Council of the European Union

Brussels, 7 December 2021
(OR. en)

Interinstitutional File:
2021/0395(COD)

14821/21
ADD 2

EJUSTICE 110
JURINFO 3
JAI 1376
JUSTCIV 191
CODEC 1606

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	2 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 393 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the documents Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation

Delegations will find attached document SWD(2021) 393 final.

Encl.: SWD(2021) 393 final

EUROPEAN
COMMISSION

Brussels, 1.12.2021
SWD(2021) 393 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the documents

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation

and

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation

{COM(2021) 759 final} - {SEC(2021) 580 final} - {SWD(2021) 392 final}

Executive Summary Sheet

Impact assessment – Digitalisation of cross-border judicial cooperation

A. Need for action

What is the problem and why is it a problem at EU level?

The two problems are a lack of digital tools fully supporting:

i. **cooperation between legal systems in different EU countries** (cross-border judicial cooperation) and
ii. **the ability of people/organisations to use legal systems in other EU countries when they need to** (lack of digital tools facilitating access to justice in cross-border cases.)

Presently, communication in cross-border cases takes place mainly on paper. Where a digital channel for communication exists, it is used on a voluntary basis only; electronic signatures and seals are not recognised across the board, due to a lack of agreed types (i.e. simple, advanced or qualified electronic signatures or seals).

This situation affects the courts/competent authorities and the individuals/legal entities involved in cross-border cases, as it leads to delays, higher costs and increased administrative burden for processing their cases.

It is also at odds with the general move towards digitalisation in modern life, especially in the private and commercial sectors, which was further accelerated by the COVID-19 pandemic.

What should be achieved?

The general objective of the initiative is to improve access to justice and the efficiency of cross-border judicial cooperation by establishing a **digital communication channel** enabling the effective use of digital tools in cross-border judicial cooperation proceedings.

What is the value added of action at the EU level (subsidiarity)?

Cross-border matters transcend the reach of national legal systems, as national legal actions cannot reach past national borders. The objective of the initiative, therefore, cannot be accomplished in a sufficiently harmonised manner by the Member States on their own and can only be achieved at Union level.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

There are 2 main options – a **non-legislative** option and a **legislative** option, with a number of suboptions.

Non-legislative option

The Commission would adopt a **Recommendation** encouraging Member States to enable the use of digital tools in the context of cross-border judicial cooperation procedures. The Commission would also continue developing the existing IT systems, without providing a legal basis for their use in cross-border cases.

Legislative option

The Commission would adopt a **Regulation** on the use of digital tools in the context of judicial cooperation and access to justice, including on the validity and acceptance of electronic signatures/seals, and the use of videoconferencing for remote hearings in cross-border civil, commercial and criminal cases. Provisions would be introduced, ensuring acceptance and the legal validity of digital documents, and outlining the data protection requirements inherent to cross-border communication.

Suboptions

The identified suboptions in the legislative option are:

- voluntary or mandatory use of the digital channel for communication between the courts/competent authorities of the Member States and the Justice and Home Affairs agencies and EU bodies, where relevant;
- voluntary or mandatory acceptance of electronic communication from individuals and legal entities in cross-border cases;
- non-regulation or regulation of the trust services.

Preferred option

The legislative option with the following features – mandatory use of the digital communication channel; mandatory acceptance of electronic communication from individuals and legal entities and regulation of the trust services.

What are different stakeholders' views? Who supports which option?

The majority of the consulted Member States and NGOs support the legislative option with a mandatory use of the digital channel between the courts/competent authorities and with JHA agencies and EU bodies, as well as mandatory electronic communication with individuals/legal entities in the context of cross-border proceedings. The use of videoconferencing for cross-border cases is also supported.

C. Impacts of the preferred option

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

With its potential to substantially cut the cost of participating in cross-border cases and the duration of the proceedings due to the accelerated communication, the initiative would directly benefit individuals and legal entities (including small/medium companies) concerned by the various EU law instruments.

The electronic communication between courts/competent authorities and with individuals/legal entities will help automating the processing of the cases and will eliminate the need to scan, print and manually register documents.

Total estimated yearly savings

- **This would benefit the administration by reducing administrative burden**. The average overall **yearly saving** at EU level are estimated at **EUR 23 372 900 in postage costs** and **EUR 2 216 160 in paper costs** amounting to **a grand total of EUR 25 589 060**.
- For iThe the individuals and legal entities will be saving **EUR 4 098 600** in postage costs and **EUR 388 800** in paper costs.
- Duration of cases – sending fewer documents by **The average posting time** will be reduced to 0 resulting in an overall yearly reduction of the duration of the procedures by **15 389 999 days**.

- Case time for The individuals and legal entities will be gaining **2 700 000 days** in average posting time.
- **Labour saved – 874 man-years** will be gained in processing effort at court/competent authority level.
- **Paper – 181 448 100** A4 standard 80g printing paper pages will be saved out of which **31 833 000** by individuals and legal entities.

Positive economic impacts would arise for certain categories of business: providers of IT consulting services; manufacturers of videoconference and other distance communication equipment; internet and telecommunication service providers; cloud storage service providers; and archiving service providers. The revenue of these businesses is expected to increase.

With no printing and postage costs, paperless communication has a smaller carbon footprint (e.g. 50% to 90% less per unit for the equivalent standard mail). The use of videoconference will eliminate the need for the participants to cross-border proceedings to travel - videoconference produces only 7% of the carbon emissions associated with physical meetings.

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

The total one-off cost for extending the eEDES and Service of documents/Taking of evidence IT systems to the full scope of the preferred (legislative) option would be EUR 18 700 000 over 5 years.

This will result in a yearly investment of EUR 3 740 000.

The yearly recurrent (maintenance and support) costs that are associated with operating the IT system at EU-27 level is estimated at EUR 8 100 000 which corresponds to 3 man-years/MS x EUR 100 000.

What are the impacts on SMEs and competitiveness?

Shortening the time and reducing the costs of the proceedings would produce tangible benefits for EU businesses, including small/medium enterprises (SMEs). These companies would also benefit from increased legal certainty and a greater ability to enforce their rights when operating in other EU countries.

Will there be significant impacts on national budgets and administrations?

No. Running the IT system provided by the European Commission will require recurrent costs of less than EUR 300,000/Year/Member State.

Will there be other significant impacts?

The initiative will have a positive impact on fundamental rights and on the digital single market, as it will shorten the duration of legal proceedings and generally increase the use of digital tools.

Proportionality?

The preferred option would not require the adoption of measures which would burden the Member States beyond what is necessary for the achievement of the initiative's objectives.

National governments Member States would only have to implement measures, which ensure the establishment and the functioning of the digital tools for communication in cross-border cases.

D. Follow up

When will the policy be reviewed?
A full evaluation will be conducted every 5 years, to assess the impacts and technological developments.