

# Digitalisation of cross-border judicial cooperation

Fields marked with \* are mandatory.

## I n t r o d u c t i o n

### **Digitalisation of cross-border judicial cooperation: Public Consultation**

This consultation concerns cross-border judicial cooperation in the European Union. It refers to civil, commercial and criminal cases and involves, for various reasons, more than one EU Member State. The European Commission is planning a new initiative aiming at digitalising cross-border judicial cooperation procedures. The purpose is to make use of new digital tools for electronic communication between courts, other competent authorities of the Member States and also to give the possibility to individuals and businesses to start proceedings and to communicate with the courts and the other competent authorities in other EU countries electronically, to be able to submit electronic documents from the comfort of their homes and offices. Currently, the communication from individuals/businesses to judicial authorities and between the public authorities themselves is carried out mainly on paper, which causes delays, involves more costs and is susceptible to crises such as COVID-19 pandemic.

The European Commission seeks the views and opinions of stakeholders and all persons who could be impacted by the future initiative in order to take them into consideration when deciding on the possible options and the way forward.

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## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation

- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* First name

Burcu

\* Surname

Yuksel Ripley

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\* Organisation name

*255 character(s) maximum*

Centre for Commercial Law and the Centre for Private International Law at the School of Law of the University of Aberdeen

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

\* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Djibouti
- Libya
- Saint Martin
- Åland Islands
- Dominica
- Liechtenstein
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname

- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine

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| <input type="radio"/> Cocos (Keeling) Islands          | <input type="radio"/> Japan      | <input type="radio"/> Philippines                                 | <input type="radio"/> United States Minor Outlying Islands |
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| <input type="radio"/> Curaçao                          | <input type="radio"/> Laos       | <input type="radio"/> Rwanda                                      | <input type="radio"/> Western Sahara                       |
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| <input type="radio"/> Czechia                          | <input type="radio"/> Lebanon    | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia                               |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho    | <input type="radio"/> Saint Kitts and Nevis                       | <input type="radio"/> Zimbabwe                             |
| <input type="radio"/> Denmark                          | <input type="radio"/> Liberia    | <input type="radio"/> Saint Lucia                                 |  |

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

## \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

### Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

### Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

**Please note that the questions are optional and respondents may choose not to reply to all of them.**

### I. General questions

1) In principle, do you think that there is a need to transition to electronic means of communication in the context of the EU cross-border judicial cooperation procedures?

*at most 1 choice(s)*

- Yes  
 No  
 Undecided

2) What would be, in your view, the benefits of the digitalisation of EU cross-border judicial procedures (e.g. the use of the digital channel instead of paper with and between competent authorities)?

Multiple choice – one or several replies are possible:

*between 1 and 7 choices*

- Better accessibility of information and easier access to judicial procedures
- Lower costs of handling cases for both administrations and citizens / businesses
- Less time consumed for both administrations and citizens/businesses
- Speedier and more effective/efficient cross-border procedures
- Increased resilience of judicial systems
- Other (please elaborate in the box below)
- I don't see any benefits

If Other, please specify:

*1000 character(s) maximum*

Increased privacy, confidentiality and security (to alleviate concerns around fraud through the use of technical means to verify the identity and authenticity of the sender/receiver, data protection, and data storage in paper-based methods), real time communication and coordination

3) What do you consider as key barriers to the digitalisation of cross-border judicial cooperation?

Multiple choice – one or several replies are possible

*between 1 and 10 choices*

- Different level of digitalisation of the Member States
- Lack of financial and human resources for developing and maintaining IT systems
- Lack of digital skills of users and/or competent authority staff
- Equipment/Connectivity constraints (i.e. no access to a computer or to the internet)
- Lack of trust in IT solutions (e.g. due to cybersecurity or data protection concerns)
- Lack of regulation providing for the use of electronic communication under national law.
- Lack of regulation recognising legal effects of considering electronic evidence admissible under national law (e.g. if there is a requirement under national law for an original paper document, when a scanned electronic version is more easily available)
- Lack of recognition of electronic identities and electronic signatures/seals between Member States



- Lack of interoperable national IT systems which can communicate with each other
- Other (please elaborate in the box below)

If Other, please specify:

*1000 character(s) maximum*

We note that all above exist as barriers to different extents. There are also psychological barriers (to diverting from traditional methods to new methods).

4) What would be, in your view, the disadvantages of the digitalisation of EU cross-border judicial procedures?

Multiple choice – one or several replies are possible

*between 1 and 8 choices*

- Risk of exclusion due to:Lack of digital skills
- Risk of exclusion due to:Lack of access to the internet / unreliable internet connection
- Risk of exclusion due to: Lack of adequate equipment (e.g. no access to a computer, or a mobile device)
- Disproportionate need of investments
- Cybersecurity concerns
- Data protection concerns
- Other (please elaborate in the box below)
- I don't see any disadvantages

If Other, please specify:

*1000 character(s) maximum*

The above risks may arise mainly in the context of e-communication/transactions between individuals /businesses and the courts/other competent authorities (not between the courts/other competent authorities themselves). Another risk is accessibility issues to platform due to eg a technical error.

5) Do you consider that the digitalisation of cross-border judicial cooperation could adversely affect the right to a fair trial and defence rights (such as the right of access to a lawyer and the right of access to the case file)?

Please select one of the choices below:

*at most 1 choice(s)*

- Yes (please elaborate)
- No (please elaborate)

Undecided

If Other, please specify:

*3000 character(s) maximum*

Although our answer is in principle no to this question, we note potential effects of the risks we selected in question 4 above and necessity to adequately address these risks to ensure access to justice.

6) Which are the EU cross-border judicial cooperation legal instruments or areas that you consider should provide for an electronic channel of communication as a priority (if any)? Please, list them and explain why below.

*3000 character(s) maximum*

Any areas of judicial cooperation where speed is important (eg criminal justice, family law matters, insolvency) and where high volume of communication is required between individuals/businesses and the courts/other competent authorities and/or between the courts/other competent authorities themselves (eg in the context of jurisdiction, recognition and enforcement, taking of evidence, service of documents).

7) In the context of a possible transition to an electronic channel of communication for EU cross-border judicial cooperation procedures:

a) do you consider that there are risks of exclusion of individuals and businesses (including SMEs) if the electronic channel becomes the default one (e.g. owing to lack of internet access, low digital skills, vulnerability or due to other reasons)?

Please select one of the choices below:

*at most 1 choice(s)*

- Yes - How should these risks be addressed? (please elaborate)
- No
- Undecided

If Other, please specify:

*1000 character(s) maximum*

Measures to ensure access to platform (eg funding, training, infrastructure)

b) What potential additional challenges should be considered in the transition to digitalisation of cross-border judicial cooperation procedures within the European Union? Please explain in the box below:

*3000 character(s) maximum*

Apart from what has been stated above in question 3, development of guidance and standards in relation to establishment and use of platform.

8) What would be your preferred scenario for the potential digitalisation of EU cross-border judicial cooperation:

a) electronic communication between courts and other competent authorities of the Member States.

Please select one of the choices below:

*at most 1 choice(s)*

- Mandatory - i.e. use of the digital channel by default, subject to justified exceptions
- Optional – i.e. left at the discretion of Member States
- Undecided

b) electronic communication of individuals/businesses with the courts and other competent authorities of the Member States.

Please select one of the choices below:

*at most 1 choice(s)*

- Mandatory - i.e. obliging Member States to provide for such a possibility, without excluding alternative channels
- Optional - i.e. left at the discretion of Member States
- Undecided

9) In case it is decided to propose a new EU legal instrument, what aspects of digitalisation should it regulate:

Multiple choice – one or several replies are possible

*between 1 and 6 choices*

- The mandatory or optional nature of electronic communication with and between competent national authorities
- The legal validity of electronic documents and evidence
- The conditions for the use of electronic signatures/seals
- The responsibilities for data protection obligations
- The architecture of the IT system to be used
- Other (Please elaborate in the box below)

If Other, please specify:

*1000 character(s) maximum*

Exceptions to mandatory/optional nature of e-communication; standards regarding interoperability and cybersecurity; additional protective measures for confidential or sensitive data (eg relating to health or family life); ownership and management of the IT system (to be further supported by terms and conditions of the platform, defining rights and obligations of the platform facilitator/owner and users). Questions regarding the technicalities of the IT system could be addressed in delegated acts.

10) Are there any other points that you would like to make?

Please elaborate in the box below

*1000 character(s) maximum*

Clarification is needed on the aim, a paper to electronic transition or a full digitalisation? EU's work on digitalisation in other areas is to be considered (eg EU blockchain strategy).

Staged development and implementation is encouraged (eg based on lessons learned from the Insolvency Recast Regulation practice and then extension in phases to further areas and to more complex forms).

Procedural laws of EU MS are to be respected.

International developments are to be considered (eg HCCH work on electronic transmission of request under the Hague Service and Evidence Conventions (see eg <https://www.abdn.ac.uk/law/blog/use-of-blockchain-technology-in-crossborder-legal-cooperation-under-the-conventions-of-the-hague-conference-on-private-international-law-hcch/>); and UNCITRAL Model Law on Electronic Transferable Records aiming to accommodate all technologies including DLT/blockchain.

Legislative act is to be supported by administrative act/regulation/delegated acts.

**II. The questions below are targeted at policy-makers or representatives of a judicial or competent authorities responsible for EU cross-border judicial cooperation:**

11) Which communication channel do you think is most appropriate for communication between judicial and other competent authorities across borders?

Please select one of the choices below:

*at most 1 choice(s)*

- Paper-based
- Electronic
- Both (please elaborate)
- Undecided

If Other, please specify:

*1000 character(s) maximum*

12) Do you consider that the involvement of EU bodies and/or services (such as the EPPO, OLAF, Eurojust) in the digital channels of communication would bring added value to the overall concept of digitalisation of judicial cooperation?

Please select one of the choices below:

*at most 1 choice(s)*

- Yes - if so, which services/bodies you find most relevant and why? (please elaborate)
- No (please elaborate)
- Undecided

If Other, please specify:

*1000 character(s) maximum*

13) In the context of a possible transition to an electronic channel of communication for EU cross-border judicial cooperation procedures and in case you do not already use a national case management/IT system for the purposes of judicial cooperation, would you benefit from an EU-developed IT solution provided to you?

Please select one of the choices below:

*at most 1 choice(s)*

- Yes
- No
- Undecided

14) What would be the best way to achieve full digitalisation of cross-border judicial procedures at the European level?

Please select one of the choices below:

*at most 1 choice(s)*

- By adopting one EU legal instrument which provides for the digitalisation of all cross-border civil, commercial and criminal procedures
- By adopting a series of amendments to civil, commercial and criminal EU law instruments for the digitalisation of cross-border judicial procedures
- By carrying out a promotional campaign regarding the use of the various electronic channels of communication, without mandating their use

Undecided

**III. The below question is targeted to private individuals or representatives of a business, or their legal representatives:**

15) In case you are involved in a cross-border case<sup>[1]</sup> as an individual or representative of a business, or their legal representative – what would be your preferred way of communication?

Please select one of the choices below:

*at most 1 choice(s)*

- I would prefer to use traditional paper-based means of communication
- I would prefer to use electronic communication with all the participants in the procedure
- I would prefer to have the possibility to use both means of communication
- Undecided

[1] A cross-border case in this consultation means a case which is dealt with under EU cross-border judicial cooperation procedures in civil, commercial and criminal matters, for instance a request for a European Payment Order under Regulation 1896/2006 (OJ L 399, 30.12.2006, p. 1–32) or a small claim under Regulation 861/2007 (OJ L 199, 31.7.2007, p. 1–22).

## Contact

[Contact Form](#)