess coherence as: low (in case of discrepancies), medium or high (in case of synergies).

The graph below shows the degree of perceived coherence with other initiatives. The response rate is low, but respondents tend to assess coherence as medium, and that Options 2 and 3 are seen as more coherent with other initiatives than Options 0 and 1.

Coherence with other EU initiatives (N= 12 - 19)



17. In case you assessed coherence as low, please describe discrepancies in the box below. If you think that discrepancies would affect only civil law or criminal law matters, please explain it.

ResponseID	Response
440	OK
452	fff
467	Other coherences cannot be identified due to lack of details
477	jgzz
503	The coherence in initiatives and proposed solutions should not only be found within the Justice Sector, but also with relevant instruments in other areas of cross-border communication (for example: e-IDAS/e-ID, DGA, DSA).
510	this question is a bit out of my professional field
532	I refer to my previous comments: individuals and private entities shall give previous authorization to be served electronically; moreover, the use of digital channels to discover the whereabouts of individuals may be an important tool to ensure the rights of defense or effective criminal prosecution but , whatever would be the future legislative

	initiatives, the access to such information by court officials or other authorities shall be subject to previous judicial authorization both in criminal and civil matters; this to ensure proportionality, a due process of law and respect by data protection rules.
537	I do not understand this question. But I would like to emphasize that e-CODEX for instance is nothing more than a software VPN network between member states. e-CODEX, like internet, in itself does not bring any solution for a functional problem. It merely makes digital secure connections possible.
555	I really don't have any idea on these topics, due to lack of experience.
563	Unclear question. In general, all options require some level of legislation.
567	Andere Kohärenzen können mangels entsprechender Detailinformationen nicht beurteilt werden.
568	Coherence is assessed as low regarding the baseline scenario as the initiatives listed have not succeeded in facilitating electronic cross-border cooperation. Since the emphasis in options 2 and 3 is on communication with individuals/legal entities then the most important initiative from the provided list is the e-Identity initiative as actually

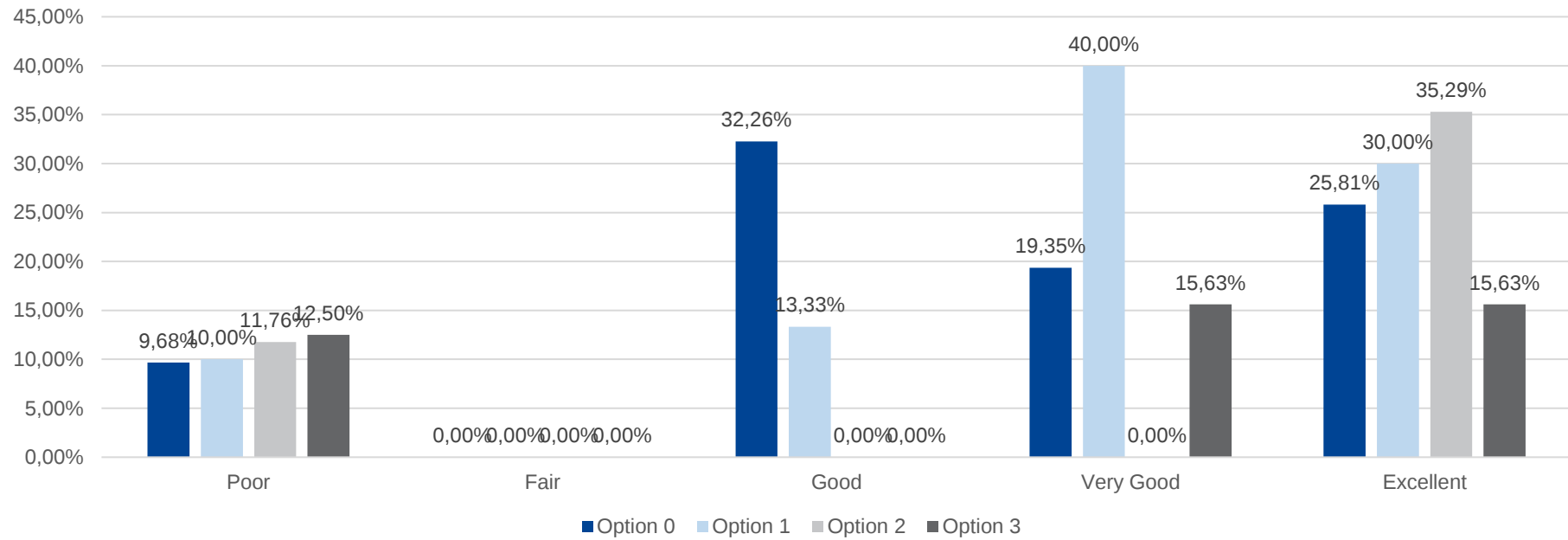
	enabling cross-border electronic authentication is a matter of priority when individuals should be able to directly participate. All the other initiatives deal with transporting information from one system to another to a greater or lesser extent.
578	Le sens de la question 16 est équivoque. Les réponses proposées ont donc été entendues comme le degré d'adéquation estimé entre chaque option et chacun des instruments mentionnés. L'option 0 ne semble pas, a priori, assez incitative pour assurer le développement harmonieux de la numérisation de la justice au sein des États Membres. S'agissant de e-EDES et e-CODEX, l'option 3, au contraire, ne semble pas assez tenir compte des situations variées des États Membres en termes d'évolutions numériques, qui nécessitent parfois de nombreuses réformes organisationnelles, et dépendent également du niveau de numérisation, de l'organisation des systèmes politiques et judiciaires, et de la taille du pays. L'option 2 nous semble donc plus adaptée pour parvenir à faire avancer l'ensemble des États Membres au même rythme, en leur laissant toutefois la possibilité d'adapter les moyens pour y parvenir en fonction de l'état de leurs systèmes d'information. S'agissant de l'initiative "e-Identity", le ministère de la justice ne semble pas concerné au principal.

4. Effectiveness

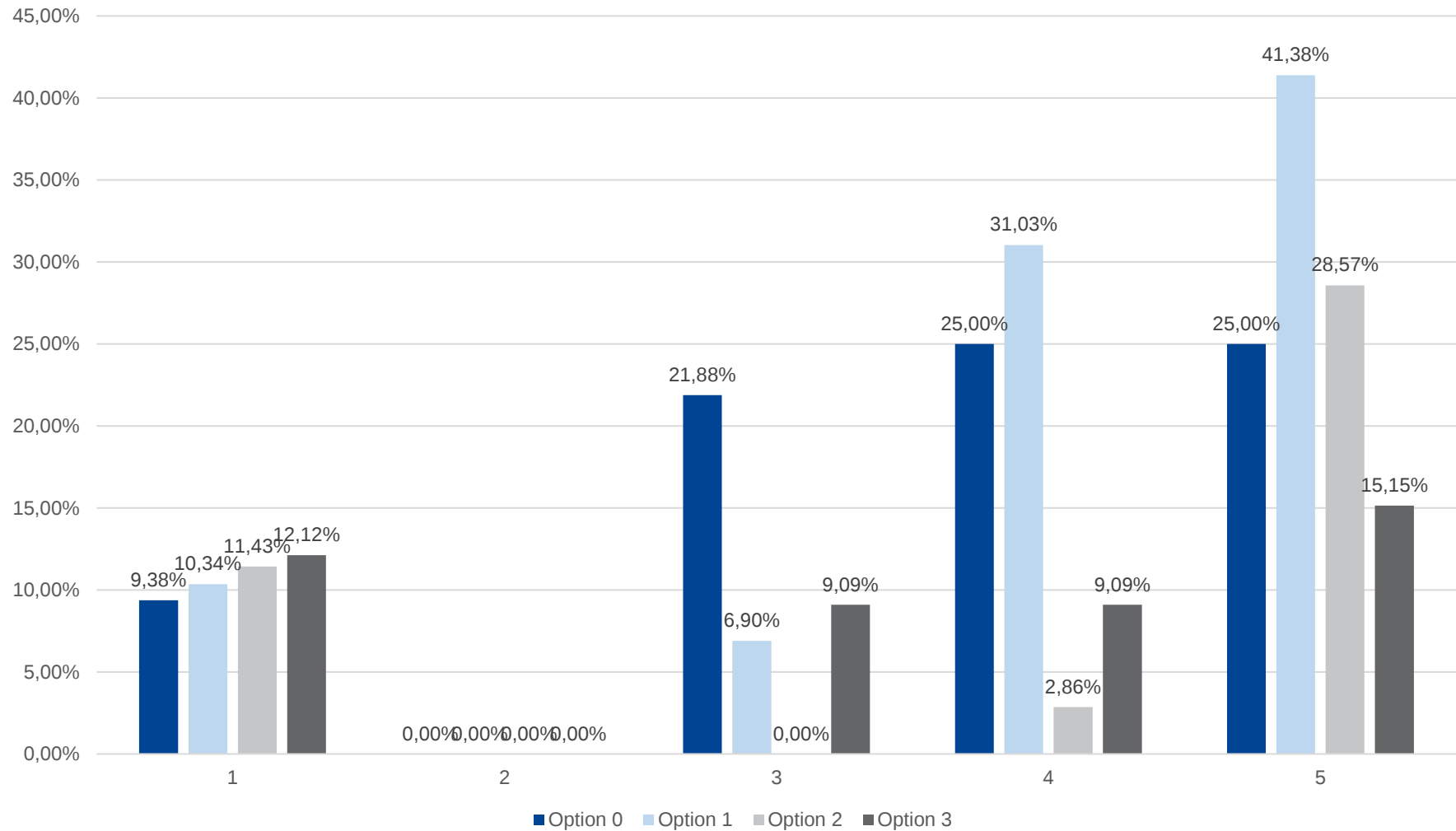
18. How effective would the Policy Options be with regard to the achievement of the objectives indicated in the table below? Effectiveness refers to the extent to which each option attains the objectives listed below. Please rate each option below according to a scale 1 to 5 where: 1 = Poor. 2 = Fair. 3 = Good. 4 = Very Good. 5 = Excellent.

The graphs below illustrate the assessment of the effectiveness of the different policy options. In general, Policy Option 2 and 3 are regarded as more effective.

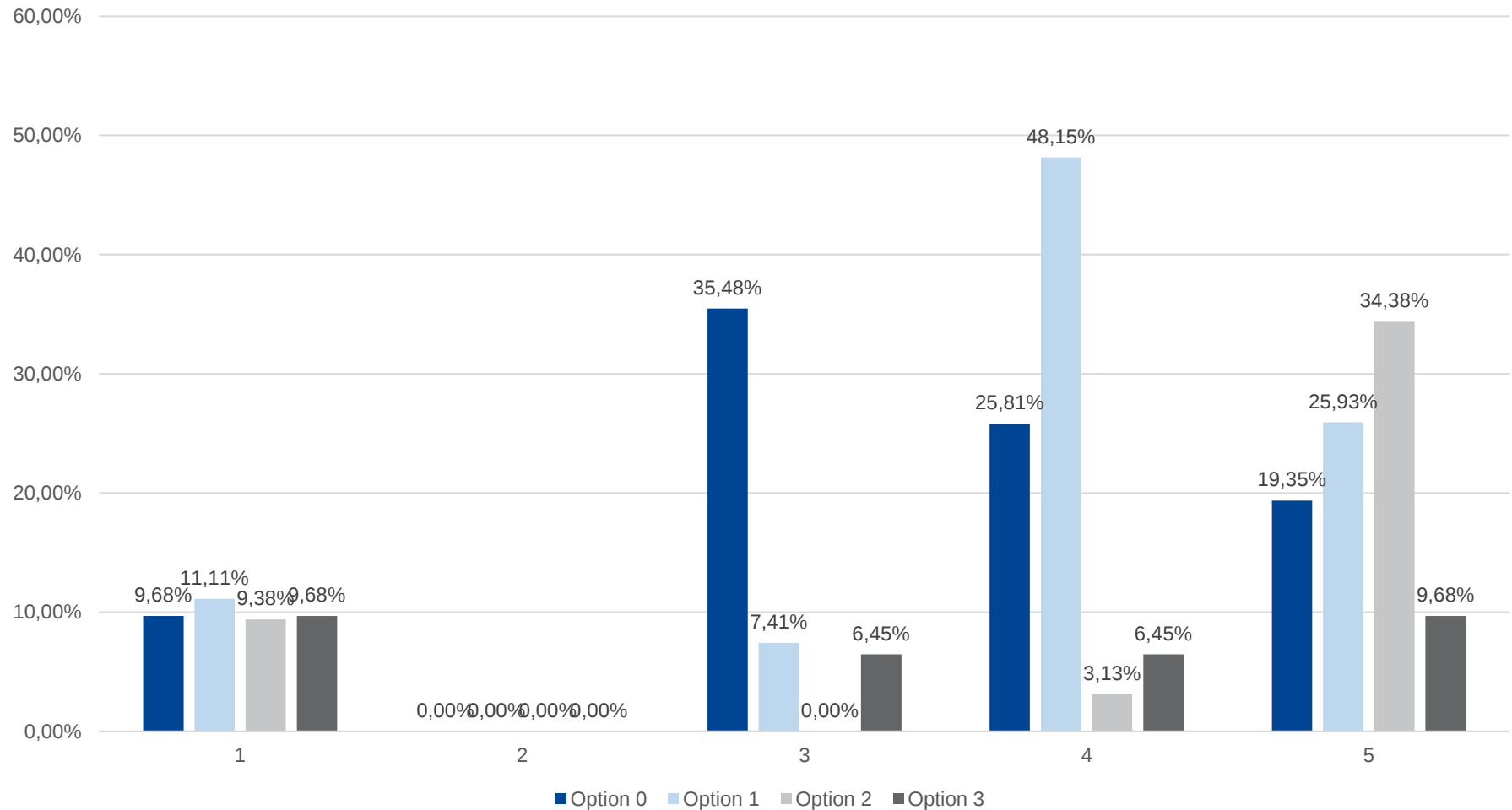
Ensure the smooth functioning of the area of freedom, security and justice by strengthening the trust in the judicial systems of the Member States and the EU



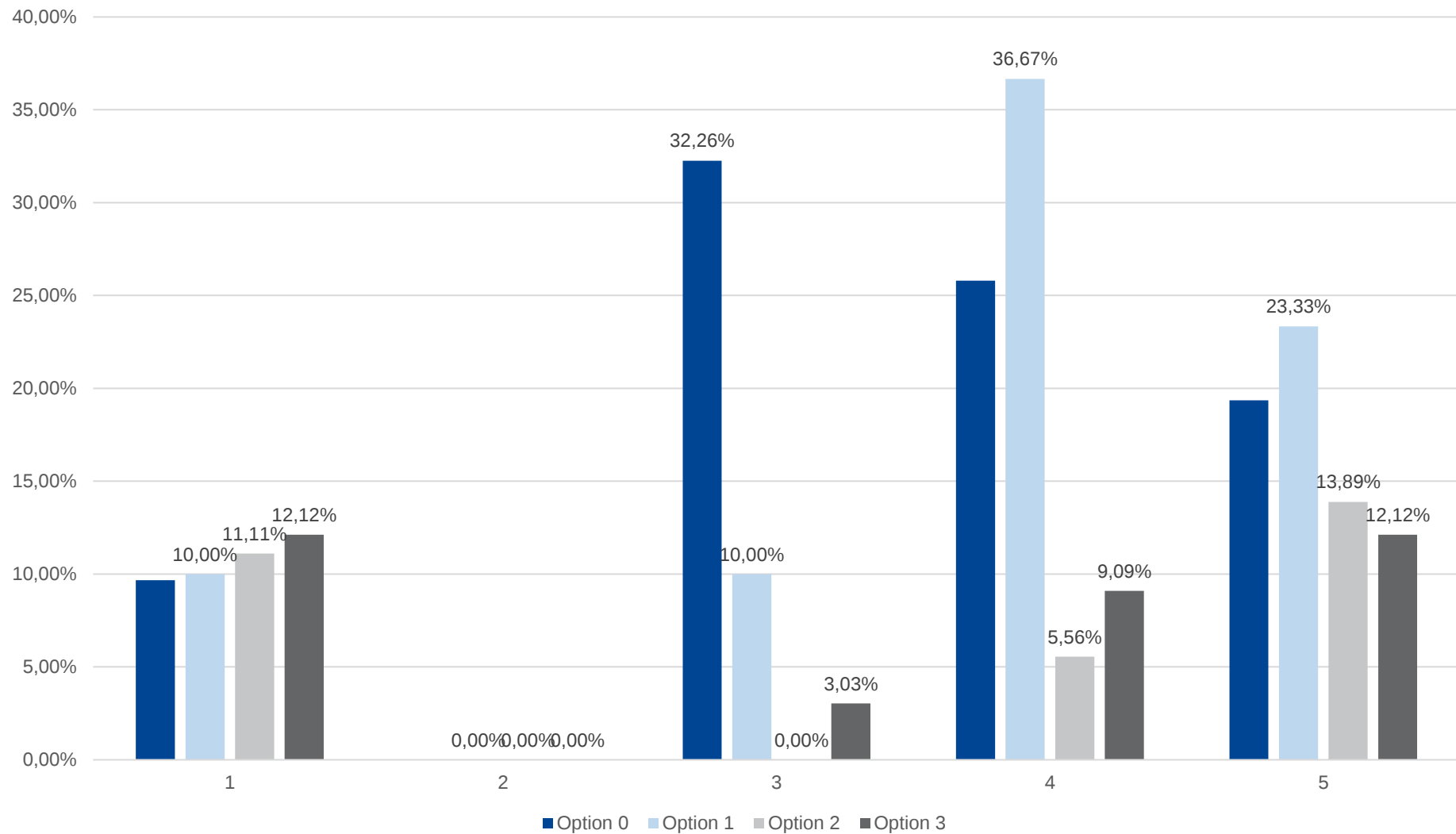
Ensure safeguarding the fundamental rights in the EU (e.g. access to justice, defence rights, victims' rights, data protection etc.



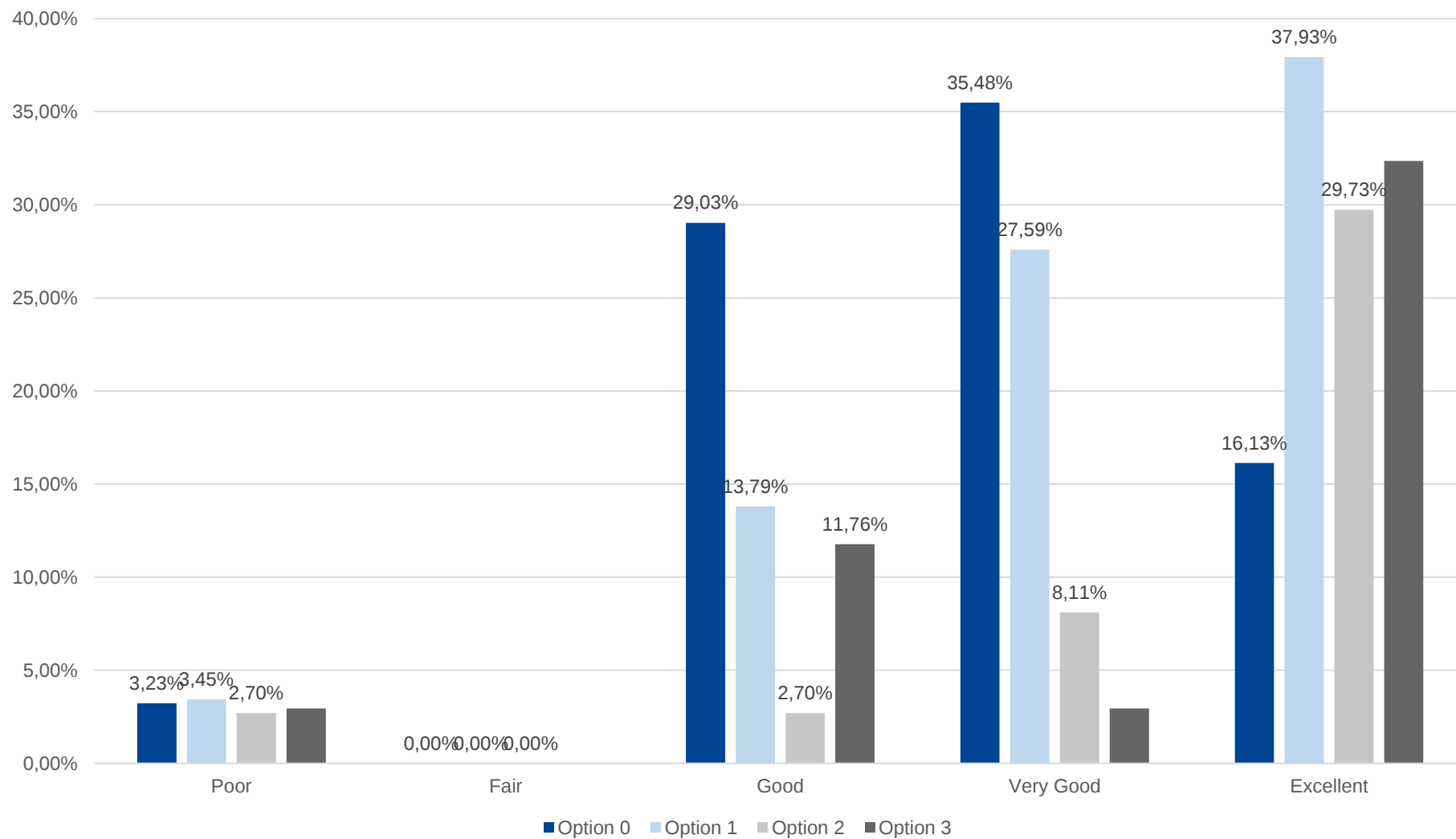
Make digital communication mandatory or not for all EU cross-border judicial cooperation and data exchange between competent national authorities and between the latter and parties to proceeding



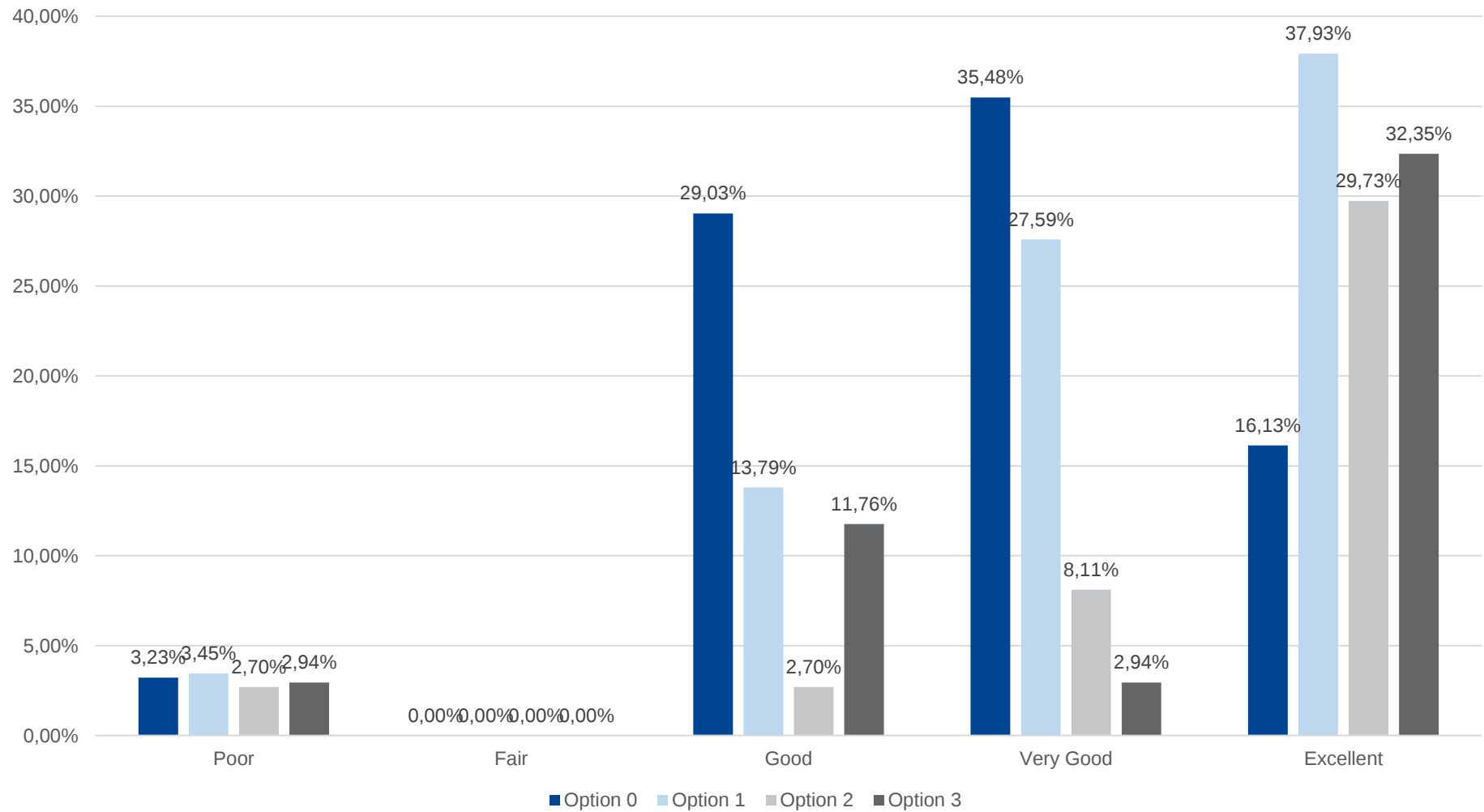
Improve speed, security and efficiency of cross-border communication in judicial proceedings in civil, commercial and criminal law



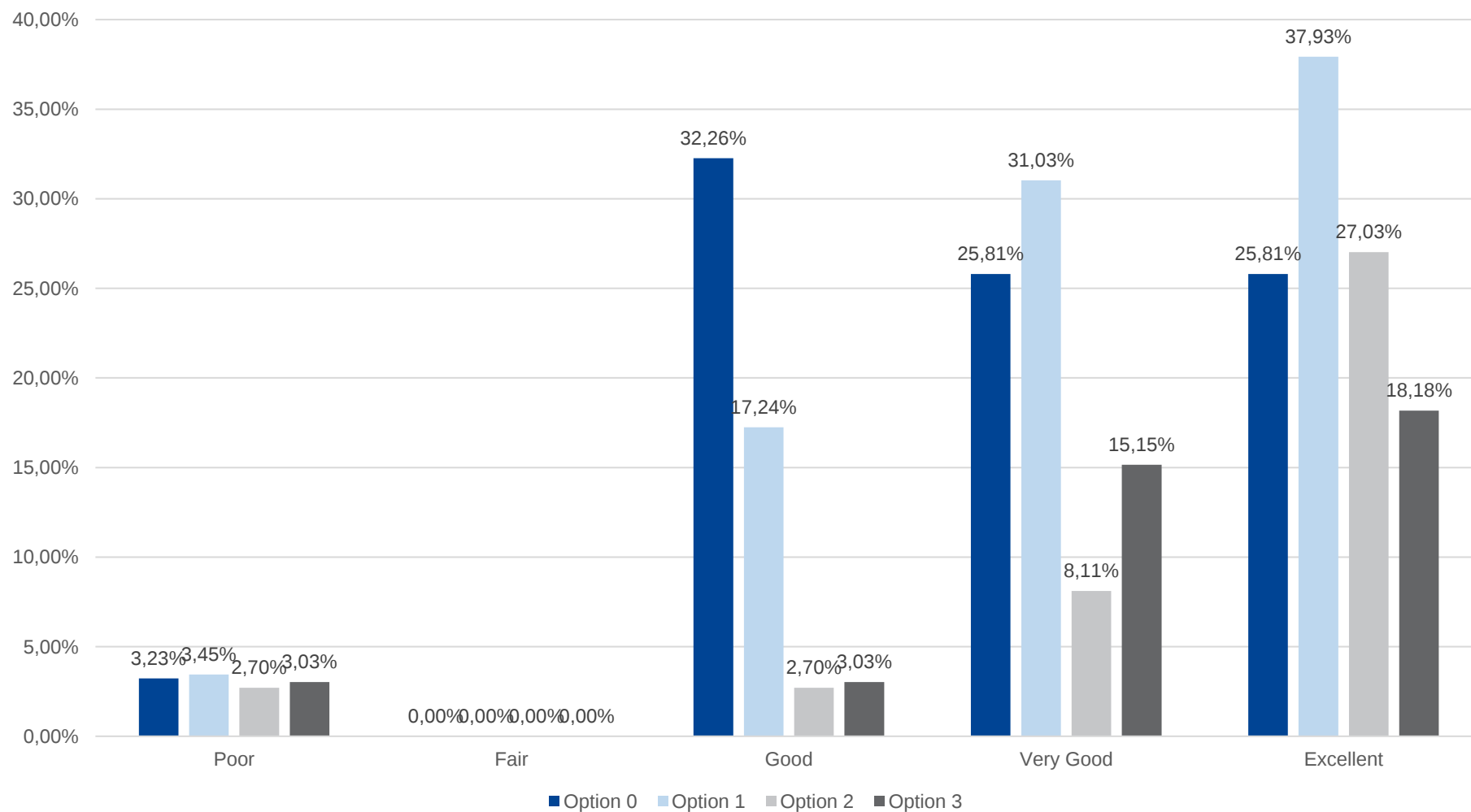
Improve access to justice and the protection of fundamental rights



Improve access to justice and the protection of fundamental rights



Reduce the burdens for competent authorities, citizens and businesses involved in cross-border judicial proceedings, resulting from undue costs and delays



5. Efficiency

Data collected through the survey is scattered and does not support a solid analysis of what the costs are of paper-based or digital communications.

However, comparing ratios of the costs in money and time provided by the same respondent, the following conclusions can be reached:

1. There is wide consensus that digital communications are faster and cheaper
2. The degree to which these are faster and cheaper varies a lot depending on the answer. According to some answers the reduction is minimal.

33. Could you please provide an estimation (unless precise figures are available) of the number of incoming communication exchanges between the competent authorities of your country and the authorities of other Member States in the field of cross-border judicial cooperation in criminal law matters per year in the period 2016-2021? Please also try to indicate how the number is likely to evolve in the future (up to 2030).

Results discussed separately.

34. Could you please provide an estimation (unless precise figures are available) of the number of outgoing communication exchanges between the competent authorities of your country and the authorities of other Member States in the field of cross-border judicial cooperation in civil/commercial law matters per year in the period 2016-2021? Please also try to indicate how the number is likely to evolve in the future (up to 2030). If you are participating in any of the e-CODEX pilot projects, please insert the number of cross-border exchanges under e-CODEX.

Results discussed separately.

35. Could you please provide an estimation (unless precise figures are available) of the number of outgoing communication exchanges between the competent authorities of your country and the authorities of other Member States in the field of cross-border judicial cooperation in criminal law matters per year in the period 2016-2021? Please also try to indicate how the number is likely to evolve in the future (up to 2030). If you are participating in any of the e-CODEX pilot projects, please insert the number of cross-border exchanges under e-CODEX.

Results discussed separately.

36.What is the average duration of EU cross-border proceedings? Is there a difference in duration between paper-based proceedings versus proceedings that employ digital solutions? Please provide an answer in the tables below in relation this question and the next question: In case you are unable to provide a calculated average duration of cross-border proceedings, please provide an estimate, if possible in the context of your professional experience.

Results discussed separately.

37.What is the average cost of a single paper/ non-digital communication exchange (in Euro)?

Results discussed separately.

38.What is the average cost of a single digital communication exchange (in Euro)?

Results discussed separately.

39.If applicable, what were the one-off costs of investments (in Euro) your authority had to make in order to digitalise your cross-border communication exchanges:

Results discussed separately.

40.If you indicated an amount in the “Other” expenditure category in the above table, please specify, what these expenditures were:

Response ID	Response
467	not applicable
578	Aucun élément à communiquer.

41. Please provide an estimate of difference in workload (in percentage) between paper-based and digital cross-border communication in the field of EU cross-border judicial cooperation. If workload increased for digital cross-border communication, please indicate the percentage of increase with the “+” sign. If the workload decreased, please indicate the percentage of decrease with the “-“ sign.

Results discussed separately.

42.Please provide the unit cost per FTE (in Euro) according to the level of the employee who performs the obligation:

Director/Manager

ResponseID	Response
282	-
452	6
467	not known yet
492	N/A
500	0
521	10
529	no data available
573	N/A

42.Please provide the unit cost per FTE (in Euro) according to the level of the employee who performs the obligation:

Head of Unit/Middle Management

ResponseID	Response
282	-
467	not known yet
492	N/A
500	0
521	5
529	no data available
573	N/A

42.Please provide the unit cost per FTE (in Euro) according to the level of the employee who performs the obligation:

Desk Officer/Administrator

ResponseID	Response
282	-
467	not known yet
492	N/A
500	0
521	3
529	no data available
573	N/A

42.Please provide the unit cost per FTE (in Euro) according to the level of the employee who performs the obligation:

Assistant/Secretary

ResponseID	Response
282	-
467	not known yet
492	N/A
500	0
521	2
529	no data available
573	N/A

42.Please provide the unit cost per FTE (in Euro) according to the level of the employee who performs the obligation:

Other

ResponseID	Response
467	not known yet
521	1
529	no data available

43.If applicable, please provide an estimate of the monthly cost paid for external services (in Euro) to perform activities to comply with obligations related to communication exchanges in EU cross-border judicial cooperation:

	Civil/Commercial law matters		Criminal law matters		Responses
	Row %	Count	Row %	Count	
Paper/Non-digital proceedings	57.1%	4	100.0%	7	7
Digital proceedings	57.1%	4	100.0%	7	7

44.If applicable, what were the one-off costs of investments (in Euro) you had to make to perform activities to comply with obligations related to communication exchanges in EU cross-border judicial cooperation:

IT Software

ResponseID	Response
154	1000
166	N/A
328	1000
532	no data

44.If applicable, what were the one-off costs of investments (in Euro) you had to make to perform activities to comply with obligations related to communication exchanges in EU cross-border judicial cooperation:

IT Equipment

ResponseID	Response
166	N/A
328	1500
532	no data

44.If applicable, what were the one-off costs of investments (in Euro) you had to make to perform activities to comply with obligations related to communication exchanges in EU cross-border judicial cooperation:

Personnel training

ResponseID	Response
154	1000
166	N/A
328	800
532	no data

44.If applicable, what were the one-off costs of investments (in Euro) you had to make to perform activities to comply with obligations related to communication exchanges in EU cross-border judicial cooperation:

Other

ResponseID	Response
166	N/A
532	no data

45.If you indicated an amount in the “Other” expenditure category in the above table, please specify, what these expenditures were:

ResponseID	Response
440	No

46. Please provide an estimate of difference in workload (in percentage) between paper-based and digital cross-border communication in the field of EU cross-border judicial cooperation. If workload increased for digital cross-border communication, please indicate the percentage of increase with the “+” sign. If the workload decreased, please indicate the percentage of decrease with the “-“ sign.

Results discussed separately.

47. Please provide the unit cost per FTE (in Euro) according to the level of the employee who performs the obligation:

Results discussed separately.

48.If applicable, please provide an estimate of the monthly cost paid for external services (in Euro) to perform activities to comply with obligations related to communication exchanges in EU cross-border judicial cooperation:

Results discussed separately.

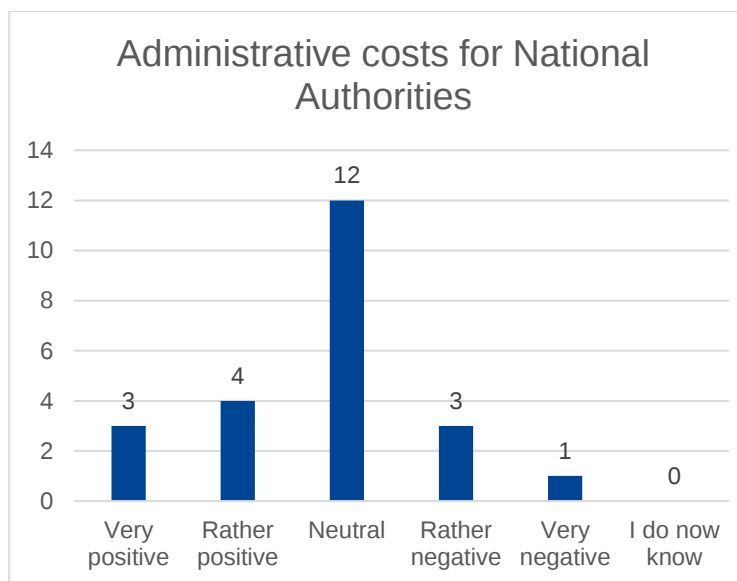
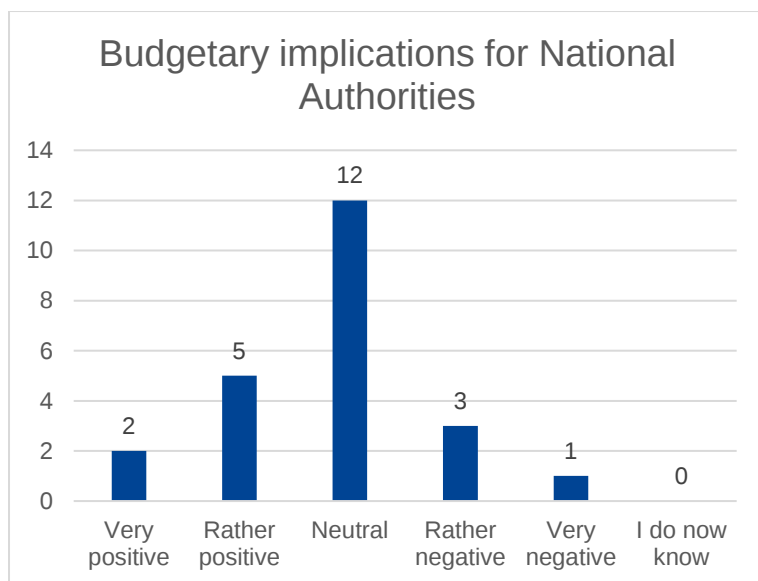
49.If applicable, could you please provide an estimation (unless precise figures are available) of how many cases were impacted as a result of the COVID-19 pandemic in the following categories?

Results discussed separately.

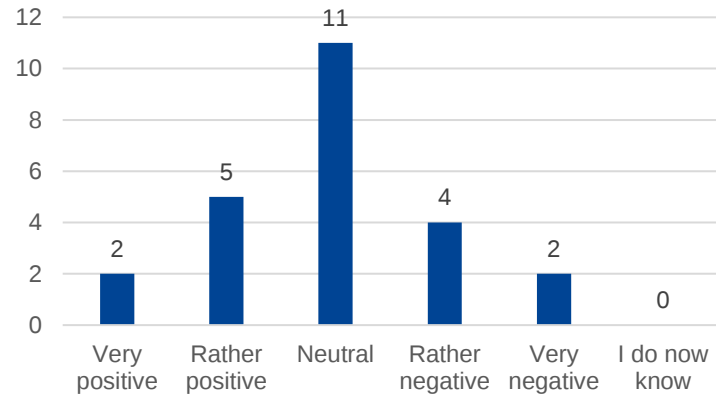
6. Economic Impacts

Policy Options 0 and 1 would have fundamental neutral effects according to the results of the survey. Citizens and legal and judicial professionals stand to benefit the most from an economic point of view under PO2 or PO3 according to the results of the survey. The next group to benefit are businesses and national authorities.

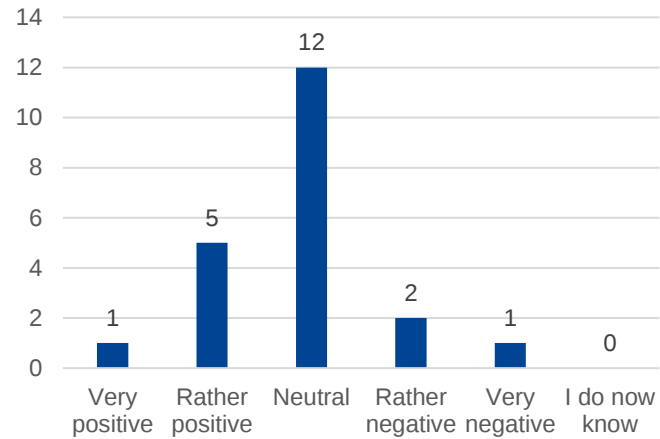
50. Please assess the economic impacts of each option in the table below. Please tick the relevant boxes. Option 0 (Baseline)



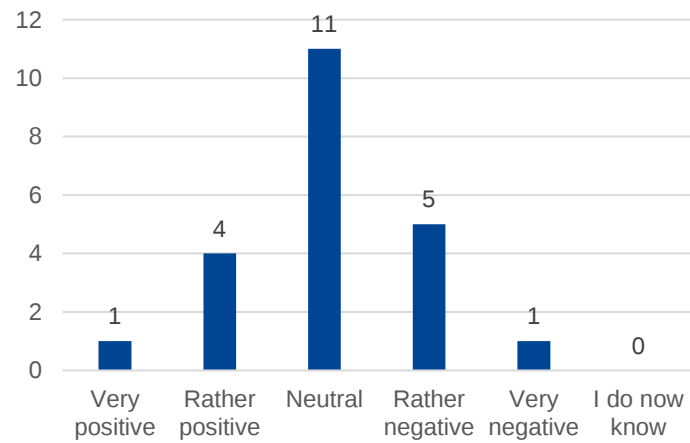
Administrative burdens (i.e.
additional workload) on National
Authorities



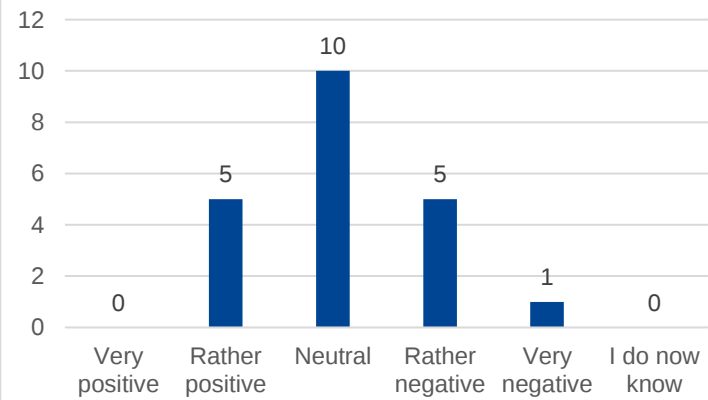
Budgetary implications for
businesses



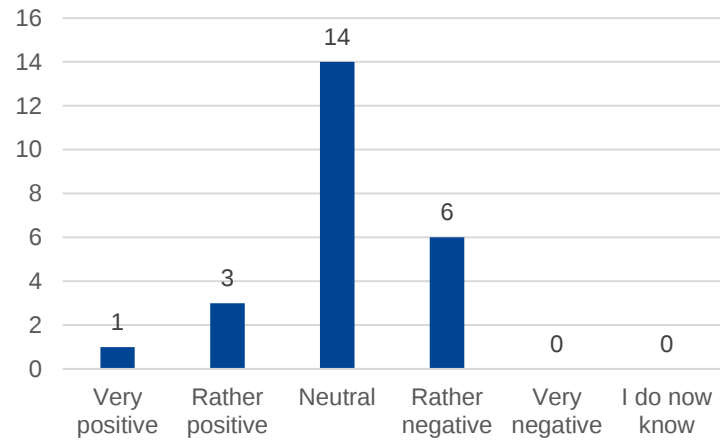
Administrative costs for
businesses



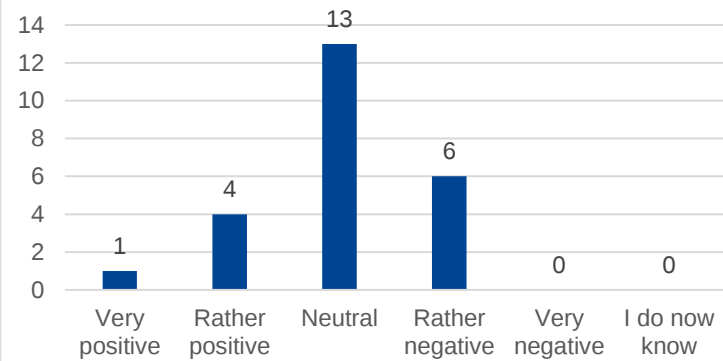
Administrative burdens (i.e.
additional workload) on
businesses



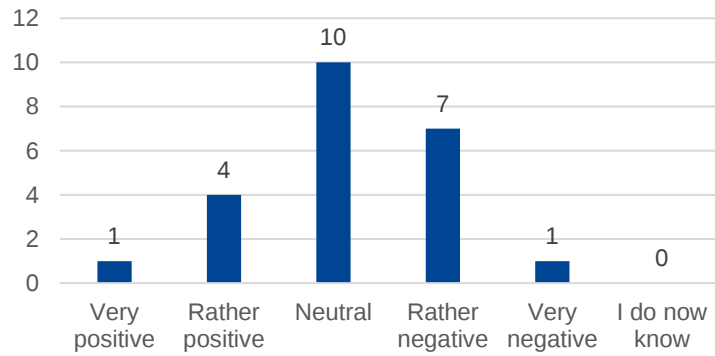
Budgetary implications for legal & judicial professionals



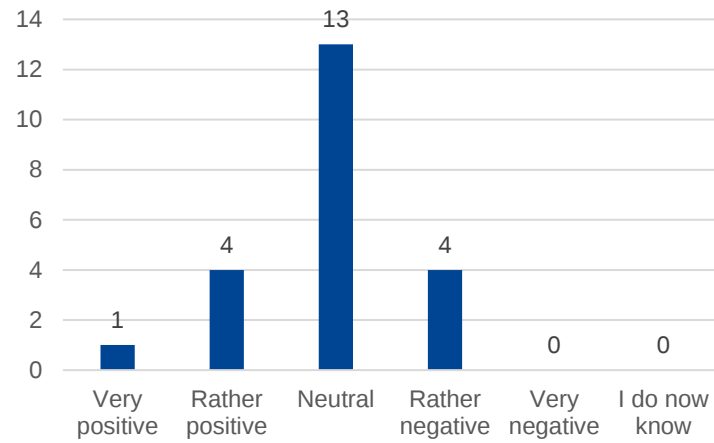
Administrative costs for legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.) and courts



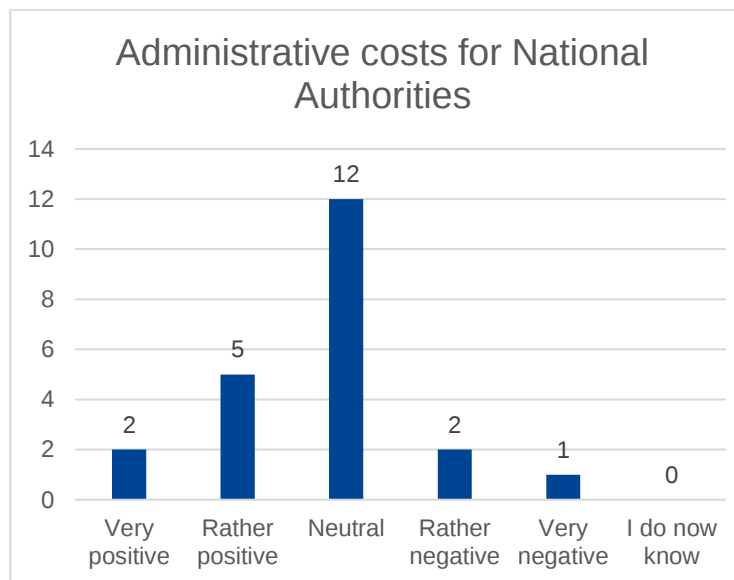
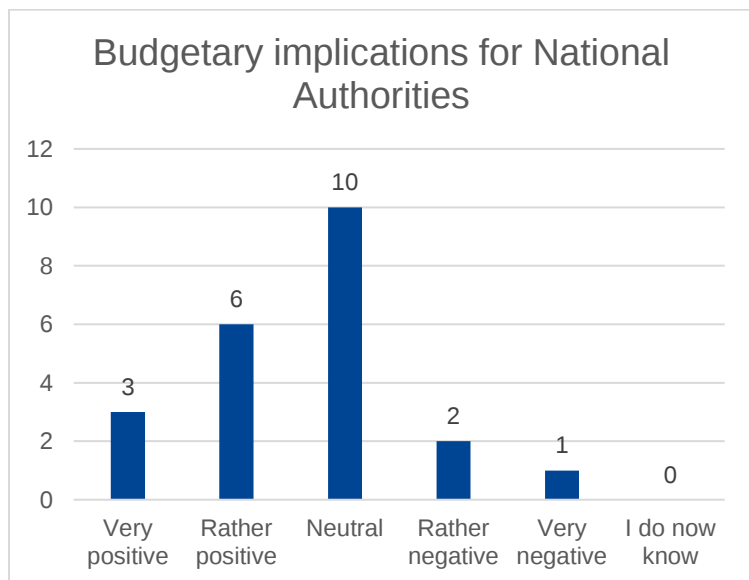
:Administrative burdens (i.e. additional workload) on legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.)



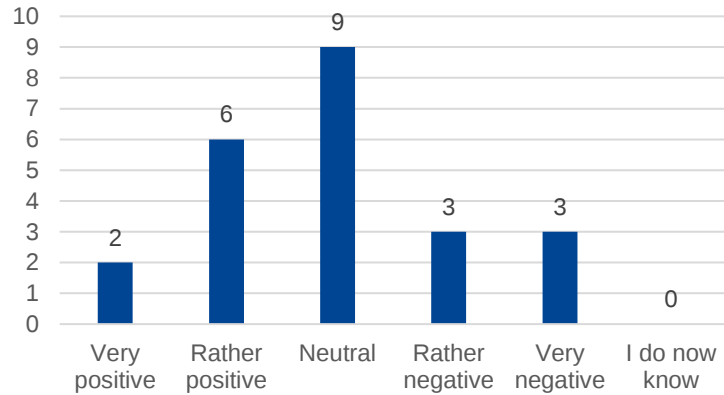
Costs & burdens on citizens (e.g. court fees)



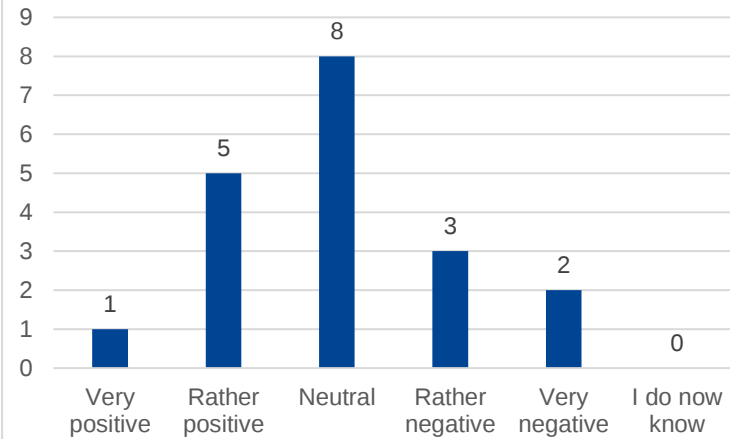
51. Please assess the economic impacts of each option in the table below. Please tick the relevant boxes. Option 1 (Non-legislative option)



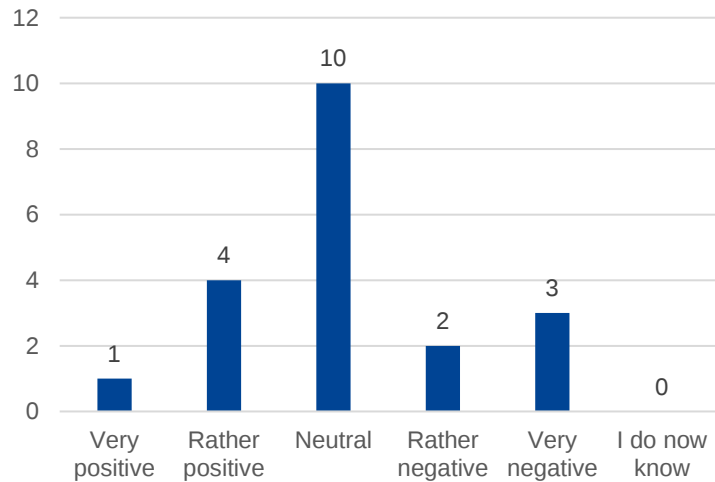
Administrative burdens (i.e. additional workload) on National Authorities



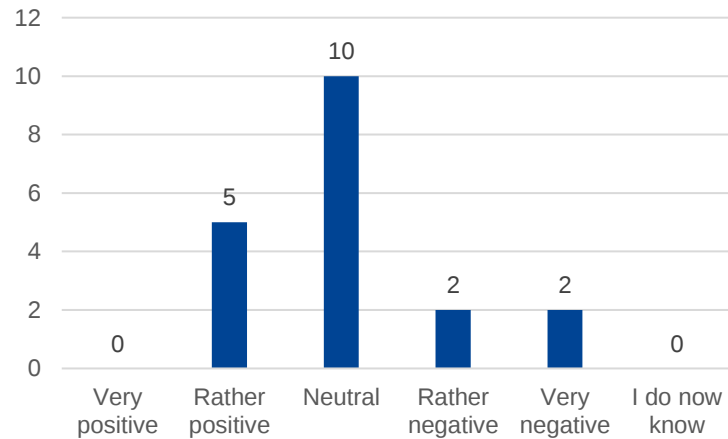
Budgetary implications for businesses



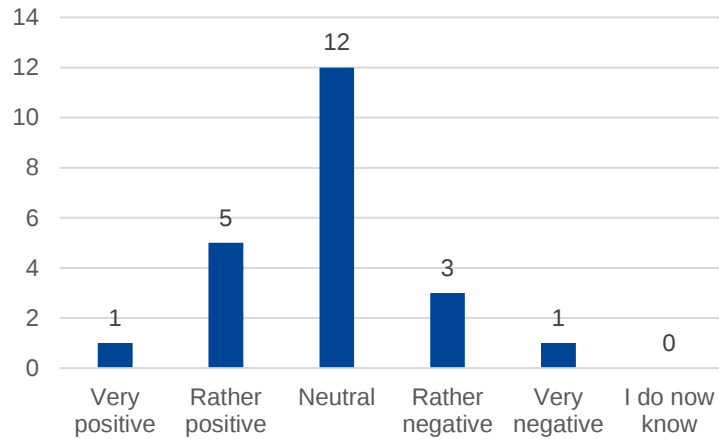
Administrative costs for businesses



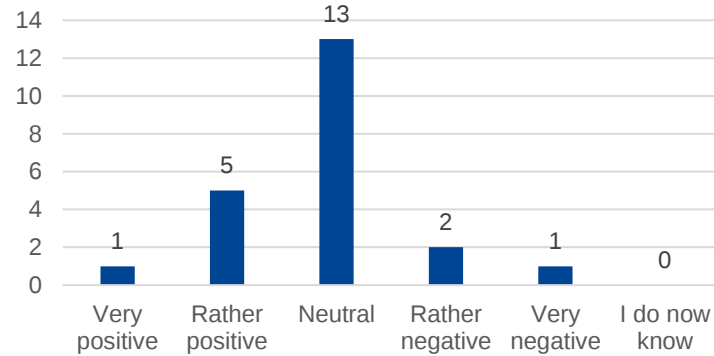
Administrative burdens (i.e. additional workload) on businesses



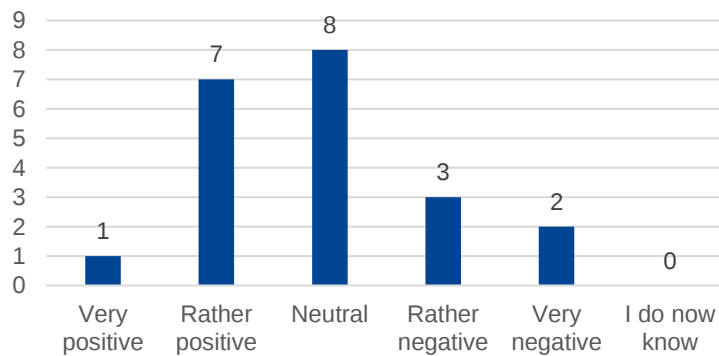
Budgetary implications for legal & judicial professionals



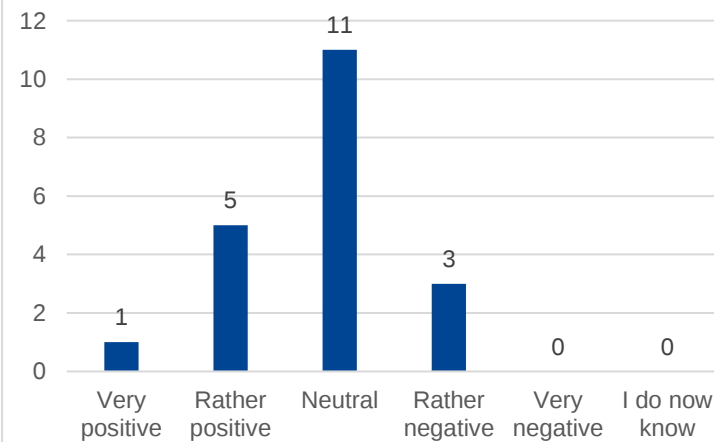
Administrative costs for legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.) and courts



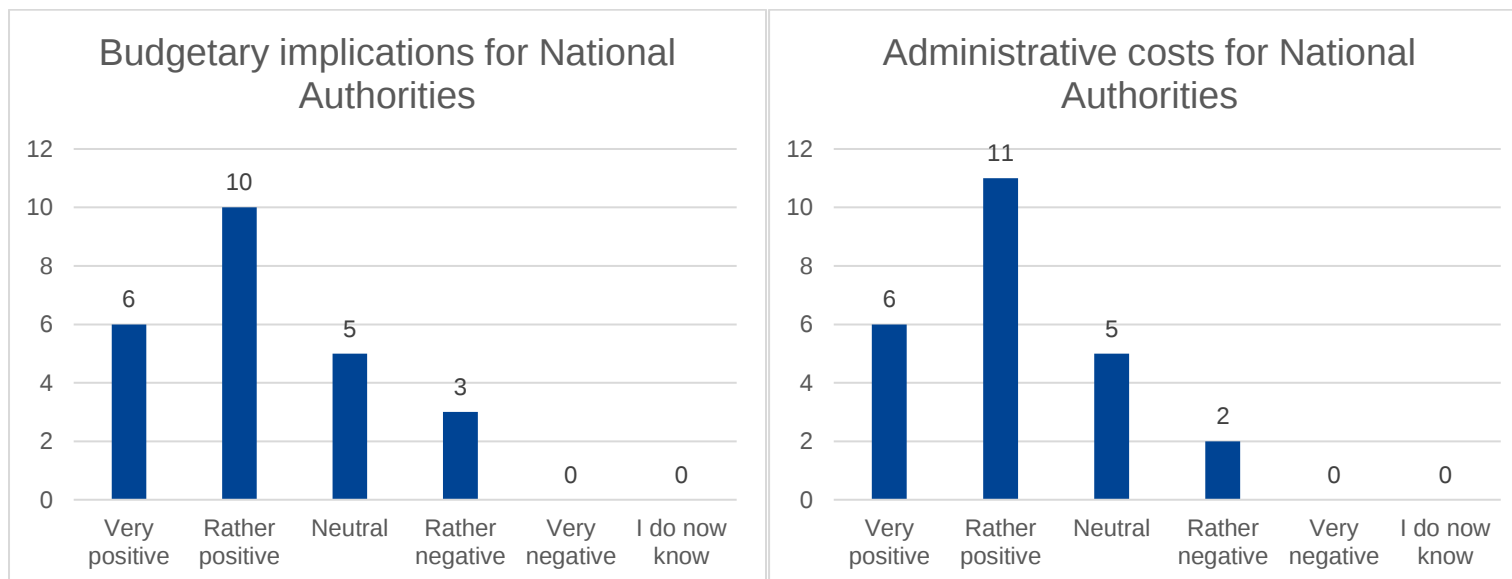
:Administrative burdens (i.e. additional workload) on legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.)



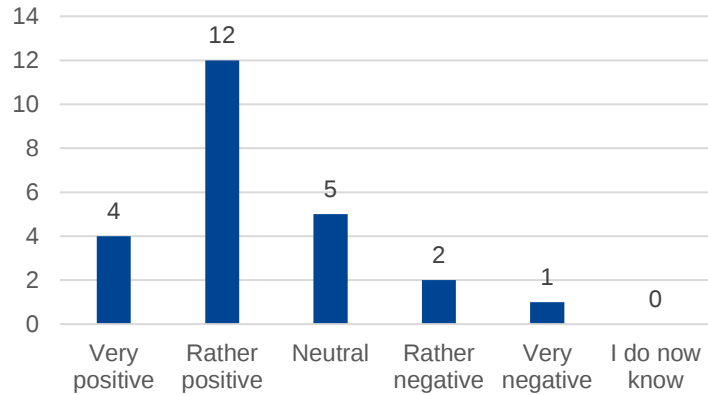
Costs & burdens on citizens (e.g. court fees)



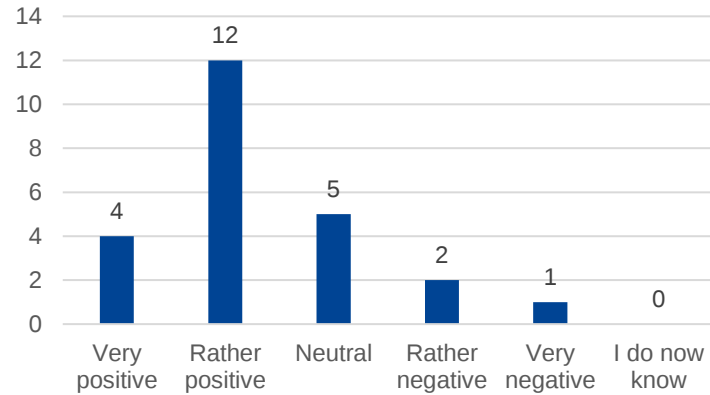
52. Please assess the economic impacts of each option in the table below. Please tick the relevant boxes. Option 2 (legislative): Optional use of digital channel; possible electronic communication with individuals/legal entities; possibility for participation in hearings via videoconference.



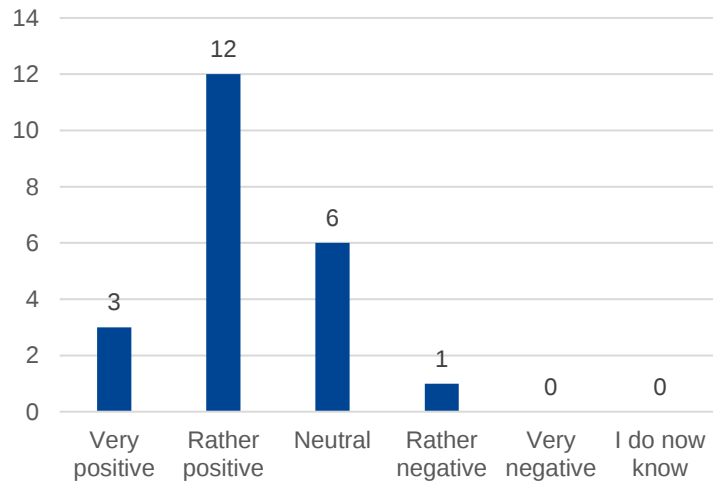
Administrative burdens (i.e. additional workload) on National Authorities



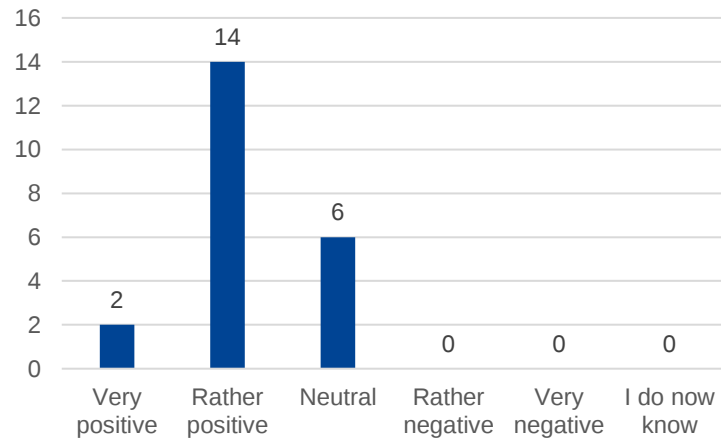
Administrative burdens (i.e. additional workload) on National Authorities



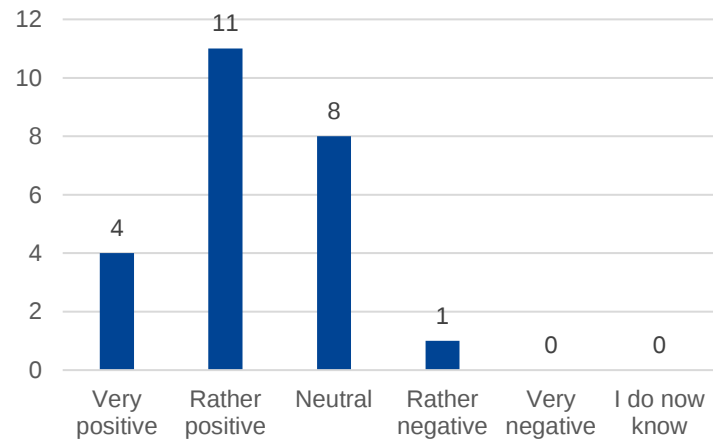
Administrative costs for businesses



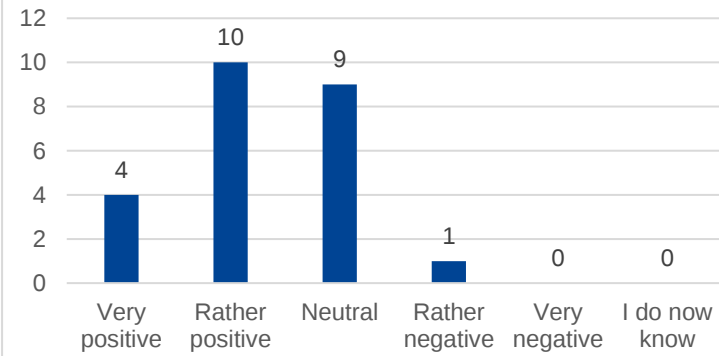
Administrative burdens (i.e. additional workload) on businesses



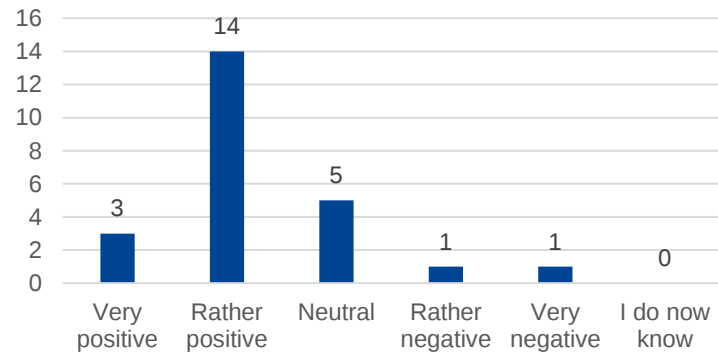
Budgetary implications for legal & judicial professionals



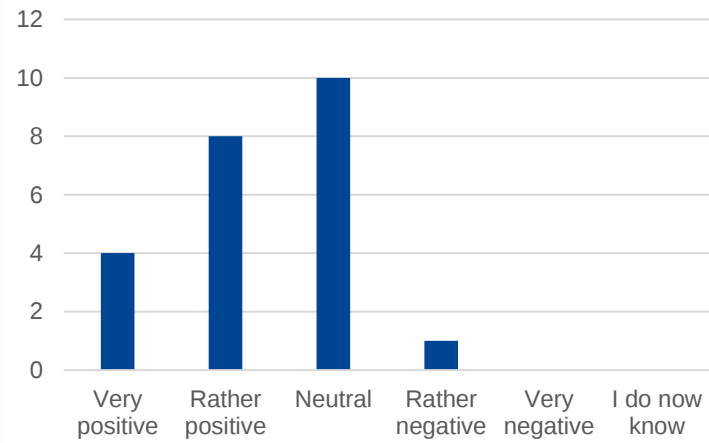
Administrative costs for legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.) and courts



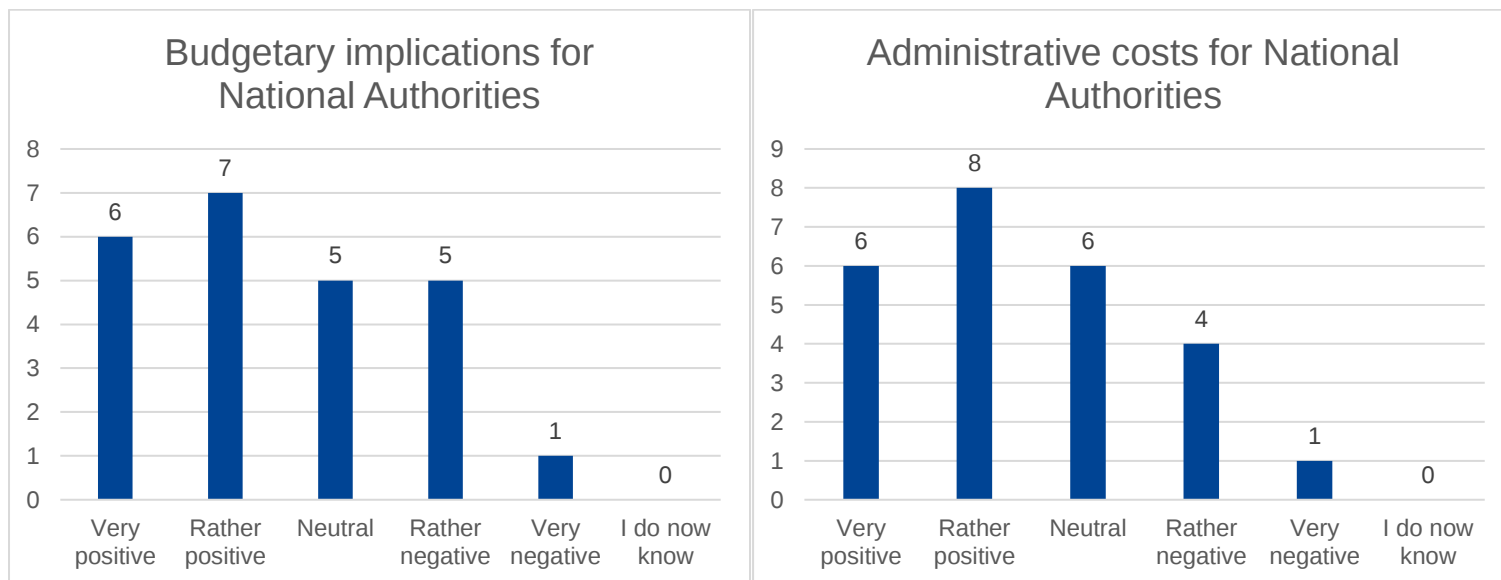
:Administrative burdens (i.e. additional workload) on legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.)



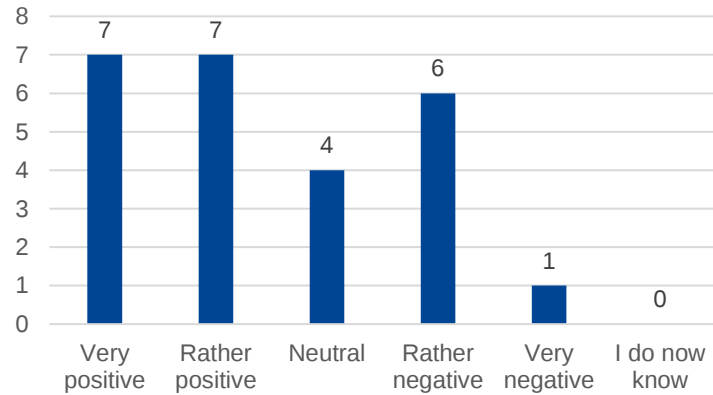
Costs & burdens on citizens (e.g. court fees)



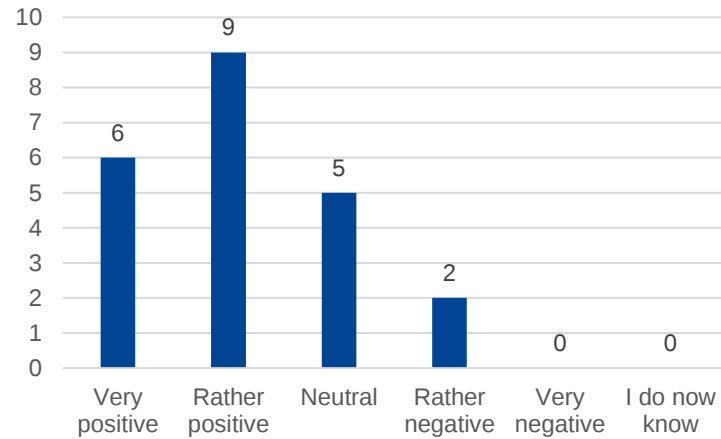
53. Please assess the economic impacts of each option in the table below. Please tick the relevant boxes. Option 3 (legislative): Mandatory use of digital channel; possible electronic communication with individuals/legal entities; possibility for participation in hearings via videoconference.



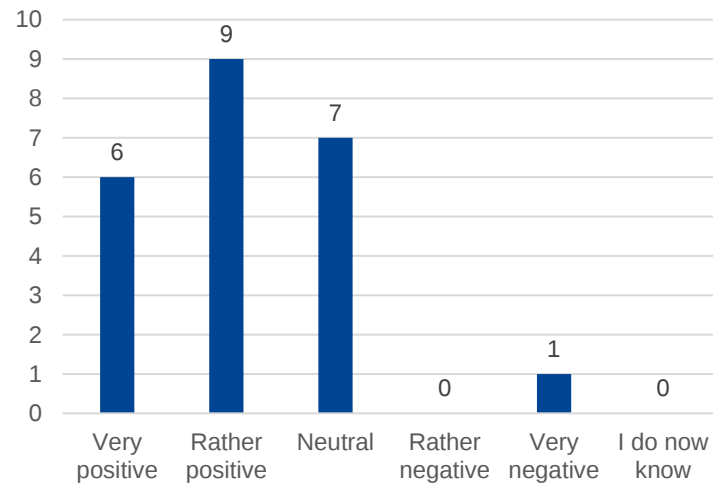
Administrative burdens (i.e. additional workload) on National Authorities



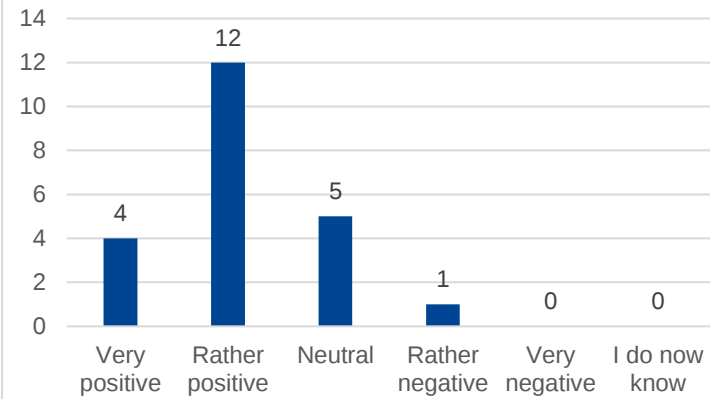
Budgetary implications for businesses



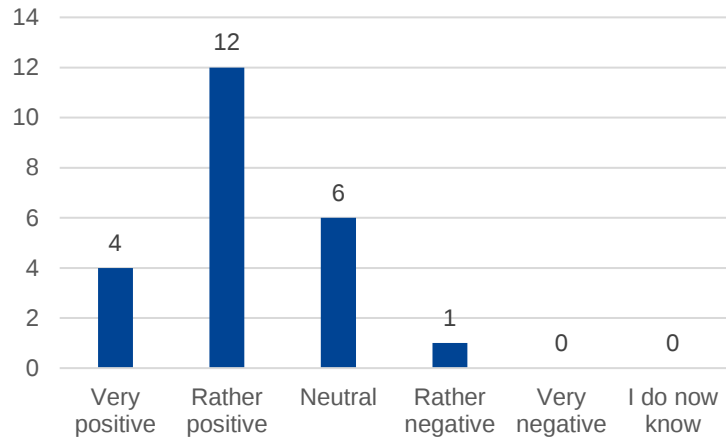
Administrative costs for businesses



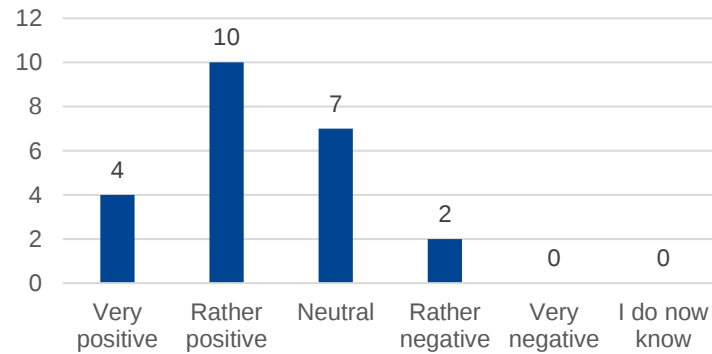
Administrative burdens (i.e. additional workload) on businesses



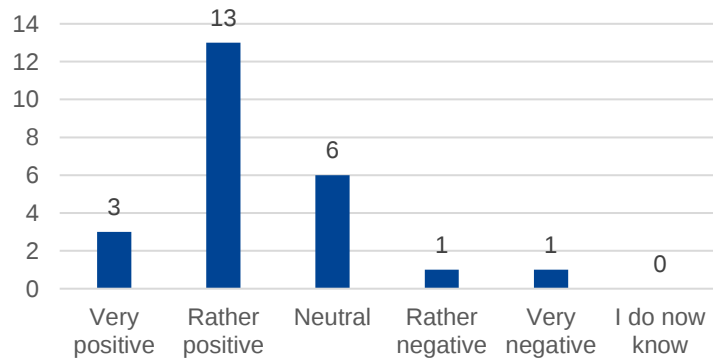
Budgetary implications for legal & judicial professionals



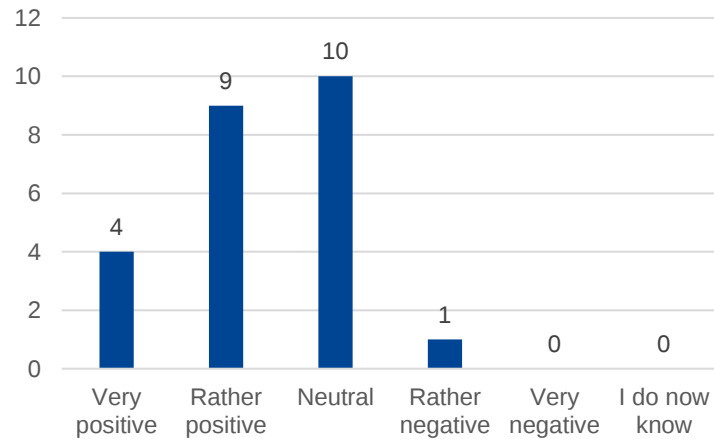
Administrative costs for legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.) and courts



Administrative burdens (i.e. additional workload) on legal & judicial professionals (lawyers, notaries, bailiffs, court staff etc.)



Costs & burdens on citizens (e.g. court fees)



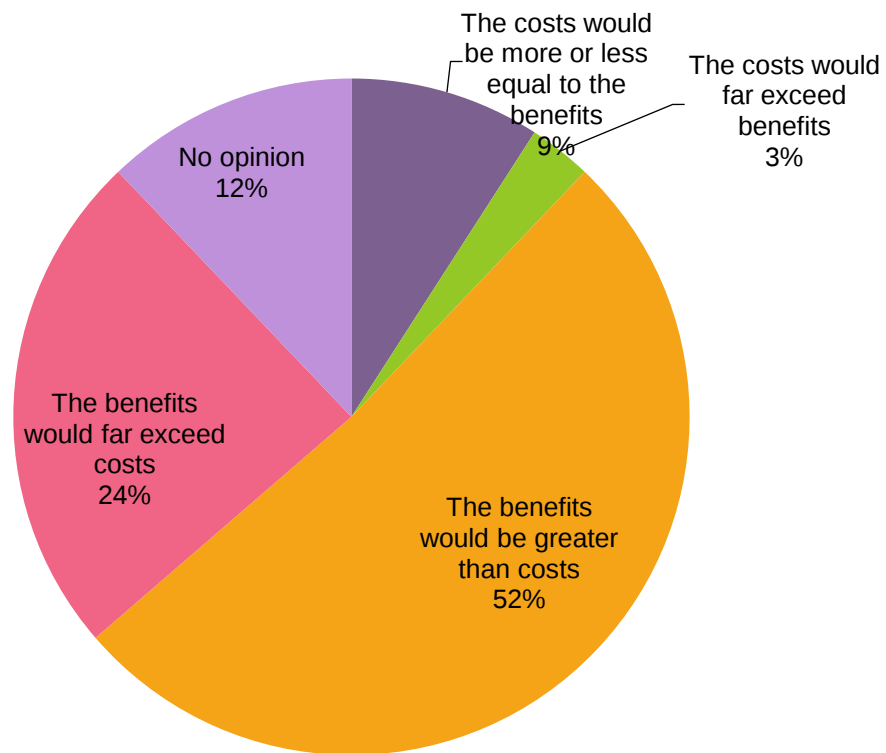
54.If you assessed the economic impacts of the above Options as ‘rather negative’ or ‘very negative’ please motivate your reply in the box below and provide specific examples of types of costs/burdens.

ResponseID	Response
287	For mandatory use of a digital channel, the national authorities should hire a team of expert ITs to set up the channel, to be sure that it works properly and have legal practitioners, judges, courts staff etc working closely with them to ensure the smooth functioning of the platform. This will cost a great amount of money as well as working hours. Also the maintenance of the digital channel should be on a continues basis, which also might be costly. The training of persons would also have costs and they will be trained during their working hours which is another issue.
330	This questionnaire does not make sense. Why do you think one can analyse budgetary options and costs in general without data on what the actual options are?
440	No
493	Due to the reluctance of a significant minority of legal professionals to embrece digitalisation, and due to limited success of previous IT projects, management of a new communication channel will lead to an increased workload in national authorities. However, the benefit would outweigh the costs in my opinion.

500	No assesment availbale
502	No opinion
503	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.
529	Costs for adjustment of relevant judicial IT systems and/or creating and setting up new systems.
537	I Think that national authotities will heave to invest for the common good. However the common good is their main purpose of course.
567	Zur Notwendigkeit eines angemessenen Ausgleichs zwischen Nutzen und Kosten einer Digitalisierung für Bürger*innen siehe bereits oben.
573	If there is no obligation tendency is that we still have a lot of paper work and administrative burdens in all areas.
578	Le coût de mise en oeuvre de la solution de digitalisation doit être pris en compte.
580	The workload will not decrease with either system. With regards to electronic means the costs will

	increase by the inclusion of IT personnel and equipment and its maintenance.
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55. Please indicate whether, under your preferred option, the costs of digitalisation of cross-border communication in judicial cooperation would be proportionate to the possible benefits (e.g. increased efficiency and resilience of justice, reduced duration of proceedings, etc.)?



Value	Percent	Count
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The costs would be more or less equal to the benefits	9.1%	3
The costs would far exceed benefits	3.0%	1
The benefits would be greater than costs	51.5%	17
The benefits would far exceed costs	24.2%	8
No opinion	12.1%	4
	Totals	33

56.To what extent, in your opinion, it is likely that adoption of different digital solutions for communication on judicial matters will happen in different EU Member States? Please rate the probability on a scale from 1 to 5 (1 – highly unlikely, 2 – unlikely, 3- neither likely nor unlikely, 4 – likely, 5 – highly likely).

	1. Highly unlikely		2. Unlikely		3. Neither likely not unlikely		4. Likely		5. Highly likely		Responses
	Count	Row %	Count	Row %	Count	Row %	Count	Row %	Count	Row %	Count
To what extent, in your opinion, it is likely that adoption of different digital solutions for communication on judicial matters will happen in different EU Member States?	1	2.4%	2	4.9%	7	17.1%	20	48.8%	11	26.8%	41

57.Should different EU Member States adopt different digital solutions for communication on judicial matters, to what extent would it slow down the digital cross-border communication in the field of EU cross-border judicial cooperation? Please rate the probability on a scale from 1 to 5 (1 – not at all, 2 – slightly, 3- moderately, 4 – very, 5 – extremely).

	1. Not at all		2. Slightly		3. Moderately		4. Very		5. Extremely		Responses
	Count	Row %	Count	Row %	Count	Row %	Count	Row %	Count	Row %	Count
Should different EU Member States adopt different digital solutions for communication on judicial matters, to what extent would it slow down digital cross-border communication	7	17.1%	4	9.8%	11	26.8%	15	36.6%	4	9.8%	41

7. EU Added Value

58. In your opinion, what is the added value of the Options below and could the same objectives (e.g. access to justice; protection of fundamental rights; improve speed, security and efficiency of cross-border communication in judicial proceedings etc.) been achieved by Member States alone without the need for EU action? Please assess the EU added value as low, medium or high and tick the relevant box.

Responses suggest that respondents identify the highest EU Added value with Policy Option 3, as 50% of the respondents choose this option, which is closely followed by Option 2 (40%). Option 0 is identified as having low European added value by 60% of the respondents.

	Low		Medium		High		Responses
	Count	Row %	Count	Row %	Count	Row %	Count
Option 0 (Baseline)	23	60.5%	13	34.2%	2	5.3%	38
Option 1 (Non legislative)	18	46.2%	18	46.2%	3	7.7%	39
Option 2: Optional use of digital channel	5	12.5%	19	47.5%	16	40.0%	40
Option 3: Mandatory	7	17.5%	13	32.5%	20	50.0%	40

use of digital channel							
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60. Any additional comments or suggestions regarding literature sources or data which could be helpful for our assessment are welcome:

ResponseID	Response
112	Have a cold beer, it's hot outside! Cheers! :)
467	Some questions are too specific to answer them seriously
493	In Germany, the EDV-Gerichtstag (Association for Computing in the Judiciary) is an important venue for the topic of this questionnaire
500	Sorry, but I could not provide any statistical and budgetary data .
502	Most of the questions are not relevant for our workfield.
503	Literature sources or data are generally available at different competent authorities and/or related to specific types of data/information requests; we would be very willing to explore these data but could not provide those within your deadline.
516	-
529	As for possible follow-up interview - I would have to gather several colleagues from the MoJ, who participated in answering the questionnaire. It is not a work of one person.
532	In the links mentioned in some of the answers there are national statistics available, in Portuguese, regarding the activity of the contact point of EJC civil, the activity of courts, duration of processes and impact of covid 19 in the number of processes, in Portugal
535	lots of questions, no response
538	As we have summer vacation period in July-August in Sweden there is not possible to provide answers with higher quality.

Einige Fragen, insbesondere Q6 (Wirksamkeit), Q7 8 (soziale Auswirkungen), Q9 10 (Auswirkungen auf die Umwelt); Q26 Q27 (wirtschaftliche Auswirkungen) sind mit Parametern verknüpft, die weder gemessen noch objektiviert werden können. Von der Erstattung hypothetischer Antworten, die nicht auf zugrundeliegende Daten gestützt werden können und denen entsprechend auch die Vergleichbarkeit fehlen würde, wurde abgesehen. Darüber hinaus ist etwa Frage betreffend "Number of court hearings postponed" herauszugreifen: Dem Ministerium liegen entsprechende Daten vor, unklar ist jedoch, welche Monate/Jahre konkret abgefragt und verglichen werden sollen und mit welchen Jahren ein Vergleich gezogen werden soll. In technischer Hinsicht stand einer Beantwortung der Frage der Umstand entgegen, dass nur eine einzelne Zahl eingetragen werden kann. Die isolierte Angabe eines einzelnen Monats schien mangels Vergleichbarkeit mit den Daten anderer Mitgliedstaaten nicht opportun. Die Daten können jedoch - sofern gewollt - der Kommission separat zur Verfügung gestellt werden.

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