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**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}

1. INTRODUCTION

Access to justice and facilitating cooperation between Member States are among the main objectives of the EU's area of freedom, security and justice enshrined in the Treaty on the Functioning of the European Union¹. The Charter of Fundamental Rights in its Article 47 guarantees right to an effective remedy and to a fair trial². Effective justice systems are also essential for the functioning of the internal market and a prerequisite for economic growth. Access to justice needs to be maintained and to keep pace with change, including the digital transformation affecting all aspects of our lives.

In the past decade the Commission and the Member States have acknowledged the need for effective justice systems and have taken a number of initiatives that have produced positive results as regards the digitalisation of justice. However much more remains to be done. Furthermore, beyond the immediate health and economic impact, the COVID-19 crisis has created a wider variety of challenges also for the justice systems in the Union and beyond its immediate borders.

On the one hand the COVID-19 pandemic has highlighted 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.³ It has thus given an extra impetus to the efforts conducted by Member States in making the best use of Information and Communication Technologies (ICT) tools in their justice systems. On the other hand, the considerable impact on the functioning of national justice systems has also adversely affected EU cross-border judicial cooperation, leading in many cases to delays and obstacles to access to justice for individuals and businesses alike⁴.

The COVID-19 crisis has thus underlined the need to strengthen the resilience of the justice system across the EU. It has also stressed the importance to further cooperate with its international partners, and promote best practices also in this policy area. This represents an important component of a society based on European values, and of a more resilient economy.

In her political guidelines⁵, the President of the European Commission undertook to ensure that Europe 'strives for more' by grasping the opportunities of the digital age within safe and ethical boundaries. The recent *2020 Strategic Foresight report*⁶ recognises the crucial importance of the digital transformation of public administrations and justice systems

¹ Article 67 TFEU.

² Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407).

³ See 2020 rule of law report — the rule of law situation in the European Union (COM(2020) 580 final).

⁴ To compile an overview of the challenges that national justice systems have been facing during the COVID-19 crisis, the Commission collected information on its impact and national response measures; https://e-justice.europa.eu/content_impact_of_the_covid19_virus_on_the_justice_field-37147-en.do

In the context of the European arrest warrant, for example, while no Member State has generally suspended the execution of surrenders, in some cases it had become impossible to transfer the requested person to the issuing state, mostly due to travel restrictions and flight cancellations. The feasibility of each transfer has been assessed case by case. Transfers by land (e.g. between neighbouring states) have generally continued to take place unless borders are closed.

⁵ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

⁶ https://ec.europa.eu/info/strategy/priorities-2019-2024/new-push-european-democracy/strategic-foresight/2020-strategic-foresight-report_en

throughout the EU. The transition should work for all, putting people first and opening new opportunities for different stakeholders. It should therefore address a broad range of issues.

The European Council⁷ and the European Parliament⁸ have both recognised the pivotal role of digitalisation in helping to relaunch and modernise the EU economy following the COVID-19 crisis.

In the July 2020 Security Union Strategy, the Commission committed to actions to ensure law enforcement and justice practitioners can better adapt to new technology, in particular by having access to new tools, acquire new skills and develop alternative investigative techniques⁹.

The Council Conclusions on *Access to justice — seizing the opportunities of digitalisation*¹⁰ of 13 October 2020 set out specific proposals for the mutual reinforcement of policies relating to effective access to justice and digitalisation.

Against this background, it is essential that the EU brings the digitalisation of justice up to full speed. While a lot has been done already, significant work ahead remains to be conducted both at national and at European level to further strengthen the resilience of the justice systems and boost their capacity to work online. The Commission's experience with regard to eGovernment is that digital transformation is one aspect of the structural reforms of the justice systems which should positively impact the systems. As part of such reforms, the processes and the design of the systems supporting them need to be always developed with the citizens and business in mind.

To reap the full benefits of digital technologies in judicial proceedings, the objective of this Communication is hence two-fold: at the national level, it aims at further supporting Member States to move ahead their national justice systems towards the digital era, by enhancing the cooperation and digital uptake of the different national judicial authorities, for the full benefit of citizens and business; and at the European level it aims at further improving cross-border judicial cooperation between competent authorities. This would concern in particular further digitalising public justice services, promoting the use of secure and high-quality distance communication technology (videoconferencing), facilitating the interconnection of national databases and registers, and promoting the use of secure electronic transmission channels between competent authorities.

This Communication is setting out a new approach to the digitalisation of justice based on a 'toolbox' – a comprehensive set of legal, financial and IT instruments to be used by the various actors in our justice systems according to their needs.

The design and implementation of the digitalisation of justice must ensure full respect of fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union¹¹. This approach would thus de facto ensure that everyone in our Union can make full

⁷ *A roadmap for recovery – towards a more resilient, sustainable and fair Europe*, endorsed on 23 April 2020.

⁸ Resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences.

⁹ COM/2020/605 final

¹⁰ OJ C 342I, 14.10.2020, p. 1

¹¹ Such as the rights to the protection of personal data, to a fair trial and to a fair remedy, including for those with no access to digital tools or the necessary skills to use them, and taking account of the situation of the elderly and disadvantaged individuals.

use of new or additional digital tools in the justice area. It is therefore essential to ensure that also persons with disabilities and children have effective access to justice on equal basis with others¹². Factoring in security considerations in the design and rollout of digital solutions in the field of justice is essential to promote their uptake and to build citizens' trust. Furthermore, by improving access to justice, digitalisation will also help to strengthen the rule of law in the EU.

2. CHALLENGES FOR JUSTICE SYSTEMS IN THE DIGITAL AGE

There are various inherent challenges for and differences across Member States. Each year since 2013, the Commission has published an EU justice scoreboard¹³ presenting a snapshot also with respect to digitalisation of judicial systems across the Member States, for example as regards online access to judgments or online claim submission and follow-up. Two recent studies analyse the use of innovative technologies¹⁴ and the particular issue of digital criminal justice¹⁵.

The Commission has carried out an in-depth analysis and is presenting a mapping of the digitalisation of justice in all Member States in the staff working document¹⁶ accompanying this Communication. It reveals a different level of progress amongst the Member States.

For example:

- individuals can access an electronic file of their ongoing cases in 10 Member States in all types of civil law procedure;
- 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.

Overall, the results portray a very varied landscape across the Member States. The EU justice scoreboard and the mapping show that many areas of justice could benefit from further digitalisation.

With certain exceptions¹⁷, one area where a slow pace of digitalisation has been encountered relates to registers and databases. Individuals, businesses and legal practitioners all have

¹² As indicated in article 13 of the UN Convention on the Rights of Persons with Disabilities to which the EU and all Member States are party to.

¹³ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en

¹⁴ *Study on the use of innovative technologies in the justice field*;
<https://op.europa.eu/en/publication-detail/-/publication/4fb8e194-f634-11ea-991b-01aa75ed71a1/language-en>

¹⁵ *Cross-border digital criminal justice*;
<https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en>

¹⁶ SWD(2020) 540

difficulties in accessing the information to which they are entitled. In many cases, such access is not available online, resulting *de facto* in a number of inefficiencies.

Another issue in EU justice is the persisting use of paper files, which continues to dominate national and cross-border judicial proceedings. EU legal procedures require the exchange of information between the competent national authorities, often involving the use of standardised forms or large volumes of data. However, current EU legislation does not stipulate the medium or detailed arrangements for such transfers. As a result, most communication remains paper-based, thus generating inefficiencies in cross-border exchanges (mainly with regard to speed, reliability, traceability and cost), complicating individuals' and businesses' access to information, and slowing down exchanges between Member State authorities.

Lack of forward planning and coordination have led to the creation of a variety of national IT tools, resulting in challenges for achieving swift cross-border interoperability. This has led to an increase of the use of paper files at the national level. To address this issue, while protecting the investments already made, Member States have explored various approaches to the digitalisation of cross-border judicial cooperation. These endeavours took place mostly as voluntary initiatives between the Member States, associations of legal practitioners and the Commission. While this cooperation has produced a number of effective tools (in particular e-CODEX¹⁸), Member States have not yet made consistent use of these solutions.

In order to effectively support the relevant Member States' authorities in the fight against cross-border crime, EU justice and home affairs (JHA) agencies and bodies have identified the need to enhance their digital cooperation capabilities¹⁹. They have had to face a number of challenges, such as a lack of state-of-the-art digital infrastructure, a trusted communication channel and the necessary applications for the exchange of evidence between national authorities and between those authorities and the EU agencies and bodies. It is therefore essential that agencies and bodies such as the EU Agency for Criminal Justice Cooperation (Eurojust), the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF) and the European Union Agency for Law Enforcement Cooperation (Europol) agree on a common approach that ensures smooth and secure cooperation with Member States, while complying with the applicable legal framework, in particular as regards personal data protection.

To sum up, it is essential that the EU and its Member States overcome these obstacles so as to make access to justice an integral part of Europe's Digital Decade. This concerns all actors in the justice system.

¹⁷ Such as the digitalisation of Member States' business registers, interconnected through the Business Registers Interconnection System - see Section 3.4 of this Communication.

¹⁸ e-Justice Communication via Online Data Exchange;

¹⁹ As part of the digital criminal justice study (see footnote 29), inter alia, the following JHA agencies and bodies provided input: Eurojust, Europol and the EPPO.

3. A TOOLBOX FOR THE DIGITALISATION OF JUSTICE

This Communication proposes a toolbox for the digitalisation of justice, in order to tackle the challenges identified above and move the justice sector forward in the digital area. The Commission is proposing an approach that takes into account the Member States' differing national circumstances, national competences, and fully respects the principles of subsidiarity and proportionality. At the same time, to achieve a fully-fledged area of freedom, security and justice, it is important that all Member States work towards reducing the existing digitalisation gaps, fragmentation between national justice systems and leverage the opportunities available under the relevant EU funding mechanisms.

The tools of the proposed toolbox are broadly categorised as follows:

1. **Financial support to Member States**, to harness the potential for creating long-term impact;
2. **Legislative initiatives**, to set the requirements for digitalisation in order to promote better access to justice and improved cross-border cooperation, including in the field of Artificial Intelligence;
3. **IT tools**, which can be built upon in the short to medium term and used in all Member States. It is important that existing and new IT tools are interoperable by default, accessible for persons with disabilities, user-centred, fast, secure, reliable, resilient and data-driven²⁰, and ensure privacy, data protection and transparency;
4. **Promotion of national coordination and monitoring instruments** which would allow regular monitoring, coordination, evaluation and exchange of experiences and best practices.

The toolbox comprises binding and non-binding measures. Mandatory digitalisation seems necessary, for example, in the area of cross-border judicial cooperation procedures, to enable effective and swift cross-border communication. Other tools that may not be binding include opportunities for information-sharing and the exchange of best practices.

Any action relating to the digitalisation of justice must be implemented in full compliance with fundamental rights, such as the rights to the protection of personal data, to a fair trial and to an effective remedy, and the principles of proportionality and subsidiarity.

Furthermore, the digitalisation process must take full account of the needs of the disadvantaged groups. Digital technologies are becoming increasingly user-friendly and accessible to a large majority, regardless of age, level of education and accessible for persons with disabilities. At the same time, institutional, organisational and technical measures must ensure full access to justice by disadvantaged groups and people in situation of vulnerability, such as children or older people, who may lack the requisite means or digital skills. Victims of crime should also be able to benefit from digital tools in accordance with every victim's specific needs.

The right to a fair trial and effective legal remedy must be guaranteed. In particular, in criminal proceedings in a digital environment, care should be taken to avoid any interference

²⁰ Making use of increasingly available data, in accordance with the European data strategy outlined in the Commission Communication, *A European strategy for data* (COM(2020) 66 final).

with the rights of defence, including the right of access to a lawyer and the right of access to material evidence. Likewise, in civil proceedings, the equality of arms must be ensured.

3.1. Financial support to Member States

Developing adequate IT systems for use in the field of justice requires time and, more importantly, resources. A comprehensive strategy to tackle the digitalisation of justice in the EU therefore needs to address **access to funding**.

The digitalisation of justice systems, the uptake of existing digital solutions and the introduction of new ones require significant investments in infrastructure, design, implementation, maintenance and training²¹. To achieve a sufficient pace of change, a twofold approach is needed:

- financial support for Member States to start the true digital transformation of their justice systems; and
- support for implementing EU-wide initiatives.

Every means available should be used to support the transition to digital justice, including the new cohesion policy instruments, the new ‘justice’ and ‘digital Europe’ programmes, as well as the Recovery and Resilience Facility.

The **Recovery and Resilience Facility** aims in fact at supporting the national investments and reforms that are essential for a sustainable recovery²². This is why, when setting out guidance to help Member States to prepare and present their recovery and resilience plans for the implementation of the Recovery and Resilience Facility, the Commission stressed that the digital transformation of the justice sector is one of the domains in which Member States are strongly encouraged to focus reforms and investments²³. National initiatives in this regard can be counted towards the 20% digital expenditure target under the Recovery and Resilience Facility, in order to realise a ‘Europe fit for the digital age’.

The Commission’s **2021-2027 cohesion policy proposals** recognise the broad need for digitalisation and strengthen the link with the country-specific recommendations under the European Semester, which have identified the digitalisation of justice as a priority for some Member States since 2016²⁴. Therefore, Member States should make the most of the opportunities in the new programming period, in particular under the European Regional Development Fund²⁵ and the European Social Fund Plus.

²¹ Training for justice professionals on digital tools and technologies is addressed in the Commission Communication, *Ensuring justice in the EU — a European judicial training strategy for 2021-2024* (COM(2020) 713).

²² The Commission will exercise scrutiny to ensure that the same investments are not financed twice. The RRF aims to finance additional investments and not to crowd out investments that could be achieved through other mechanisms.

²³ https://ec.europa.eu/info/sites/info/files/3_en_document_travail_service_part1_v3_en_0.pdf

²⁴ Croatia since 2016, Cyprus since 2017, Belgium since 2018 and Greece in 2020.

²⁵ In particular, under Policy Objective “A smarter Europe” by promoting innovative and smart economic transformation”, Specific Objective “Reaping the benefits of digitalisation for citizens, companies and governments”. Investments should be consistent with the national or regional smart specialisation strategies and contribute to smart economic transformation.

The **Technical Support Instrument**²⁶ will provide support to all Member States in the implementation of structural reforms including in the justice area. The Commission has already considerable experience in the implementation of projects related to digitalisation of justice systems in several Member States under the current Structural Reform Support Programme (SRSP).

The Commission's experience with regard to eGovernment is that digital transformation is one aspect of the structural reforms of the justice systems which should positively impact the systems themselves (Governance, Human Resource management, Case management, etc.). A prerequisite for digitalisation of the systems is the reengineering of those processes and the design of the systems supporting them, always with the citizens and businesses in mind. Digital transformation structural reform without high-level process reengineering in mind, would be of limited impact.

As regards digitalisation initiatives with an EU dimension, support should be available under the new **Justice programme** and the **Digital Europe programme**. Both instruments foster the digitalisation of justice, for example by supporting the establishment of interoperable²⁷ solutions for more efficient cross-border cooperation and interconnecting registers and databases. The Digital Europe programme will also provide opportunities for piloting multi-sectoral innovative technology initiatives, in particular those based on AI and distributed ledger (blockchain) technologies.

Proposed actions	By whom?	By when?
Support the provision of new services for citizens and companies through digitalisation of justice systems and relevant public services under the new Cohesion Policy instruments	Commission / Member States	Ongoing until 2027
Prioritise the inclusion of digitalisation of justice actions in the national Recovery and Resilience Plans	Member States	Ongoing until 2026
Submit requests in the framework of the Technical Support Instrument for the digitalisation of justice systems	Member States	Ongoing until 2027
Offer financial support under the 'justice' and 'digital Europe' programmes (2021-2027) for initiatives enabling the digitalisation of justice at EU level	Commission / Member States	Ongoing until 2027
Implement concrete projects for the digitalisation of national justice systems and relevant public services, e.g. building electronic registers and databases, case management systems and secure communication channels, and equipping judicial	Member States	Ongoing until 2027

²⁶ Proposal for a Regulation of the European Parliament and of the Council establishing a Technical Support Instrument (COM/2020/409 final).

²⁷ The Commission has announced its intentions to evaluate the European interoperability framework (EIF) in order to assess the support it gives governments to set up interoperable digital public services (i.e. services that are fully available online and usable by businesses and citizens in any EU country). The initiative will also propose a new interoperability strategy for EU governments. <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12579-Interoperable-digital-public-services-European-Interoperability-Framework-evaluation-strategy>

authorities with videoconferencing tools and ensuring accessibility in digitalisation		
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3.2. Making the digital channel the default option in EU cross-border judicial cooperation

To date, the digitalisation of cross-border judicial cooperation procedures has been based mostly on voluntary initiatives between the Member States²⁸. However, this approach has reached its apparent limits. For example²⁹, in the area of civil and commercial law, seven Member States use digital communication tools for all relevant EU legal instruments when communicating with other competent authorities, six use them in a limited context, and seven currently do not use them at all. This fragmentation generates sustained inefficiencies – inter alia, the continued use of the paper channel results in unnecessary financial costs and negative environmental impact. Moreover, the use of digital communication tools on its own does not address the needs of fully digitalised procedures, which requires appropriate legal arrangements.

The Commission has already proposed a new approach to digitalisation in relation to certain EU legislation. On 31 May 2018, it proposed amendments to the Regulation on the Service of Documents³⁰ and the Regulation on the Taking of Evidence³¹. Among other things, these Regulations establish a legal framework for communication between national authorities in the context of cross-border cooperation. The Commission impact assessments³² clearly showed that the current paper-based cooperation presents a number of deficiencies, with an adverse impact on the cost and effectiveness of judicial proceedings. To ensure the relevance of the procedures in an increasingly digital world, the proposed amendments provide for electronic transmission as the default channel for communication and document exchange³³. In June 2019, the EU adopted the Restructuring and Second Chance Directive³⁴, which allows for viable business in distress to be rescued and honest, but bankrupt individuals to be given a second chance. One of its objectives is gradually to digitalise insolvency procedures, which will help to reduce their cost and length.

²⁸ Currently, only a few Member States are taking part in a pilot project to exchange European payment orders digitally.

²⁹ See accompanying staff working document.

³⁰ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (COM/2018/379 final).

³¹ 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 (COM/2018/378 final).

³² SWD/2018/285 final.

³³ The Regulations were adopted at the end of November 2020.

³⁴ 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) (OJ L 172, 26.6.2019, p. 18).

³⁴ 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) (OJ L 172, 26.6.2019, p. 18).

On the basis of this experience, as announced in its 2021 Work Programme³⁵, the Commission will take a step further and propose legislation on the further digitalisation of judicial cooperation procedures in civil, commercial and criminal matters. Such a proposal could:

- Require Member States by default to use **digital channels** for cross-border communication and data exchanges between competent national authorities;
- Require Member States to accept **electronic communication** for cross-border procedures involving citizens and businesses, without ruling out the use of paper;
- Guarantee that the solutions and principles set out in the eIDAS Regulation³⁶ are referenced and used, in particular:
 - the principle that **electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings** solely on the grounds that it is in electronic form;
 - **electronic identification**³⁷ and **signatures/seals** should become acceptable for the digital transmission of judicial documents and their appropriate assurance levels agreed.
- Provide a basis for the **processing of personal data**, within the meaning of the General Data Protection Regulation³⁸ and applicable Union rules on data protection and determine the responsibilities of different controllers and processors;
- Ensure that any electronic access points established for use by the general public **cater for persons with disabilities**³⁹;
- In order to ensure that national IT systems are interoperable and able to communicate with each other, lay down the broad **architecture of the underlying IT system** for digital communication.

The process of digitalising EU judicial cooperation would certainly entail non-negligible costs. In this regard, Member States should be able to benefit from EU financial support. Generic IT solutions developed at EU level, for use by all Member States, could be a major cost-reduction measure.

Proposed action	By whom?	By when?
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³⁵ https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en

³⁶ Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

³⁷ Digital Identity is an essential enabler of the Single Market and a key driver of the digital transformation of public administration. Based on the political mandate received from the European Council, the Commission will propose a revision of the eIDAS Regulation in order to enable Europeans to benefit from a universally accepted European Digital Identity, which can be used in all online proceedings, public or private requiring the use of electronic identification and authentication online. These developments are also relevant and important for the justice field and should be taken into account.

³⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance).

³⁹ In line with the accessibility requirements for electronic communication services set out in Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70-115).

Legislative proposal on the digitalisation of cross-border judicial cooperation (see Commission work programme for 2021)	Commission	Q4 2021
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3.3. Artificial intelligence (AI)

A Commission study⁴⁰ has shown that the rate of uptake of new technologies, such as artificial intelligence, varies between and within Member States, but is generally slow everywhere. The use of AI applications can bring a lot of benefits, such as making use of information in new and highly efficient ways, and improve access to justice, including by reducing the duration of judicial proceedings. At the same time, the potential for opacity or biases embedded in certain AI applications can also lead to risks and challenges for the respect and effective enforcement of fundamental rights, including in particular the right to an effective remedy and fair trial⁴¹.

To make use of the opportunities offered by AI technologies, while addressing the associated risks, in the follow-up to the White Paper on AI from February 2020, the Commission opened a public consultation and received views from various stakeholders on the use of AI applications in the justice area as a possible high-risk use case, in particular if used as part of decision-making processes with significant effects on the rights of persons⁴². The proposed requirements in the White Paper on increased transparency, human oversight, accuracy and robustness of these systems aim to facilitate their beneficial use, while ensuring that fundamental rights (including non-discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) are respected and rule of law and due process principles upheld. The use of Artificial Intelligence tools can support, but must not interfere with the decision-making power of judges or judicial independence.

Recent Commission research⁴³ has shown that judicial authorities are increasingly adopting AI-based applications. Of particular interest in the field of justice are the anonymisation of court decisions, speech-to-text conversion and transcription, machine translation, chatbots supporting access to justice and robot process automation⁴⁴.

As in other sectors, the use of AI applications in the justice sector could be very beneficial. Better coordination at EU level could avoid duplication of national efforts and create significant synergies. It could also ensure interoperability and ultimately transform good pilot projects into EU-wide solutions. Many AI solutions currently in use are based on

⁴⁰ *Study on the use of innovative technologies in the justice field*; <https://op.europa.eu/en/publication-detail/-/publication/4fb8e194-f634-11ea-991b-01aa75ed71a1/language-en>

⁴¹ These issues are presented in the Council of Europe's European Ethical Charter on the use of AI in judicial systems. The Charter also includes guidance on how to address the challenges and use AI technologies in a way that is respectful of the rights of all parties concerned. <https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment>

⁴² White Paper On Artificial Intelligence - A European approach to excellence and trust, 19.02.2020, COM(2020) 65 final.

⁴³ As further illustrated in the staff working document accompanying this Communication and the *Study on the use of innovative technologies in the justice field*; <https://op.europa.eu/en/publication-detail/-/publication/4fb8e194-f634-11ea-991b-01aa75ed71a1/language-en>

⁴⁴ Automation of processes such as organisation, planning and facilities management, prioritisation, categorisation and allocation of documents and tasks by robots.

machine-learning technologies, which require systems to be ‘trained’ with relevant data. Therefore, increasing the availability of public datasets produced by the judiciary⁴⁵ for re-use, *inter alia*, with various AI solutions should be explored and pursued, in full compliance with personal data protection rules, as set out in the Communication European strategy for data⁴⁶.

While the advantages of introducing AI-based applications in the justice system are clear, there are also considerable risks associated with their use for automated decision-making and ‘predictive policing’ / ‘predictive justice’. The Commission considers that certain uses of AI applications in the justice sector pose particular risks to fundamental rights. This perspective was shared by stakeholders such as European and national bar associations, legal practitioners, academics and civil society organisations in their reactions to the open public consultation on the AI white paper (February-June 2020)⁴⁷. As a follow-up to the White Paper, the Commission is working on a general framework to address the risks of AI technologies, including notably of high-risk AI applications. For applications that pose a high risk, potential biases need to be addressed. To that effect, the Commission is considering requirements concerning possible testing of applications, and the need to provide relevant documentation on their purposes and functionalities.

Where machine learning is used, the risks of biased outcomes and potential discrimination against women and particular groups, such as persons with a minority ethnic or racial background, are high and must be addressed. Therefore, special attention should be paid to the quality of the training data used⁴⁸, including its representativeness and relevance in relation to the purpose and the context of the intended application and how these systems are designed and developed to ensure that they can be used in full compliance with fundamental rights. The opacity of certain AI applications can be a challenge with regard to the need to justify decisions, the equality of arms concerning parties in judicial proceedings, and other principles. Appropriate safeguards are needed to guarantee the protection of fundamental rights, including equal treatment and data protection, and to ensure the responsible, human-centric development and use of AI tools where their use is in principle appropriate.

However, the final decision-making must remain a human-driven activity and decision. Only a judge can guarantee genuine respect for fundamental rights, balance conflicting interests and reflect the constant changes in society in the analysis of a case. At the same time, it is important that judgments are delivered by judges who fully understand the AI applications and all information taken into account therein that they might use in their work, so that they can explain their decisions. The use of AI applications must not prevent any public body from giving explanations for its decisions. It is therefore important that judges and prosecutors are trained on the use of AI applications⁴⁹.

While these issues will be subject to further analysis, certain targeted measures can already be proposed, as follows:

⁴⁵ In the context of implementing Directive (EU) 2019/1024 on open data and the re-use of public sector information (OJ L 172, 26.6.2019, p. 56).

⁴⁶ COM/2020/66 final

⁴⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12270-White-Paper-on-Artificial-Intelligence-a-European-Approach/public-consultation>

⁴⁸ Quality of the training data means that the data should be relevant, accurate and representative in relation to the purpose and the context of the intended application.

⁴⁹ COM(2020) 713

Proposed actions	By whom?	By when?
Exchange best practices and lessons learned on the use of innovative technologies in justice by Member States and the EU institutions, JHA agencies and bodies, and legal professional organisations; to this end, the Commission will organise quarterly expert webinars by topic	Commission / Member States/JHA agencies	Q1 2021 and onwards
Explore ways to increase the availability of relevant machine-readable data produced by the judiciary for establishing trustworthy machine-learning AI solutions for use by interested stakeholders, such as judicial authorities and legal practitioners, including the private sector	Commission / Member States	2021 and onwards

3.4. Better IT tools for access to information through the interconnection of registers

In order to exercise their rights and have full access to justice, individuals need access to information. They can already use public information tools such as EUR-Lex⁵⁰, giving access to legal information, and the European e-Justice portal⁵¹, giving access to information on justice, but they need better and more efficient ways to access personal information and documents. In this context, it is also important to ensure accessibility for persons with disabilities. Businesses need digital tools to access information, interact with national authorities and enjoy effective access to justice. 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. Legal practitioners need to be able to give their clients the best possible support, in particular by communicating with courts and submitting documents safely and efficiently. It is important that national and European authorities have appropriate tools to communicate securely across borders and to exchange evidence and documents. The EU justice and home affairs agencies need efficient means to support national authorities and to cooperate effectively among themselves.

In the past decade, alongside their work on e-government⁵², the Commission and the Member States have taken a number of initiatives that have produced positive results as regards the digitalisation of justice⁵³. Citizens, public authorities and companies already benefit from digital tools that improve transparency, facilitate access to evidence in criminal proceedings and reduce delays and unnecessary administrative costs. For instance, the e-Justice portal is the main EU source of legal and practical information in the justice domain for the public at large. It also provides access to interconnected registries, inter alia, through the business

⁵⁰ <https://eur-lex.europa.eu/>

⁵¹ <https://e-justice.europa.eu/>

⁵² While the eGovernment deals with the overall process of the digital transformation of public administrations, sectoral emphasis is needed. The focus of e-justice is on the digitalisation of justice systems, the interactions between judicial and other competent authorities, and those public services of relevance to judicial proceedings. More information on the Commission's work on eGovernment can be found here: https://ec.europa.eu/info/business-economy-euro/egovernment_en
<https://ec.europa.eu/digital-single-market/en/egovernment-action-plan>

⁵³ Further to the implementation of several successive e-justice strategies and action plans (currently the 2019-2023 strategy on e-justice (Council, 2019/C 96/04) and 2019-2023 action plan on European e-justice (2019/C 96/05)).

registers interconnection system (BRIS)⁵⁴, which brings together the business registers of Member States and EEA countries, provides public access to information on more than 20 million limited liability companies across Europe, and enables business registers to exchange information on cross-border cases.

From case-law repositories to company information, Member States already operate a number of registers and databases containing information of public or specific interest. These help individuals and businesses and are often crucial for the work of legal practitioners. Many such registers have already moved online and in some cases EU-wide interconnections have been or are being established.

Member States have exchanged criminal records information since April 2012⁵⁵ using reference implementation software made available by the Commission⁵⁶. This approach was strengthened in April 2019, with the adoption of a Regulation⁵⁷ establishing a centralised system for identifying Member States holding conviction information on non-EU nationals and stateless persons (ECRIS-TCN)⁵⁸. Similarly, exchange of information between authorities and access to multilingual information has been facilitated through the business registers interconnection system (BRIS), which gives access to more than 20 million EU limited liability companies, and the insolvency registers interconnection system (IRI)⁵⁹. Directives (EU) 2019/1151⁶⁰ and 2019/2121⁶¹ introduce new requirements to the digitalisation of business registers and the provision of the information between business registers and to the public through BRIS⁶². The land registers interconnection (LRI) is being piloted by a small number of Member States, but to exploit its full potential it should extend

⁵⁴ Established by Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers (OJ L 156, 16.6.2012, p. 1), now codified by Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

⁵⁵ On the basis of Council Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 23) and Council Decision 2009/316/JHA (OJ L 93, 7.4.2009, p. 33).

⁵⁶ The second implementation report on ECRIS will be adopted soon.

⁵⁷ Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

⁵⁸ The ECRIS-TCN system is now being developed by eu-LISA.

⁵⁹ 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, p. 19–72).

⁶⁰ Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law (OJ L 186, 11.7.2019, p. 80–104).

⁶¹ Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions (OJ L 321, 12.12.2019, p. 1–44).

⁶² Directive (EU) 2019/1151 enables and enhances the use of digital tools and processes in the Single Market. This Directive makes it possible to form a company and register a branch fully online, and to file, fully online, the company documents required by the business registers. The Directive provides the Business Registers' Interconnection System (BRIS) with new functionalities, including new exchanges of information between EU business registers (i) on disqualified directors (ii) cross-border branches and on changes to company information (iii) new sets of company data available free of charge through the search interface on the e-Justice Portal. Directive (EU) 2019/2121 further enhances BRIS with new exchange of information between EU business registers and new public information on cross-border conversions, mergers and divisions.

EU-wide. Directive (EU) 2015/849⁶³ requires Member States to interconnect their national beneficial ownership registers. The beneficial ownership registers interconnection system (BORIS) will serve as a central search service for all related information. This will enhance transparency of beneficial ownership in view of better prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Access to national court jurisprudence in machine-readable form is also a precondition for, among other things, greater transparency, the uniform application of EU law and building interoperable IT systems. The European case-law identifier (ECLI)⁶⁴, a uniform identifier that uses the same recognisable format for all Member State and EU courts, has been developed to facilitate the accurate citation of court judgments. The Commission will consider ways of promoting use of the ECLI and possibly make it mandatory.

Member States should pursue the establishment of electronic registers and databases as a priority. Electronic databases are easy to consult, minimise time and cost for users, and are resilient to crises such as COVID-19. Digitalising databases and registers is a precondition for their interconnection at EU level for the benefit of cross-border users and to support the single market. The Single Digital Gateway Regulation⁶⁵ requires a full digitalisation of the user interface of certain key life events and procedures for cross-border users. Interconnections also reduce the risk of fraud by facilitating targeted research in various countries at the same time.

The digitalisation of registers and databases is also a key enabler for achieving compliance with the ‘once only’ principle and the establishment of common European justice data spaces in accordance with the *European strategy for data* Communication.

Furthermore, whenever possible, Member States should recur to the use of videoconferencing. The use of videoconferencing in judicial proceedings, where permissible by law, substantially reduces the need for burdensome and cost-intensive travel and may facilitate proceedings. While many videoconferencing solutions are already used at national level, the 2019-2023 ‘e-justice’ action plan⁶⁶ cites the use of videoconferencing in cross-border proceedings as a priority. However, this will involve developing national systems in close coordination at EU level, in order to ensure mutual trust, interoperability and security. Therefore, Member States should regularly exchange information about ongoing work in this area and best practices. The use of videoconferencing should not infringe the right to a fair trial and the rights of defence, such as the rights to attend one’s trial, to communicate confidentially with the lawyer, to put questions to witnesses and to challenge evidence.

Proposed actions	By whom?	By when?
Full Member State participation in the	Member States	30 June 2021

⁶³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73–117).

⁶⁴ Council Conclusions on the European case-law identifier (ECLI) and a minimum set of uniform metadata for case law (OJ C 360, 24.10.2019, p. 1).

⁶⁵ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1–38).

⁶⁶ 2019-2023 Action Plan European e-Justice (OJ C 96, 13.3.2019, p.9).

insolvency registers interconnection system required by Regulation (EU) 2015/848		
Upgrade BRIS to support new functionalities required by Directive (EU) 2019/1151	Commission / Member States	First set of changes: 1 August 2021 Second set of changes: 1 August 2023
Upgrade BRIS to support new functionalities required by Directive (EU) 2019/2121	Commission/Member States	31 January 2023
Full participation of Member States in the interconnection of land registers	Commission / Member States	2024
Encourage Member States to develop videoconferencing facilities in accordance with national law in close coordination with each other and, where possible, use EU funding in this respect	Member States	Q1 2021 and onwards

3.5. IT tools for secure cross-border cooperation in civil, commercial and criminal matters

Making e-CODEX the gold standard for secure digital communication in cross-border judicial proceedings

e-CODEX is the main tool for establishing an interoperable, secure and decentralised communication network between national IT systems in cross-border civil and criminal proceedings⁶⁷. It is a software package that enables connection between national systems, allowing users, such as judicial authorities, legal practitioners and members of the public, to send and receive documents, legal forms, evidence and other information in a swift and safe manner. e-CODEX is already used by the e-evidence digital exchange system (eEDES) and certain pilot projects⁶⁸. It is also intended to underpin the decentralised IT system to be established in the context of the new Service of Documents and Taking of Evidence Regulations.

At present, a consortium of Member States and other organisations⁶⁹ manages e-CODEX. To ensure its long-term sustainability, the Commission has adopted a proposal⁷⁰ to entrust its further development and maintenance to the EU Agency for the Operational Management of

⁶⁷ e-CODEX has been developed and maintained with EU financial support.

⁶⁸ e-EDES (for the exchange of European investigation orders and mutual legal assistance requests in criminal proceedings); the voluntary digital exchange of claims under the European order for payment and the small claims procedure; iSupport (an electronic case management and secure communication system for the cross-border recovery of maintenance obligations).

⁶⁹ Austria, Belgium, Croatia, Czechia, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Jersey, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Romania, Spain, Turkey, UK; Council of Bars and Law Societies of Europe and Council of the Notariats of the European Union.

⁷⁰ Proposal for a Regulation of the European Parliament and of the Council on a computerised system for communication cross-border civil and criminal proceedings (e-CODEX system), and amending Regulation (EU) 2018/1726 (COM(2020) 712).

Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)⁷¹. It is important to have such legislation in force ready for eu-LISA's envisaged takeover of e-CODEX from 1 July 2023 and the Commission will therefore work closely with the co-legislators to follow up on its proposal. Furthermore, the upcoming EU cybersecurity strategy will provide a cross-cutting framework, accompanied by legislative proposals to further enhance the security of network and information systems.

Broadening the scope of eEDES

The **e-evidence digital exchange system (eEDES)** is an IT tool whereby Member State authorities can securely exchange European investigation orders, mutual legal assistance requests and associated evidence in digital format. At present, authorities send requests and receive evidence by (slow) postal or electronic means that do not always ensure the necessary levels of security. Against this background and a growing need to secure e-evidence quickly in cross-border criminal investigations, Member States called for the creation of a secure platform⁷². eEDES is designed to directly improve the efficiency and speed of existing cooperation procedures, while ensuring the security of exchanges and enabling verification of the authenticity and integrity of transmitted documents. It is also designed to be interoperable with national case management systems. All Member States should swiftly connect to eEDES in order to generate true EU added value.

eEDES should be developed further. In particular, it should be expanded to enable secure communication between competent authorities and relevant service providers in the framework of the new e-Evidence Regulation⁷³, when adopted, and between Member States' authorities and the relevant JHA agencies. Going forward, the technical components developed for eEDES could evolve into reusable tools for the digitalisation of EU cross-border civil, commercial and criminal legal acts. In this regard, the future scope of eEDES will be laid down in the legislative proposal on the digitalisation of judicial cooperation procedures.

Proposed action	By whom?	By when?
Support Member States by developing and extending common tools for the digitalisation of cross-border cooperation in civil, commercial and criminal matters (based on work on eEDES)	Commission	2024

⁷¹ Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99–137).

⁷² Council Conclusions on improving criminal justice in cyberspace (9 June 2016); <https://www.consilium.europa.eu/media/24300/cyberspace-en.pdf>

⁷³ The European Commission proposed the e-Evidence Regulation in April 2018 (COM(2018)225 final 2018/0108 (COD)). The Council reached a General Approach on the Regulation at the JHA Council on 7 December 2018. The proposal for a Regulation is included in the list of priority pending proposals of the Commission work programme 2021.

3.6. Digital criminal justice

The modernisation of digital tools for judicial cooperation and information exchange in criminal investigations and proceedings across the EU is crucial in the light of evolving security threats and the pace of technological change. JHA agencies and bodies such as the EPPO, Eurojust and Europol need to be suitably equipped to fulfil their mission, cooperate with each other and Member State authorities, and ensure coordination on criminal matters.

The following measures have been identified as the most urgent in the field of criminal law:

- There is broad consensus⁷⁴ on the need to modernise **Eurojust’s case management system (CMS)**. This will need to be financially sustained. The Commission will seek to support Eurojust in this work including through the ‘Digital Europe’ programme⁷⁵;
- **‘hit/no-hit’ connections**⁷⁶ between Eurojust’s, Europol’s and the EPPO’s CMSs will ensure that they are aware at all times of any links between investigations or prosecutions they are working on, in line with their respective mandates. These interconnections, which will allow these organisations to see whether there is a “hit” between the information they hold and information from other EU agencies and bodies, are already foreseen in most of the respective legal acts establishing these organisations – the key is to ensure now that these interconnections work as intended by the legislation. In addition, there are currently no provisions on hit/no-hit links between the EPPO and Europol. Europol’s legal framework should therefore be amended accordingly. The Commission will address this as part of its proposal to strengthen the mandate of Europol, which will be presented in December 2020.

The Council Decision on the exchange of information and cooperation concerning **terrorist offences**⁷⁷ and **Eurojust’s counter-terrorism register** need improvement. The Council Decision is one of the few instruments requiring Member States to share information on their counter-terrorism cases with Europol and Eurojust, and as such is a cornerstone of those agencies’ work in helping Member States to combat terrorism. In order to maximise the benefits, all actors need to agree on what information is to be provided and at what stage of the procedure. At the same time, data protection and data security must be ensured in line with the Law Enforcement Directive⁷⁸, and Eurojust’s counter-terrorism register must be securely integrated within its legal and technical framework. To this end, the Commission

⁷⁴ Following discussions on the concept of ‘digital criminal justice’ at the JHA Council in December 2018, the Commission started work on a study, in close cooperation with Eurojust. Its subsequent report (14 September 2020) presents a comprehensive set of challenges particularly affecting criminal justice systems. In line with the conclusions, the Commission proposes the concrete actions outlined below.

⁷⁵ COM/2018/434 final.

⁷⁶ A ‘hit/no-hit’ is a minimal-data approach that divulges limited knowledge and personal data. It allows the requesting party to verify whether pertinent information about a natural person, other entity or a case exists in a counterpart’s IT system(s), without the need for the latter to disclose details beyond a ‘yes, data match exists’ or ‘no, there is no match in our records’ reply.

⁷⁷ Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

⁷⁸ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

will present a legislative proposal on exchanges on digital cross-border terrorism cases, and identify possible further improvements to Eurojust's data-processing framework.

Forming a joint investigation team (JIT) has been widely recognised as one of the most efficient steps in carrying out a cross-border investigation. JITs bring together investigators and prosecutors from the Member States and non-EU countries, where necessary supported by Europol and Eurojust. Their efficiency could be further enhanced by a specific IT environment specifically tailored to their needs. This would make cooperation easier and quicker, allowing JITs to be set up and work more effectively, e.g. through communication and document/evidence storage and exchange tools. The Commission intends to present a legislative proposal for a Regulation on a **JIT collaboration platform**.

Cross-border digital exchanges should also be adapted to ensure **the exchange of large files**.

Judicial practitioners should be able to **identify and link cases**. Both law enforcement and judicial authorities need to be able to find out whether a given individual is already being investigated or prosecuted in another Member State. As for the exchange of large files (see above), centralised and decentralised options for dealing with this issue have been suggested by the cross-border digital criminal justice study, building on partial solutions that are already available. Any action in this respect must be conducted in full compliance with the applicable rules on the protection of personal data.

Proposed action	By whom?	By when?
Creation of a new case management system for Eurojust under the 'digital Europe' programme	Commission/ Eurojust	Q1 2021 onwards
Creation of a technical taskforce bringing together the Commission and JHA actors to support the implementation of 'hit/no-hit' mechanisms between relevant agencies	Commission, Eurojust, Europol, EPPO, OLAF	Q1 2021
Inclusion of provision on a 'hit/no-hit' interconnection between the EPPO and Europol in Europol's legal framework (to be confirmed)	Commission	Q4 2020
Legislative proposal on exchanges on digital cross-border terrorism cases (see Commission work programme for 2021)	Commission	Q4 2021
Legislative proposal for a Regulation on a JIT collaboration platform (see Commission work programme for 2021)	Commission	Q4 2021
Blueprint on sharing large files and creating a cross-border judicial case-checking mechanism	Commission	2021

3.7. My e-Justice space

In a number of Member States, individuals already have electronic access to various services offered by the judiciary and public administrations, e.g. provision of certified copies (of a clean criminal record check for use when applying for a job, statement of marital status, birth certificate or a will).

Such services save time, can be accessed from anywhere⁷⁹ and are available even in challenging situations, such as the COVID-19 pandemic. However, individuals and businesses are often not fully aware of their existence. Furthermore, despite the obligations of public sector bodies to make their websites and content accessible for persons with disabilities, the reality is that many of them still face barriers to their use. The Commission therefore considers that a “My e-Justice space” should be established as an entry point with links to available national services. This space should be part of the e-Justice portal and managed in close cooperation with all Member States. The tool would apply only to judicial documents that a person, or their legal representative, is allowed to consult and/or obtain. It should not provide access to all judicial documents concerning a person, in particular those in criminal proceedings where a balance must be struck between the confidentiality of investigation, the suspect/defendant’s right to information and the victim’s right to information and protection, and where there are specific provisions under EU law⁸⁰.

As a first step, a comprehensive collection of links could be posted on the e-Justice portal to facilitate access to available national electronic services provided by the judiciary and the relevant public administrations. Consideration could then be given to coupling the tool more closely with national systems, so that individuals and businesses can make requests and receive documents directly from the e-Justice portal. This would ensure a uniform user experience in all EU official languages, whereas national systems are often limited to the national language(s). The aim would not be to replace existing or future national systems.

“My e-Justice space” should also facilitate access to justice in EU cross-border procedures, in particular with regard to European small claims⁸¹ and European payment orders⁸². In that context, it would provide individuals, businesses and their legal representatives with a EU-level access point from which they could file claims electronically and communicate seamlessly with the national competent authorities. This could help address practical barriers to the user-friendliness and speed of application of the relevant instruments; currently, claims are usually sent by post, which carries risk and inherent delays.

Proposed action	By whom?	By when?
Create on the e-Justice portal a collection of links to national electronic services provided by the judiciary and public administrations	Commission/ Member States	2023
Provide an EU-level access point to allow individuals and businesses to file European small claims and payment orders, and communicate electronically with the competent national authorities	Commission/ Member States	2024

⁷⁹ Subject to an appropriate level of security, e.g. the use electronic identification and authorisation.

⁸⁰ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1); Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

⁸¹ 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 199, 31.7.2007, p. 1).

⁸² 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, p. 1).

3.8. Cooperation, coordination and monitoring tools

The state of digitalisation of justice systems is already regularly reflected under various monitoring frameworks, such as the EU Justice Scoreboard, the Rule of Law Report and the European Semester. Since a number of IT tools will be further developed, it will be important to ensure also coherence among the various instruments, and to promote close cooperation with EU Member States and EU JHA agencies, and further coordination among Member States. The Commission will therefore continue to monitor developments on digitalisation of justice systems and further the cooperation through new initiatives and ensure regular stocktaking.

EU justice scoreboard

The EU justice scoreboard already provides comparative data on various aspects of the digitalisation of national justice systems, such as the availability and use of ICT. As of 2021, the Commission aims to include further data on digitalisation in the Member States. This should allow for more in-depth monitoring of progress areas and challenges.

Information sharing on national digitalisation initiatives

The Commission will make proposals to Member States on setting up a dedicated section in the e-Justice portal on national initiatives on the digitalisation of justice. This will provide a comprehensive overview of projects, thus incentivising convergence.

Digital Justice Ministerial Forum and regular stocktaking

The digital transition is ongoing and involves working with partners at both national and EU level. A coordinated approach to support for digitalisation and continued work with all partners are key and a strong political impetus is needed.

In 2021 to maintain the momentum, the Commission will organise an online Digital Justice Ministerial Forum, with high-level participation by the EU institutions and key stakeholders. In the longer term, it will consider further forms of cooperation and coordination on the digitalisation of justice, as solutions need to work in practice for all concerned. National and EU issues requiring coordination include ongoing developments, planned activities, national and EU-level funding opportunities, and foresight on future technologies. Regular exchanges will foster understanding and the sharing of best practices, and make it possible to monitor actions taken, including those proposed in this Communication.

Proposed actions	By whom?	By when?
Enhance the monitoring of progress on digitalisation at national level through the EU justice scoreboard	Commission	2021 and onwards
Collect information on the e-Justice portal on national initiatives on the digitalisation of justice	Commission/ Member States	Q1 2021 and onwards
Organise a Digital Justice Ministerial Forum	Commission, Member States, stakeholders	2021
Regular stocktaking of progress on the digitalisation of justice	Commission, Member States, stakeholders	2021 onwards

3.9. The digitalisation of justice — ready for the future

Digital technology is constantly evolving. New approaches and solutions for managing, securing and exchanging information appear all the time. These developments also affect the digitalisation of justice. Without a clear and up-to-date view of the direction in which they are moving, investments in digital justice systems run the risk of being ineffective and not bringing best value for money. In addition, the emergence of new technology brings with it the need for ongoing assessment of its impact, in particular as regards fundamental rights and data protection, as demonstrated by developments in artificial intelligence.

Everyone working on the digitalisation of justice needs to stay abreast of developments. All actors should have access to regularly updated information in order to be able to assess them from a legal, technical and budgetary angle before making any decisions on investments and safeguards. In addition, the significant research capacity at both Member State and EU level can be used to investigate aspects of technology that are important for society at large, but being of lower commercial interest, remain underdeveloped.

Ongoing research and foresight activities carried out by various entities, for example the Commission's Joint Research Centre, could be better focused, and activities better coordinated, to ensure that all aspects of the digitalisation of justice receive the attention they deserve. Synergies should be sought with the work on innovation and foresight in the context of the EU innovation hub for internal security that is currently being set up.

Furthermore, as with many other policies, cooperation is needed not only at European level, but also with our partners internationally in order to make the best use of digitalisation for more secure and efficient justice. Criminals also exploit the advantages of digitalisation, be it by committing online crimes or using digital tools to carry out criminal activities. They have quickly seized new opportunities created by the COVID-19 crisis. It is therefore paramount that judicial and law enforcement authorities at European level and in the framework of international cooperation are equipped with the appropriate tools to access relevant electronic evidence necessary to investigate and prosecute such crimes effectively. The e-evidence package⁸³ will provide national law enforcement and judicial authorities with European Production Orders and European Preservation Orders to obtain digital evidence from service providers for criminal investigations, irrespective of the location of the establishment of the provider or the storage of the information. It is important that the co-legislators take forward the Commission's proposals speedily. Furthermore, ongoing negotiations with our international partners – both with the US and within the framework of the negotiations on a Second Additional Protocol to the Council of Europe Budapest Convention on Cybercrime – need to be concluded.

Proposed action	By whom?	By when?
With the Joint Research Centre, develop a monitoring, analysis and foresight programme on	Commission/ Member States	Q2 2021

⁸³ Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters COM/2018/225 final - 2018/0108 (COD); Proposal for a directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings COM/2018/226 final - 2018/0107 (COD)

justice-relevant digital technology		
Create a mechanism on the e-Justice portal for regular reporting, analysis, feedback and exchange of best practices on justice-relevant IT	Commission/ Member States	Q2 2021

4. CONCLUSIONS

While efforts in the EU have already brought results, the data show the need for a step-change to reap the full potential of modern digital tools, in full respect of fundamental rights.

The COVID-19 crisis has exposed challenges and risks as regards the effective functioning of justice systems in exceptional circumstances and has highlighted the need to strengthen the resilience of the justice system across the EU. On the other hand, it has also triggered a significant shift towards the uptake of digital technologies in our societies. Building on this shift, it is important to give a new impulse for the creation of an overarching approach on the digitalisation of justice in the EU, grasping all possible opportunities while ensuring appropriate safeguards.