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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2020) 542 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT 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

Delegations will find attached document SWD(2020) 542 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

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

{COM(2020) 712 final} - {SEC(2020) 408 final} - {SWD(2020) 541 final}

Executive Summary Sheet
Impact assessment on a computerised system for communication in cross-border civil and criminal proceedings (e-Justice Communication via Online Data EXchange - e-CODEX system)
A. Need for action
Why? What is the problem being addressed?
e-CODEX is an IT system for cross-border judicial cooperation, which allows users, be they judicial authorities, legal practitioners or citizens, to send and receive documents, legal forms, evidence or other information in a secure manner. e-CODEX was developed by a consortium of 21 EU Member States between 2010 and 2016 with EU funding from the Competitiveness and Innovation Framework Programme (CIP) ICT Policy Support Programme. Member States have made use of the system on a voluntary basis in procedures like the European Payment Order or the European Small Claims Procedure. Now, in order to ensure the maintenance, evolution and future extension to other judicial procedures of the system, a solution should be found to ensure its proper financing and sustainability. This is also a pre-requisite for the adoption of the system by the Member States that have not used it so far. The Commission is already developing the e-Evidence Digital Exchange System (eEDES), using e-CODEX as the communication channel. Member States are expected to connect to eEDES by 2021. E-CODEX is also the most likely software solution to be used for the establishment of the decentralised IT system in the context of the Service of documents and Taking of evidence regulations. Not providing sustainable management of e-CODEX could jeopardise this work, as well as with regard to all the procedures which are already using this system in a piloting context.
What is this initiative expected to achieve?
The general objective is to promote the efficient functioning of a common area of freedom, security and justice by ensuring optimal use of judicial procedures. A common system for online communication tailor-made for judicial authorities is essential to fulfilling that objective. More specifically, the initiative aims to prevent inefficiencies in cross-border communication by ensuring sustainable maintenance of the e-CODEX system and improve efficiency by ensuring a wider use of the e-CODEX system.
What is the value added of action at the EU level?
A mechanism for the secure exchange of cross-border information in judicial proceedings is best achieved at EU level, since a universally accepted solution is needed. 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 maintenance at EU level entails a cost, it is the only way to achieve an interoperable system for cross-border communication between judicial authorities.

B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
Several legislative and non-legislative options were considered. Some options were discarded at an early stage: The creation of a separate legal entity was discarded since it would be disproportionate compared to the limited tasks that would be given to the entity. In addition, the use or development of an alternative system were discarded mainly since the current e-CODEX solution proved to be very effective and efficient for the procedures for which it is already used and it is reasonable to expect a return on the 24 million EUR invested in creating e-CODEX. Also, a commercial solution would raise issues regarding long term sustainability and the confidentiality and integrity of the data exchanged, as the owner of the solution could in theory have access to the data transferred using its solution. Handing over e-CODEX to a Member State or a consortium of Member States could not be considered since Member States have clearly rejected this possibility. Their preference, as expressed in several Council conclusions, is to have eu-LISA ensure the further evolutive maintenance of e-CODEX. Under these conditions, two options were assessed against the baseline scenario, i.e. that no permanent

maintenance is provided leading to the expiry of e-CODEX. Among these the option of handing over e-CODEX to an Agency was considered most appropriate. The alternative option to have the Commission ensure the maintenance of e-CODEX was deemed less favourable since it would be more difficult to ensure Member State involvement in the governance of the system – which is something Member States consider important in order to guarantee the independence of the judiciary. An agency could also be a more flexible solution allowing to better take into account the input from stakeholders. Among the existing agencies, the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) is the only one with relevant experience in managing large-scale IT systems and should therefore be given the task to manage e-CODEX. In order to allow for the adoption of a legal basis for e-CODEX, as well as to ensure an adequate handover process, the current Member State consortium or a new entity would need to continue maintaining e-CODEX in the 2021-2023 period.

Who supports which option?

Member States have expressed strong preference for handing over e-CODEX to an agency and consider eu-LISA as the most appropriate one (most recently in Council conclusions adopted at the JHA Council in October 2020).

Stakeholders representing the major legal professional organisations in Europe, have also expressed support for a permanent solution for the e-CODEX system. Several stakeholders responding to the inception impact assessment consider eu-LISA as the most appropriate entity to manage the system.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

As an essential IT system for the digitalisation of judicial cooperation, e-CODEX will simplify and speed up cross-border judicial procedures. By improving the efficiency of cross-border proceedings, e-CODEX would also contribute to improving the functioning of the Digital Single Market. The use of e-CODEX would have a positive impact on the fight against cross-border crime by facilitating cooperation between judicial authorities in criminal matters. The efficiency of national courts could also increase as a result of digitalisation of procedures.

An EU regulatory agency like eu-LISA will have the capacity to ensure the long-term maintenance of the e-CODEX system. The Agency will be able to adopt governance procedures allowing rapid assimilation of needs emerging from different communities, including from the Member States and from users of e-CODEX.

What are the costs of the preferred option (if any, otherwise main ones)?

The takeover of the tasks currently carried out by the Member State e-CODEX consortium will entail costs for the EU budget. The total costs for 2022-2027 amount to EUR 9.667 million (average cost per year of EUR 1.611 million). The costs include the additional human resources required for the activities to be carried out by eu-LISA and by the Commission. At eu-LISA, the recruitment of internal resources will start already as of 1 September 2022 with two CA posts. As from 1 January 2023, eu-LISA should have a total of 2 TAs and 3 CAs, which will ensure core functions with regard to e-CODEX. Additionally, the Commission (Directorate-General for Justice and Consumers) will have to be involved in providing policy governance of eu-LISA's work, in monitoring the Agency, and in preparing the necessary implementing acts mandated by the Regulation. One additional statutory post has been budgeted for this from 2022.

How will businesses, SMEs and micro-enterprises be affected?

SMEs and micro-enterprises will benefit from the digitalisation of judicial procedures enabled by e-CODEX. The possibility to submit claims to courts online, for instance in the application of the European payment order or claims under the European small claims procedure, will save costs for postage and lead to cost savings as a result of more efficient and shorter procedures. There will be no additional costs for SMEs (or other operators) following the implementation of e-CODEX for a specific legal procedure.

Will there be significant impacts on national budgets and administrations?

Positive impacts on national judicial authorities' ability to cooperate with their counterparts in other Member States can be expected. For example, the e-CODEX system could facilitate the enforcement of unpaid fines for traffic offences against foreign residents.

Installing and using e-CODEX will entail costs for those Member States that have not yet done so. The cost

should not exceed 80-100 person-days per deployment.
Will there be other significant impacts? <u>Max 6 lines</u>
The further extended use of an IT system like e-CODEX to legal procedures could save natural resources by reducing the use of paper. Less use of transport services for postal delivery could also have positive environmental impact. A spill-over effect leading to digitalisation of the national administration is also expected, considering that the e-CODEX solution could be adopted domestically as well, not just for cross-border cases.
D. Follow up
When will the policy be reviewed? <u>Maximum 4 lines</u>
Three years after the transfer of e-CODEX to eu-LISA and every four years thereafter, the Commission will conduct an evaluation of the extent to which it has been an effective solution. On the basis of this evaluation, the Commission will decide on the appropriate follow-up.