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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	3 December 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2020) 408 final
Subject:	Regulatory Scrutiny Board Opinion 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 SEC(2020) 408 final.

Encl.: SEC(2020) 408 final

ANNEX

EUROPEAN COMMISSION

17.12.2017

SEC(2020) 408

REGULATORY SCRUTINY BOARD OPINION

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}
{SWD(2020) 541}
{SWD(2020) 542}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2017)

Opinion

Title: Impact Assessment / Cross-border e-Justice in Europe (e-CODEX)

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Context

This impact assessment explores how to secure permanent funding for the maintenance and further development of the e-CODEX tool after 2018.

The e-Justice policy enhances access to justice and the efficiency of judicial processes in and across the Member States. The EU has adopted the e-Justice Strategy and Action Plan for 2014-2018.

e-CODEX is an IT tool to connect national electronic judicial systems. It includes secure cross-border message exchange in the judicial area. Developing the e-CODEX project costs a total of about EUR 24 million. This was funded in equal proportions by EU grants and by the participating Member States as a pilot project under the Connecting Europe Facility. It will reportedly cost an additional EUR 2 million to maintain e-CODEX between 2016 and 2018.

(B) Main considerations

The Board notes that the scope of the impact assessment is specific and limited. It is about the decision whether to make the pilot project e-CODEX permanent, and where to host it. It reflects the broad orientations of the e-Codex Roadmap, adopted on 8-9 December 2016 by JHA Council.

The report contains significant shortcoming that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects.

(1) The report is not sufficiently clear on whether the future of e-CODEX and the choice of the hosting Agency are already agreed between the Council and the Commission.

(2) The report does not fully explain why the uptake of e-CODEX is low and how the proposed regulation would overcome the existing bottlenecks.

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(3) The comparison between the two options on hosting e-CODEX is partial and unbalanced.

(C) Further considerations and adjustment requirements

(1) The report should clarify the current policy situation of e-CODEX. It should explain upfront the decision which the impact assessment should support: a decision about the continuation and permanent funding of e-CODEX, or about where to host e-CODEX after 2018. This explanation should draw on all prior commitments made by Member States, Council conclusions, stakeholder support from the consultation, Commission communications on e-Justice etc. When this is done, the rest of the report should be adapted accordingly and present a more proportionate analysis for the objectives, problem, options and expected impacts.

(2) The problem definition should explain the low uptake of e-CODEX. The problem section should further substantiate the extent to which the low uptake of the system is due to its uncertain long-term sustainability or to the prohibition of digital tools in national legislation or other factors not reflected in the report, such as lack of trust and unclear governance. It should also explain the gap between 21 participants in the CEF project and only 10 users. The problem definition should include more evidence of the success or lack of success of the e-CODEX pilots.

(3) The report should clarify the baseline and options. The baseline should incorporate the revised context and scope, as discussed under point (1). The options should make clear what the practical implications are for e-CODEX, regardless of its hosting. For example, what does e-CODEX mean for development of other CEF projects, extension to third countries, etc. The description should clarify to what extent e-CODEX is future proof and if all other realistic options have been considered.

(4) The report should as far as possible provide objective facts and evidence to support the comparison of impacts and the consequences on the management in Commission DG or eu-LISA. It should cover relevant issues beyond the technical and financial issues, such as governance or applications beyond e-Justice. The option of hosting by eu-LISA should explain whether this requires a change in the mandate of the agency or its legal base. The report should further justify the qualitative argumentation by references to stakeholders and the underlying studies. When describing the impacts of the options, it should make a clearer link to how each option is fit-for-purpose to solve the problem(s) and meet the objectives.

In the absence of solid evidence, the report should better substantiate the higher scores given to the option of eu-LISA. It should become clearer that this is a proportionate approach reflecting the given policy situation as presented in the context.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option(s) of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process **The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.** **The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.**	
Full title	Impact assessment on Cross-border e-Justice in Europe (e-CODEX)
Reference number	PLAN/2017/794
Date of RSB meeting	13/12/2017

Quantification tables: JUST Impact Assessment - Cross-border e-Justice in Europe (e-CODEX)

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	*Amount*	*Comments*
Indirect benefits		
Cost savings as a result of the use of digital communication (e.g. e-CODEX) for the European Small Claims procedure or the European Order for Payment procedure	8-21 EUR, 3-9 days per case Overall the length of EPO proceedings would be reduced yearly between 35.301 and 127.836 days. The total savings on postage would amount to between € 94.136 and €298.284.	The savings are indicated in terms of costs of postage and shortening of the procedure thanks to the use of digital communication. These benefits would accrue both to businesses and citizens/consumers as parties to small claims proceedings.
Better enforcement of traffic fines	8 million EUR per year (France)	The benefits consist of increased enforcement of fines for cross-border traffic offenses. These benefits would accrue to the national administration / judiciary
More efficient court proceedings	5-10 minutes per case (Germany)	The benefits correspond to estimated time savings due to the use of e-CODEX in German courts

II. Overview of Costs (total for all provisions) – Preferred Option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Handover of e-CODEX to eu-LISA	Direct costs	0	0	0	0	15.000 (EU)	1.068.975 (EU)
	Indirect costs	0	0	0	0		
Implementation of e-CODEX at national level	Direct costs	0	0	0	0	80-100 person-days	
	Indirect costs	0	0	0	0		
...							