



‘e’ meets justice

Access to justice
should not be
discouraged by
the complex
variety of legal
systems

**Accelerating European Justice: uniting
IT experts, scholars and legislative experts.**





Continue the conversation

You do not need to make long travels anymore to buy goods abroad. With one click of the mouse, your new laptop can be shipped from Austria to Portugal, sometimes even on the same day. As cross-border e-commerce is increasing rapidly, so is the need for suitable legal redress mechanisms for consumers engaging in cross-border online transactions. The European Small Claims Procedure and the European Payment Order have helped to address this need.

Access to civil justice is of great importance for enforcing the rights of consumers and businesses. Yet, access to justice means more than the existence of cross-border procedures. It also means that these procedures can be easily navigated by those who need them. The current cross-border procedures can seem incredibly complex, especially to citizens without legal knowledge. Technology like e-CODEX can help to overcome this complexity and ensure that the needs of the citizen become central to European cross-border justice. In addition, the project 'Building EU civil justice' contributes to effective and equal access to justice for EU citizens by conducting academic research from a legal-normative, comparative and empirical viewpoint.

But technology cannot do this on its own. Experts in technology need to be joined by experts in law, experts in policy and experts in academia. Collectively, they have the opportunity to raise the cross-border procedures to the next level. The *'e' meets Justice* conference, held in Lisbon on 2 and 3 May 2019, provided a platform for experts from all fields to discuss and exchange ideas in order to find a meeting point between the legal world and the digital world.

This publication is our effort to ensure the conversation continues. It bundles the stories and reflections from various speakers of the conference. Their contributions can serve as an inspiration and can help us to look ahead at what our collaboration can bring about for European justice and e-CODEX.

LUÍSA PROENÇA

Deputy National Director of Polícia Judiciária



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Enhanced cooperation to provide citizens access to justice throughout the EU

Cross-border family law cases: how e-CODEX could make life easier for citizens

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**There are millions of
international families
in the EU.**

EACH of their members is a potential user of courts in many different EU countries, depending on their habitual residence, nationality, place of death, and so on. Divorces, parental authority, child abduction, children placement, maintenance, property regimes, succession, enforcement, and execution of judicial decisions are regulated by European Regulations to make the EU a territory of legal certainty for those families facing cross-border matters. This aim would be more efficiently achieved and at a significantly lower cost for the citizens if their lawyers would be able to directly and electronically access, communicate and exchange documents with

courts of EU Member States. Relevant examples include accessing decisions and information about the status of proceedings; obtaining regulations' certificates, transmitting all relevant information related to a child abduction or submitting placement orders online.

Indeed, nowadays it is usually not yet possible for a lawyer from an EU country to communicate, send and receive such files electronically to/from a court of another EU Member State. As a result, lawyers are required to go to the court in person, to instruct a local lawyer, or to rely (if possible) on postal

With electronic communication with the court, time and money could be saved



services, not to mention the language obstacles and translation requirements. This obviously leads to additional costs and delays for their clients. The e-CODEX infrastructure could become a very helpful instrument to facilitate court users in cross-border family law cases.

This article will describe several actual situations that are regularly encountered by practitioners, where e-CODEX could be of added value.

Determining whether proceedings have been filed

The first example is of a citizen who wishes to initiate a divorce proceeding or parental responsibility proceeding while there are grounds to assume that their spouse has already filed a legal case abroad.

Under these circumstances, it would be useful and cost-effective for the client if the lawyer could ask the relevant jurisdiction whether the case is already pending.

Another example is that a person is served for a proceeding but has already seized another Member State's jurisdiction. In that case, it would be crucial for that person to prove the first seizing quickly to stop the second proceeding. Their independent and conscientious lawyer will have to obtain the proof and then instruct a local lawyer to defend that position in front of the other jurisdiction. This means two lawyers will have to work and invoice fees. On top of that, valuable time of the courts in different jurisdictions will be occupied with a very straightforward decision with respect to European Regulations.

THROUGH E-CODEX, THE INITIAL LAWYER WOULD:

- Have to identify themselves and prove their mandate;
- Indicate the identification of the parties (names, dates and places of birth);
- Specify the nature of the proceeding: divorce, parental responsibility, etc.

IN RESPONSE, THE COURT MAY PROVIDE:

- Date and time of registration of the case;
- By whom;
- Date of notification (which could be of transmission to central authorities);
- Date of final registration to the court;
- Date/stage at which the court is considered to have been seized, for instance with respect to BIIa (article 16);
- A document confirming the situation officially, which should be enough to stop any discussion.

With such a digital process, and if multilingual forms were created to standardise the communication, money and time could be saved for both courts, lawyers and EU citizens.

Obtaining certificates under the Brussels IIa Regulation (BIIa)¹

BIIa – as other regulations do – provides that certificates can be obtained from courts in order to prove the enforceability of a decision, under articles 39 (matrimonial matters and parental responsibility), 41 (rights of access) and 42 (return of the child). When a certificate has not been issued at the time of the decision – for instance because there was no international aspect at the time and no party asked for it – it would be very useful to be able to obtain the certificate directly and quickly from the court when international enforcement becomes necessary or to modify official documents such as marriage certificates and birth certificates. Normally, the lawyer would instruct a local lawyer from the Member State where the decision has been issued in order to go to the court and provide all information requested to obtain the certificate (official copy of the decision, non-recourse certificate, etc.).

With electronic communication with the court, again, time and money could be saved. This would be a step further towards a better circulation of judgments in the EU. The lawyer of the enforcing Member State could send the mandate and the decision to the relevant court in order to obtain the certificate, without instructing a local lawyer to do so.

Obtaining a decision and the status of that decision
Lawyers may need to obtain court decisions that their clients cannot provide because they have lost it or because they have moved and have not been served. The representative of a child may also have to get hold of a decision issued in another Member State regarding this child, such as a parental authority or placement order. In general, any citizen may need to request a copy of a court decision or check if there is any pending proceeding against them. To obtain this information, the lawyer would need to instruct a local lawyer in the relevant Member State with nothing else than the name of the client or the other party. This might be even more complicated in case of doubt about the jurisdiction where proceedings have been launched.

A direct electronic means of communication between EU lawyers and courts could help in that search and, in the end, provide more legal certainty across the EU.

Conclusion

These examples clearly illustrate the potential of e-CODEX to facilitate parties in cross-border family law cases. There are many other situations where e-CODEX could dramatically change the way European justice will serve citizens – and courts – in the future.

1. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.



A direct electronic means of communication between EU lawyers and courts could help provide legal certainty for families facing cross-border matters.

**It would be very useful to be able to
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quickly from the court.**



3.4 million

cross-border
civil and
commercial
court
proceedings
in the EU
each year





e-CODEX: uniting communities at the forefront of cross-border justice

The need for cross-border collaboration

FOR both citizens and businesses, cross-border interaction has increased rapidly in recent years, due to factors such as the rise of international e-commerce, digital media, studying abroad and international careers. The upswing in international transactions is directly reflected in the number of cross-border disputes.

AS VĚRA JOUROVÁ,
COMMISSIONER FOR
JUSTICE, CONSUMERS
AND GENDER EQUALITY,
STATED:

**EVERY YEAR, THERE ARE
APPROXIMATELY 3.4 MILLION
CROSS-BORDER CIVIL
AND COMMERCIAL COURT
PROCEEDINGS IN THE EU.¹**

This may seem like a lot, but this figure pales in comparison to the number of out-of-court proceedings and wronged citizens deterred by the unfamiliarity of cross-border justice. However, it is essential for the internal market that those taking part in it can rely on the justice system to protect them. In other words: the legal infrastructure for dealing with cross-border cases needs to catch up with the commercial and social infrastructures of our day and age.

The European Union institutions and Member States knew full well that this day would come and decided to introduce several legal procedures to help citizens or businesses to deal with cross-border litigation, such as the European Small Claims Procedure (ESCP) for claims up to €5,000, the European Payment Order (EPO) for higher claims and the European Investigation Order (EIO) to help judicial authorities request and share evidence in criminal matters.² These European Regulations are in place to close the judicial gaps between Member States. But there is also a practical gap.³ Although the forms and procedures are standardised, they are implemented and embedded differently within each jurisdiction. Because Member States all use their own software systems to process information,



they largely rely on the post for the transmission of requests and information. This makes the practical implementation of the European Regulations burdensome, time-consuming, vulnerable and at times unavailing. That is why, in addition to the European Regulations, the EU invested in the development of a digital platform to facilitate secure, efficient and sustainable communication in cross-border procedures, also known as e-CODEX. The project started in December 2010.

LAUNCH OF e-CODEX

When releasing a new tech product, commercial parties often release a beta version of their product to a limited audience prior to the general public. This type of pre-release, while useful to detect bugs and improve usability, was not available to the e-CODEX platform. Due to the high stakes, the e-CODEX platform was not released to its users until it had been perfected to the top-notch solution that it is today. That means that during the first years of its existence, the e-CODEX project mostly resided in a community of IT-experts. Although delegations of law practitioners, politicians and scholars were, of course, consulted during the technical development, it was not until after the launch that e-CODEX

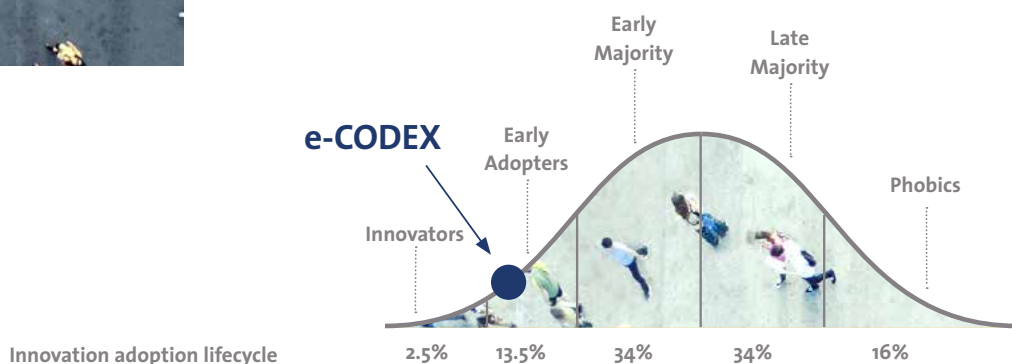
¹ European Commission (2018), Commission proposes to modernise and digitalise EU civil judicial cooperation, Press release, IP/18/3991, Brussels, 31 May 2018.

² Velicogna, M., 'Reconfiguring the European justice service provision to meet the people's needs: an introduction to the e-CODEX solution and e-CODEX Plus experience', p. 28 of this publication.

³ Groustra, J., 'Overcoming National Diversification in the European Payment Order Procedure' p. 20 of this publication.



e-CODEX IS A LINKING PIN FOR E-JUSTICE COMMUNITIES THROUGHOUT THE EU.



was able to spread to and take root in other communities.

The adoption of new technology has been studied widely by sociologists and is often described with the technology adoption lifecycle, based on Everett Rogers' Diffusion of Innovations (1962). When a new technology becomes available to its users, its adoption over time follows the path of a bell curve. The first group to take the new technology into use is called the 'innovators', which consists of 2.5 % of the population. This is usually a community of experts in the field who are thought to be opinion leaders. If the innovation catches on with this group, the 'early adopters', will follow shortly. If they embrace the new technology, that means 16 % of the population is using the technology and spreading the word to the 'early majority'

(34 %). After that, the late majority (34 %) adopt the technology and finally, the phobics (16 %) are converted too. As many may recall, less than a decade ago, the majority of consumers was wary of online payments. While a plethora of online payment methods has now advanced to the final stages of the technology adoption lifecycle, e-CODEX still has a long way to go to reach a similar status.

For e-CODEX, the academic community has played an important role in the uptake by innovators.⁴ The 'e' meets Justice conference, where politicians, IT-experts, scholars and law practitioners from around Europe congregated, marks the milestone that e-CODEX has now reached the early adopter stage and, moreover, is becoming a linking pin for e-Justice communities throughout the EU.

⁴ As evidenced by contributions of Professor Xandra Kramer (Erasmus University Rotterdam, the Netherlands), Dr Francesco Romeo (University of Naples 'Federico II', Italy), Jos Hoevenaars, PhD (Erasmus University Rotterdam, the Netherlands) and Dr Riikka Koulu (University of Helsinki, Finland) elsewhere in this publication.

EARLY ADOPTION OF e-CODEX:

FOUR EXAMPLES

At the time of publication, various projects have been launched, using e-CODEX to enhance the access to legal information and means throughout Europe or to exchange case-related data in civil and criminal law procedures involving more than one Member State securely. This means the e-CODEX platform is already actively making a difference for citizens, businesses, legal practitioners and courts.

1.

Protecting the financial position of companies doing business across borders.

The very first use of e-CODEX was in July 2013, enabling claimants or their representatives to file EPO claims online and send them directly to the competent court from outside their jurisdiction. For example, when an Irish private equity firm decides to invest in a fintech startup in Luxembourg, they appoint a German executive search agency to find the new Chief Marketing Officer (CMO) for the startup. The agency invests in employer branding for the startup, finds the right candidate and helps her relocate from Germany to Luxembourg to start as the new CMO. In total, the private equity firm runs up a substantial five-figure bill with the executive search agency. Unfortunately, after three months, the investor decides to pull the plug on the startup due to unforeseen yet insurmountable technical issues with the product. The fees for the employer branding efforts, recruitment of the CMO and relocation package are still pending and the private equity firm shows no intention of paying. Within the borders of one jurisdiction, it would be straightforward for the executive search firm to obtain a court order. Without e-CODEX, it would be far more complicated and daunting for a small or medium-sized enterprise such as the executive search firm to obtain a court order in a foreign jurisdiction. Fortunately, the e-CODEX system allows the German lawyer representing the executive

search firm to file an electronic application with the Irish Court of Justice instantly and directly, with no need to translate the claim nor to appoint a lawyer or special attorney in Ireland. On acceptance, the Irish Court of Justice sends a European Payment Order to the private equity firm, apprising them of the available options: to pay the amount awarded to the claimant or to send a statement of opposition within a time limit of 30 days. As such, e-CODEX protects the financial position of companies doing business across borders and makes cross-border trading safer and justice faster.

2.

Protecting consumers with smaller claims.

The e-CODEX platform is also actively protecting the rights of consumers with smaller claims throughout Europe. For example, when a flight from Düsseldorf (Germany) to Rome (Italy) with a Spanish airline is severely delayed, a Dutch passenger is entitled to compensation under EU law. However, without e-CODEX, filing a claim would take the consumer down a rabbit hole of competent courts, lawyers in loco, expensive translators, unobtainable files, unclear court fees and the particularities of the Spanish legal system. Fortunately for the Dutch passenger, e-CODEX now makes it uncomplicated and worthwhile to file an ESCP claim. For a more in-depth exploration of a real-life ESCP case, see the contribution of The Director of ECC The Netherlands, Eva Calvelo Muiño (page 40 of this publication).

3.

Electronic exchange of e-Evidences.

Another example of an e-CODEX implementation is EXEC (Electronic Xchange of e-Evidences with e-CODEX), an up and running network to support international criminal investigations. Each participating Member State uses e-CODEX to set up an access point to this network, enabling them to exchange of EIOs and related e-Evidences electronically with other connected Member States. Imagine the Austrian police has found DNA material of a fugitive criminal, and they have reason to believe that this criminal has crossed the border to Germany. Thanks to EXEC, the Austrian authorities can send the EIO and DNA profile to their German counterpart directly, with higher quality and lower costs. Because the national IT systems of the German authorities can process the digital EIO directly, this will significantly speed up the legal assistance proceedings.

4.

Improvement of the collection of cross-border fines.

The e-CODEX platform also forms the foundations for eDelivery, a collaboration between the French National Agency for Automated Offence (Antai) and the Dutch Fine Collecting Agency (CJIB) to build a solution to improve the collection of cross-border fines, in order to reduce the number of traffic violations and road-related casualties in France caused by holidaymakers. The eDelivery solution is interoperable and can be adopted by other Member States.



TRANSITIONING TO THE EARLY MAJORITY STAGE

e-CODEX could also make a world of difference in international family law cases.⁵ It goes to show that e-CODEX is the invisible solution to a plethora of problems commonly experienced by citizens, businesses, law practitioners and authorities. Each of these user communities has different needs and expectations. In order for e-CODEX to transition to the next stage of the technology adoption lifecycle, the project will have to accommodate the requirements of all stakeholders. This stresses the importance of continuously reaching out to all relevant parties and inviting them to take part in an open dialogue. The *'e' meets Justice* conference is part of the effort to involve different stakeholders in the ongoing development of e-CODEX. These *types of initiatives* are essential to reach the common goal: improving cross-border access to justice.

⁵ As testified by law practitioners Marco Mellone (page 16 of this publication) and Katell Drouet-Bassou and Simone Cuomo (page 16 of this publication).



At this stage, the contribution of the legal tech community should not be underestimated, as they will play an invaluable role in the development of further user-centric applications to make cross-border justice more and more accessible. How this cooperation could take shape is illustrated by the interview with Eva Storskrubb (Dispute Resolution Counsel, Stockholm) and legal service designer Jelle van Veenen (page 24 of this publication).

“
EVERY
INDIVIDUAL CASE
CONTRIBUTES
TO THE GREATER
GOOD OF JUSTICE
FOR ALL.

e-CODEX AS THE VANGUARD OF CROSS-BORDER JUSTICE

It can be concluded that, although e-CODEX plays an indispensable role in the complex European digital landscape, it is no longer an IT project. It is so much more than the digitalisation of justice processes. The real challenge is not connecting the technical systems of different jurisdictions, but connecting stakeholder communities.

Over the years, the e-CODEX project has connected politicians, scholars, practitioners and IT experts from all over the EU to exchange ideas, find common ground and co-create solutions. By doing so, e-CODEX has already assumed a linking pin role in the e-Justice community, connecting a wide range of stakeholders through the shared objective of a seamless justice experience throughout Europe. This is a great accomplishment in its own right, but it is not one of the formal targets of the e-CODEX project. The mission of e-CODEX is to make cross-border justice accessible for all citizens and businesses within the EU. In the end, the success of e-CODEX depends on its adoption. What counts is every time the e-CODEX platform opens the door to cross-border justice in a civil, commercial or criminal case. Every individual case contributes to the greater good of justice for all. Since the number of cases that could benefit from a wider e-CODEX implementation is many times larger than the number of cases already benefitting from it, it can be concluded that e-CODEX still has a long way to go.

USER-CENTRIC APPLICATIONS
MAKE CROSS-BORDER JUSTICE
MORE AND MORE ACCESSIBLE.



The connection between law and technology: **increasing access to justice**

MARCO MELLONE

Marco Mellone is an Italian **LAWYER** in international commercial and private law. He was a member of the team of legal experts called to deal with the juridical aspects of e-CODEX, and he joined the Italian delegation negotiating both the European Small Claims Procedure and the European Payment Order at the Council of European Union in 2006.



EU citizens have a common technological platform at their disposal which allows them to interact with a court located in another Member State and to transmit judicial documents in a safe and fast manner.

We are just at the beginning of a new era in which law and technology will interact **more and more!**



In regard to the connection between law and technology, with a particular focus on the European context, it must be remembered that the European Union has adopted a number of instruments of judicial cooperation among the Member States For example, the European Union established the:

EUROPEAN SMALL CLAIMS PROCEDURE

Regulation No. 861/2007,
now Regulation No. 2015/2421
&

EUROPEAN PAYMENT ORDER

Regulation No. 1896/2006

These instruments set up a European model of civil proceedings to strengthen the cooperation and the interaction between people and justice all around Europe. This ambitious objective could not be achieved without the fundamental help of the new technological means of communication.

The e-CODEX project has been conceived with the specific purpose to build technological (and even in some way cultural) bridges between the judicial (and also juridical) systems of the Member States. The success of this project can not be denied: indeed, we can say that today, EU citizens have a common technological platform at their disposal which allows them to interact with a court located in another Member State and to transmit judicial documents in a safe and fast manner.

It has been a great pleasure for me to focus my attention on some legal aspects which have been crucial for the correct development of the e-CODEX

project. I refer, among other things, to the very sensitive issue of the validity of the electronic signatures of the documents exchanged via the e-CODEX platform: reference is also made to the equally important issue of the storage of the data and information transmitted through the e-CODEX platform. These issues have helped me understand the importance of good and correct interaction between technological instrument and law, especially, within the context of a modern and globalized world where we live today.

A cross-border love story

A very enlightening example can be taken from my professional experience. One day, a female Italian citizen came to my office and told me that she was in love with a Pakistani man she met online. A very common situation, by the way. Unfortunately, the two lovers could not meet personally due to some bureaucratic problems. Therefore, she asked me what she could do in order to meet her boyfriend and to stay with him for the rest of her life.

At that point, I checked the Pakistani law and I discovered that according to such law, it was (and it is still) possible to conclude a marriage over the phone. I immediately informed my Italian female client, who arranged, together with her Pakistani boyfriend, all the preliminary bureaucratic steps in order to get married. On the wedding day, she simply connected her laptop and called her boyfriend via Skype, who was connected with his laptop before the Pakistani competent authority. The Pakistani public officer asked her via Skype if it was her intention to get married to her Pakistani boyfriend and then he did the same with the latter

and finally, he declared the marriage valid and effective. Such marriage was not considered valid by the Italian competent authorities (including the Italian Consulate in Pakistan). I started a judicial fight in order to obtain the validity of this marriage within the Italian law and in 2016, after four years, the Italian Supreme Court ruled that a marital consensus given via internet is absolutely valid (although some specific conditions shall be met).

This very romantic story tells us how important it is to balance the opposite exigencies raised respectively by the law and the technology. The former seeks mainly for certainty; the latter seeks rather for speed.

Increasing access to justice

The experience achieved through the e-CODEX project will undoubtedly open the doors to future initiatives in the field of electronic interaction in cross border judicial matters. We are just at the beginning of a new era in which law and technology will interact more and more and this will dramatically help the access to justice for European citizens. Initiatives such as the *'e' meets Justice* conference shall be encouraged since they bring together stakeholders, influencers and decisionmakers from all Member States, inviting them to build the necessary bridges. In that way, these initiatives represent and somehow anticipate future perspectives on the so-called European common judicial space.

Yes!
I
do!





ONLINE SHOPPING

””””

””””

It is estimated that about three out of ten online purchases encounter difficulties along the way.

Overcoming National Diversification in the European Payment Order Procedure

JOSJE GROUSTRRA

Josje Groustra is a **JUNIOR ADVISOR** dedicated to the e-CODEX project at the Ministry of Justice and Security in the Netherlands. She holds a **MASTER DEGREE** in European Affairs from the University of Lund (SE) and a **MASTER DEGREE** in European Law from Leiden University (NL).

IN 2018, NEARLY 70 % OF ALL CITIZENS IN THE EU HAD BOUGHT SOMETHING ONLINE.

36 % of these EU citizens bought products from retailers based in other European Member States.¹

This number is expected to grow even bigger with the new rules on unjustified geo-blocking of websites. Yet it is estimated that about three out of ten online purchases encounter difficulties

along the way.² These difficulties could be technical problems, but also problems that may require legal follow-up, such as broken or faulty goods or deliveries that never took place. Taking legal steps in such a cross-border situation can be a daunting task for any consumer or company.

Several European cross-border procedures aim to remedy this challenge, the most prominent example being the European Payment Order (EPO). Via this uniform EU procedure, citizens and companies can submit monetary claims throughout the EU, electronically supported by e-CODEX. In practice, however, many national variations arise in the application of the EPO by national courts. Rather

¹ https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#General_overview

² https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#General_overview

than one European, uniform procedure, in practice, the EPO consists of 28 different procedures. The electronic support by e-CODEX has brought to light just how complex these national variations can make it for a citizen to navigate through the EPO procedure. As Marco Velicogna indicates elsewhere in this publication, the introduction of business rules in e-CODEX can help to overcome the difficulties caused by the national adaptations of the EPO procedure. But in order to do so, it needs to be clear how and where the national implementations of the EPO deviate from each other. My research for e-CODEX Plus into the application of the EPO in Portugal, Austria, Germany and Poland could be seen as the starting point of this effort.

The European Payment Order: Balancing Harmonisation with National Variations

At first glance, the EPO procedure seems simple. The claimant submits the application, which is subsequently either rejected, approved or sent back for modification by the relevant court. When an application has been approved, it will be served on the defendant. If the defendant does not file for opposition, the EPO will be issued. If there is opposition, the procedure will be transferred to the standard civil procedure.

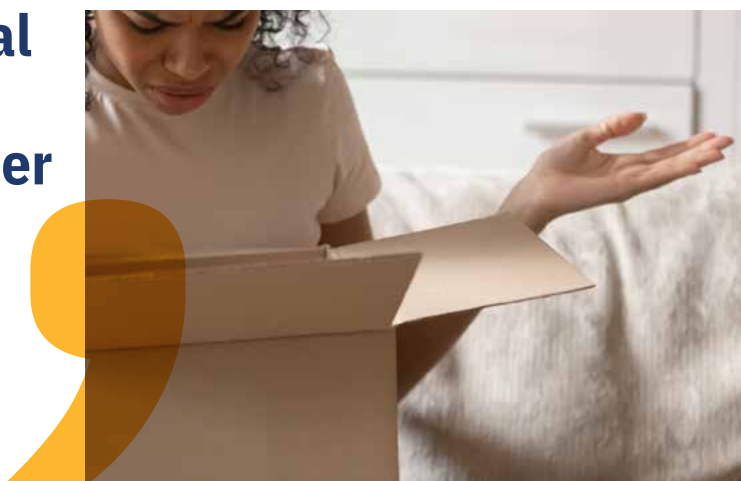
All these steps are undertaken by national courts, national judges or national officials. In a way, the procedure thus operates on two levels: the European level establishes the procedure and the national level applies the procedure. To impose the same, specific, procedural rules in all the different national contexts would be very invasive for national legal cultures and traditions. Therefore, the EPO procedures leave many aspects of the procedure up to national laws.

Simultaneously, the adaptability of the procedure to the national context means that citizens and companies have to navigate not only the European procedure but also the national differences that may occur. Hence, the procedure is not always equally straightforward and can be very complex for most users. This complexity, especially for the claimant, is highlighted in particular by one example: the payment of the court fees.

Court fees

One of the aspects that is not fully covered by the EPO procedure is the payment of the court fee. As a claimant, three questions regarding the court fee are important. Namely, what amount do you need to pay? How do you need to pay? And when do you need to pay?

**Taking legal
steps in a
cross-border
situation
can be
daunting.**



Three questions regarding the court fee:

WHAT? HOW? WHEN?

FIRSTLY, the height of the fee is discussed to some extent in the regulation establishing the EPO procedure. More specifically, the procedure outlines the amount the fee cannot exceed. Although it does not make sense to impose one single court fee on all Member States, it is important that information on that court fee is easily accessible to claimants. Some information thereto is provided on the e-Justice portal, but this information is not always available in several languages, is often outdated or is difficult to locate at all.

SECONDLY, if a claimant manages to find the amount that needs to be paid, the next question that arises is how you need to pay. The procedure itself mentions nothing regarding the payment method, but the application form lists five different options: bank transfer, credit card, collection by court from claimant's bank account, legal aid or other. Enquiry with four different Member States, though, shows that not all these five options are accepted in every Member State. Notably, the part of the form on the payment of the court fee is listed as 'optional'.

FINALLY, there is the seemingly straightforward question of when to pay. Again, the procedure itself does not state anything about the timing of the payment of the court fee. Does the court require you to pay within a certain time limit, which means your application is rejected if you miss the deadline? Or does the court wait for your payment, however long it takes, before it considers your application? Or maybe the court will examine your application, send it to the defendant, but will not issue an enforceable payment order until you have paid the court fee?

For a claimant, these three different questions are all equally important when initiating an EPO procedure, and yet none of the answers to these questions is straightforward or can be found easily.

Overcoming National Differences

The court fees are just one aspect of the EPO procedure that is subject to many different national rules and practices. Time limits to return forms or transfers to national procedures in cases of opposition are also largely determined locally. These national influences make the EPO procedure easier to apply across all Member States, but they also make the procedure difficult to navigate for users. How can you start a procedure, after all, if you do not know exactly how to pay a court fee of which the amount is unclear and you do not know within what time frame you should transfer the funds?

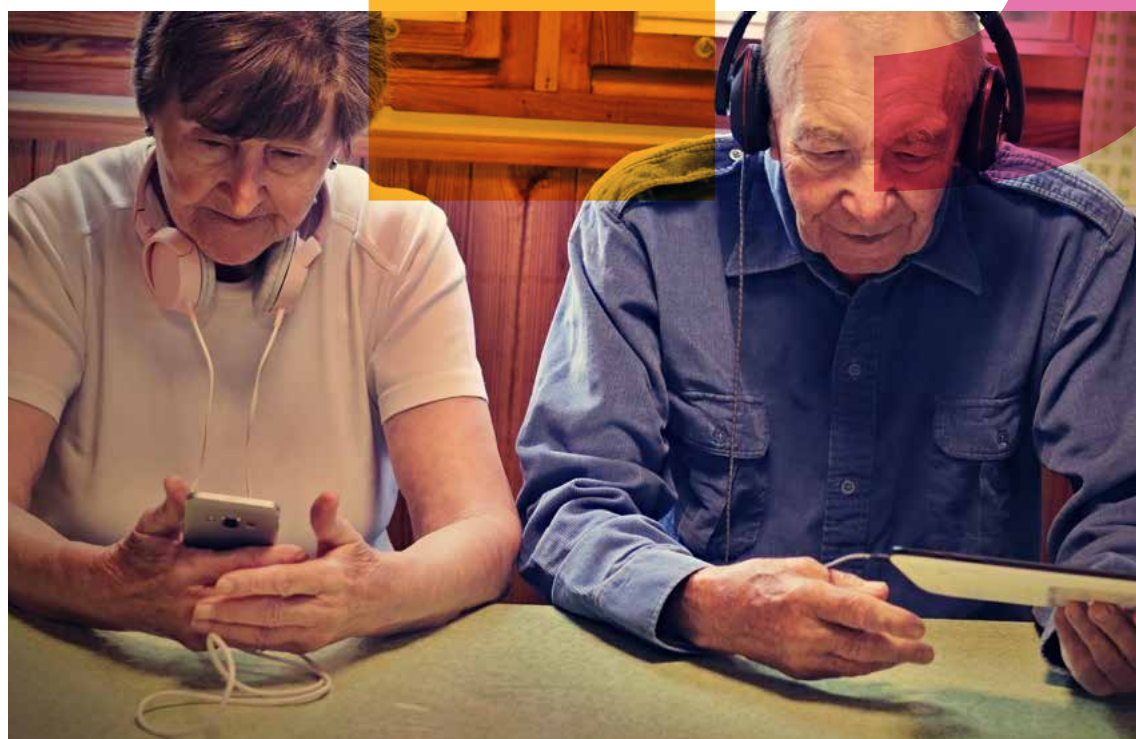
The fact that these national variations are inherent, and even required, in the EPO procedure does not mean that it is impossible to anticipate the confusion and complexity these differences may cause. The question should be how these national differences can be overcome. In that regard, e-CODEX may prove instrumental. By introducing business rules in e-CODEX, as explained by Marco Velicogna, information on national procedures and practices may be centralized and thus made accessible to those seeking cross-border justice. Having this information available removes obstacles for citizens to use the EPO procedure.

MORE ON THIS SUBJECT:

MARCO VELICOGNA

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Uniting worlds



'e' versus Justice?

The benefits and challenges of uniting different worlds



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JELLE VAN VEENEN

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Can digitalisation or legal tech contribute to improving access to justice?

EVA: Digitalisation can contribute to improving access to justice. For example, digitalisation can facilitate access to public records held by a court, access to formal certificates necessary to effect the rights of a party or access to case law. In addition, digitalisation can facilitate access to justice by enabling the delivery of material electronically to a court during pending proceedings or enabling payment for court services online. Thus, many day-to-day aspects of civil justice can be facilitated.

However, one should remember that many of these aspects of 'administrative' facilitation tasks have little to do with the actual civil proceedings themselves. That is: with the hearing of the parties' case as well as the hearing of evidence before a judge. Digitalisation should only be used as a tool to the extent that the fundamental procedural principles are simultaneously upheld.

JELLE: I believe that technology can play an important role in improving the delivery of legal services.

It can be used as a way to automate processes. By replacing certain repetitive or administrative tasks by technology, professionals are freed up to assist people in tasks that require humans, for example providing strategic advice, mental support or assistance with difficult aspects of judicial procedures. Furthermore, technology can also help to gather information to make processes more accessible to customers. You can provide customers with more accurate and detailed information regarding the costs, the outcomes and the duration.

But technology is not a magic bullet for all sorts of issues that we are not able to solve with human professionals. When you set up technology as a replacement of people to save you costs, you will most likely be disappointed. Proper technology requires serious investments, both at its start and in its maintenance. Nor is technology always a suitable

solution for everything, simply because some situations require human intervention, some people require emotional support and some disputes may require more professional guidance. Technology is not a replacement for human professionals; it only serves as an extension.

What are the benefits and challenges of using services like e-CODEX to help citizens and companies deal with their legal situations?

JELLE: For most people, even finding out how to resolve a dispute in their own country is very difficult, let alone abroad. If you do not know how to resolve a cross-border situation, you immediately assume it cannot be done, unless you go as far as to hire a lawyer. In the case of consumer disputes, that is unlikely. As a result, there is an insurmountable barrier for cross-border consumer disputes. So in the European context, there is a great opportunity for a product like e-CODEX to provide all the necessary information on cross-border disputes in a single place: where to go, what the outcomes will be and what costs are involved.

However, it is still a challenge to connect more procedures to the e-CODEX platform and gather the right information, not to mention reaching the people you wish to help with e-CODEX. In order for e-CODEX to succeed, people and businesses need to know it exists. They need to use it and provide their feedback on the service. Then, the platform can evolve and grow. On average, a citizen may have a legal dispute every six to nine years, not to mention cross-border disputes. It is not a daily worry for many people. So how do you make sure that, when a cross-border dispute arises, people will find e-CODEX?

EVA: The main benefit is that it might be more efficient when the digital service works properly. In addition, e-CODEX may contribute to enabling citizens and companies to act more efficiently in a cross-border legal context. Naturally, there have to be safeguards related to the security of legal information and to the malfunction of a digital service.

The challenges that I and others have identified originate from a different perspective. For example, considering the EU small claims pilot of e-CODEX, although it is a simplified procedure, not all legal aspects of the procedures and the forms to be used are necessarily understandable to a lay litigant. Therefore, full digitalisation of the small claims procedure may be a challenge. In order for the service to work, examples from the USA show that so-called 'collaborative technology' or 'hybrid service systems' are recommended to integrate human and automated assistance for the litigants.

In addition, many of what I call 'legal aspects' have a particular function to protect the rights of either party. The digital interface must always be designed to uphold that legal protection.

Should judicial procedures be able to adapt to technical demands or innovative technology if this can improve access to justice?

EVA: In general, one can say that judicial procedures need to keep up with the developments in society, including technical innovation. However, I would like to refer to the 2011 Opinion called 'Justice and information technologies (IT)' of the Consultative Council of European Judges formed under the Council of Europe. The Opinion specifically supports e-Justice

in many respects, but it also includes some points of caution, including the following:

'The introduction of IT in courts in Europe should not compromise the human and symbolic faces of justice. If justice is perceived by the users as purely technical, without its real and fundamental function, it risks being dehumanised. Justice is and should remain humane as it primarily deals with people and their disputes.'

In my opinion, this point remains valid and imperative to remember when the adaptation of procedural rules to technical demands is discussed. The human face of justice must be retained and taken into account. The fundamental principles of orality, immediacy and concentration in civil procedures stem from the vision of an adversarial process between two counterparties before a judge. This includes a central element of human interaction, namely the right to be heard and present one's case before the judge and the counterparty. As does the hearing of witnesses and experts. In this context, one should be careful when introducing technological tools. Efficiency is not the only parameter for civil justice, also the quality of justice must be relevant. We should avoid using technological tools to develop second-class justice.

JELLE: Judicial procedures should serve both the people and justice. In my opinion, if technology improves the service to the people, the procedures should adapt. The goal here is more important than the means, and the means we are currently using were designed ages ago.

Nevertheless, the principles on which the justice system was built should always be held in high regard. Yet these principles are different from the means we employ to achieve these principles. The principles should be respected while the means we use may be revised.

It is a difficult consideration, especially for legal professionals. In judicial practice, the judicial aspects of their work are so important that it is sometimes overlooked that the actual procedures are lacking. You do not improve access to justice with unreachable procedures. The practical implications of procedural choices should not be forgotten.

Do you think the collaboration between IT and legal experts can benefit the overall judicial principles? What should be the role of e-CODEX therein?

JELLE: Judicial principles can benefit from better judicial procedures, which technology can help to improve. Nevertheless, technology cannot improve them by itself. It is just part of a modern service that does not only require technology and IT experts, but also professionals to help you understand what people need in a legal process. This may be lawyers, but also legal service designers, user experience designers and psychologists.

In that regard, e-CODEX can act as a backbone for modern information-driven legal services. For instance, you can imagine a simple consumer tool developed by a third party, which relies on e-CODEX for access to the relevant court. In turn, the third party provides a user-friendly and good-looking front end in combination with a sustainable business model. e-CODEX provides a starting point for these services, so they do not have to organize cross-border communications by themselves.

But more than that, e-CODEX can also serve as an inspiration. For example, by organizing the *'e' meets Justice* conference and by providing information at a European level on what is happening in different countries, e-CODEX is able to spark ideas in different locations and show entrepreneurs that they can benefit from re-thinking better access to legal procedures. Many people think nothing may change or that it is very difficult, but if you can show practical results like e-CODEX, it helps to spark new ideas. The more ideas there are, the more chances of results.

EVA: I agree that the discussions at the conference demonstrated that IT and legal experts need to collaborate closely when digital services are developed in the civil justice context. The break-out discussions were interesting and useful. The conference provided a good forum for such a discussion to take place in a cross-border setting.

What is the most important challenge for cross-border (e-) justice at the moment?

JELLE: On the one hand, there is a challenge regarding the involvement of consumers. Every access to justice question faces challenges in making justice, or judicial procedures, accessible at a low or reasonable cost and making it clear to users what to expect and what their own responsibilities are. Much is still required in terms of information that is available for people, especially in a cross-border context.


On the other hand, there is also a huge challenge in addressing the legal market. Legal professionals work in a certain manner, and they have good reasons to do so, but they should also not be afraid to look further at ways to improve their working methods. How can you get them to keep improving the way that they work and the way in which they provide judicial services to people?

EVA: From my perspective, the most important challenge is to retain the 'human and symbolic face of justice' and to consider fundamental procedural principles in the context of each digitalisation project. As I have said before. The use of technological tools as such is not innovative. It becomes innovative if we use it wisely to further justice.

Reconfiguring the European justice service provision to meet the people's needs: an introduction to the e-CODEX solution and e-CODEX Plus experience

MARCO VELICOGNA

Marco Velicogna has worked as a **RESEARCHER** at the Research Institute on Judicial Systems of the Italian National Research Council since 2003, researching judicial administration, comparative judicial systems, court and public prosecutor office technologies, and the evaluation and management of innovation. He has also worked as a **CONSULTANT** for the Italian Ministry of Justice and participated, as a **SCIENTIFIC EXPERT**, in the activities of the European Commission on the Efficiency of Justice.



How we live our everyday life has radically changed over the last few decades.

THE young generation entering the job market does not remember or in many cases has never seen a world without internet, smartphones, low-cost flights or an EU with frontier checks between the Member States. At the same time, the free movement of goods, services, capital and persons, and the new possibilities provided by e-business and

e-commerce and social media have put increasing strain on justice systems and judicial procedures, which have historically evolved in a framework that was meant to provide justice services for an off-line, geographically bound society. This new context requires new means to ensure access to justice and effective judicial protection.

Adapting justice to changing circumstances

The EU institutions and Member States have been increasingly aware of this problem and have worked toward finding possible solutions. Several legal instruments have been deployed in the EU in areas such as international jurisdiction, cross-border service of documents, and the recognition and enforcement of judicial decisions. In the criminal justice area, instruments such as the European Arrest Warrant and the European Investigation Order have been introduced to strengthen cross-border cooperation. In the civil justice area, harmonised procedures such as the European Payment Order, the European Small Claims and the European Account Preservation Order have been introduced to simplify, speed up and reduce costs of litigation. To make justice more accessible, these procedures also allow self-representation by the parties. Their importance from a legal perspective has been broadly recognised. At the same time, these legal instruments have shown severe limitations to their capability to respond by themselves to the challenges social and technological developments are posing to European justice.¹

In the effort to solve the problem, EU institutions and Member States have invested in the use of technologies, developing an EU e-Justice portal to support access to information, but also to develop the means to support the electronic provision of justice services. The result of this effort is called e-CODEX. e-CODEX is a platform designed to support legally valid electronic communication in cross border judicial proceedings between judicial authorities and between judicial authorities and end users.

The startup phase of e-CODEX

e-CODEX has been initially developed by a large consortium of EU Ministries of Justice and representative of key justice service provision stakeholders (CCBE for lawyers, CNUE for notaries) within a project co-funded by the EU which began in December 2010 and ended in May 2016. The project was initially directed toward the creation of a technical solution allowing reliable, fast and secure transportation of data between existing national e-Justice solutions within the existing legal framework. An essential requirement for the solution was to 'respect both the principle of independence of the judiciary and of subsidiarity'.²

Table 1: e-CODEX Piloting (based on Velicogna 2019, data source: Hvillum, et al. 2016)

Cross-border judicial procedure	Launch date	Countries piloting live in May 2016	Countries in the testing phase in May 2016
European Payment Order	August 2013	Austria, Estonia, Germany, Greece, Italy, Malta and Poland	France
European Small Claims Procedure	June 2015	Austria, Czech Republic, Malta and Poland	France
Business Registers	September 2015	Austria, Ireland and Italy	
Mutual Legal Assistance	November 2015	Germany, Spain and Netherland	Greece
Financial Payments	May 2016	France and Netherland	Germany and Hungary

¹ See for example Onjanu E A, 'Adapting Justice to Technology and Technology to Justice. A Coevolution Process to e-Justice in Cross-border Litigation', European Quarterly of Political Attitudes and Mentalities (EQPAM), 8(2019)2 (available at https://sites.google.com/a/fspub.unibuc.ro/european-quarterly-of-political-attitudes-and-mentalities/Home/abstract_eqpam_vol8no2-april2019-_ontanu); Onjanu E A, 'Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures', Intersentia, 2017

² Hix S., Junikiewicz A., Wigard S., & Jaspers P. (2011). D1.5 Interim Activity Report No 1.V1. e-CODEX project Deliverable, p. 8.

Furthermore, to support legally valid communication, the system carries out validation of electronic identification and signatures of the parties involved, as such systems are typically designed to operate within national borders. e-CODEX 'is designed as a decentralised system based on a distributed architecture, enabling communication between national and European ICT systems through a network of [National] access points'.³ After being developed, the system was tested by piloting countries in five cross-border judicial procedures (see table 1), demonstrating that the system was not only technically functioning, but also capable of supporting real cases, involving real people, real judges and real judicial decisions.

Next steps for e-CODEX

AFTER THE PILOT ENDED, THE GENERIC COMPONENTS OF THE TRANSPORTATION INFRASTRUCTURE WERE HANDED OVER TO THE CONNECTING EUROPE FACILITY (CEF), WHILE FOLLOW-UP PROJECTS CONTINUED TO BE FINANCED TO:

- Maintain the domain-specific components (Me-CODEX, Me-CODEX2);
- Extend the system to additional procedures and Member States (EXEC, IRI, e-CODEX Plus, CEF e-Justice DSI);
- And open it to legal professions and third-party service providers (Pro-CODEX, API for Justice).⁴

The decision to use e-CODEX as the transport infrastructure for the EU e-Evidence Digital Exchange System, which is being created 'to secure and obtain e-evidence more quickly and effectively by streamlining the use of MLA (Mutual Legal Assistance) proceedings and, where applicable, mutual recognition', is of particular relevance.⁵⁶

e-CODEX supports real judicial decisions.



³ Amato R., Velicogna M., 'Encoding cross-border judicial cooperation in criminal matters: current practices and the rise of the EU e-Justice infrastructure', paper presented at the Conference Operational Cooperation in European Union Criminal Law, University of Nantes

⁴ Ibid.

⁵ JHA Council of the European Union, Council conclusions on improving criminal justice in cyberspace, Luxembourg, 9/6/2016, p. 4

⁶ Ibid, p. 4

The e-CODEX community is also working on the handover of generic components and services within the e-CODEX justice domain to an EU agency for long-term maintenance and evolution. While no legally binding decision has been adopted so far, the Commission and Council are aligned on the selection of the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)⁷ for this role.

Making e-CODEX more user-friendly

At the same time, the e-CODEX experience has not just provided a technical solution, but also the opportunity to better investigate the failing points of existing legal procedures from a practical and user-centric perspective. In particular, piloting e-CODEX with real cases revealed the complexity of the continuous interplay between uniform European judicial procedures and national laws which govern specific aspects of their implementation. Moreover, it showed the complexity for the user in dealing with the resulting, very diversified national procedures and local practices, which requires local knowledge that is not centrally available.

The 'National flavours in the European Payment Order and business rules' panel at the *e-meets Justice* conference demonstrated the possibility of finding a solution to this problem through the use of business rules, as investigated by e-CODEX Plus.

Business rules describe, through formal notation methods, the steps that need to be made to carry out the process, but also the constraints of each step. Harvesting cross-border judicial procedure business rules in various Member States would allow providing end users with all (and no more than) the information needed to carry out a cross-border judicial procedure in a specific national context, taking into account the differences resulting from the implementation of the procedure in a national context.⁸ With the provision of only the selective information that is actually needed by the user, the user would not be lost in a huge amount of data, as is the case at present. This added value would be independent of the use of e-CODEX itself and would dramatically improve the usability and understandability of cross-border judicial procedures.

Furthermore, implementing business rules in e-CODEX would allow the automated validation of the exchanged messages, ensuring that all the requirements of an EU regulation as well as the procedure's national variations and related requirements are met. Shifting the focus from the procedure to the user's needs, e-CODEX has the potential of reconfiguring the way in which European justice can be accessed, off-loading the complexity from the end user through selective information provision and technological support.



The focus needs to shift from the procedure to the user's needs.

⁷ Amato R., Velicogna M., 'Encoding cross-border judicial cooperation in criminal matters: current practices and the rise of the EU e-Justice infrastructure', paper presented at the Conference Operational Cooperation in European Union Criminal Law, University of Nantes

⁸ On the differences resulting from the implementation of the European procedures in the national context, see for example Hess B et al. (ed), *Mutual Trust and Free Circulation of Judgments Study* (2017) (available at <https://publications.europa.eu/en/publication-detail/-/publication/531e-f49a-9768-11e7-b92d-01aa75ed71a1/language-en>); Onjanu E A, 'Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures', Intersentia, 2017.

Bridging the Gap Between Communities: **creating a Common Vocabulary**

JOS HOEVENAARS

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Digitisation of justice poses difficulties and challenges, especially so in a cross-border context.

KEY to all these challenges is the communication between practitioners and academics who understand the importance of cross-border civil procedures and IT specialists who understand the possibilities and requirements of IT as well as the complex digital landscape of the EU. Often, conferences that bring together multiple stakeholders with very different backgrounds and priorities and who speak different 'languages' run the risk of being either too generic to be accessible to various audiences at the same time or too specific and fragmented to create any sense of coherence.

Technology supporting a pan-European cooperation

Nevertheless, being 'comfortably uncomfortable' while listening to and discussing with other participants at the 'e' meets Justice conference underlines the challenge in creating a shared sense of what is ahead for a field as diverse as e-Justice.

THE CONSTRUCTION OF A PAN-EUROPEAN, TECHNICALLY SUPPORTED COOPERATION IN THE LEGAL SPHERE REQUIRES THE INVOLVEMENT OF ACTORS FROM ACADEMIA, THE LEGAL PROFESSION, THE JUDICIARY, LEGAL TECH AND MINISTRIES OF JUSTICE.



Communication between practitioners and academics is key.

The first panel discussion brought participants from these backgrounds together to discuss the need for as well as the challenges inherent to the cross-border legal collaboration.

Vivid examples, as provided by the international lawyer Marco Mellone (page 16 of this publication), show the complicated practical implications of cross-border legal issues. These implications can be found anywhere, as Cristina Mariottini (Max Planck Institute, Luxembourg) illustrated with an example of the online ADR procedures revolving around the .eu Top Level Domain. In this particular arena, consumer interests, legal tech and online dispute resolution have come together. Likewise, many more collaboration projects between academia, the legal community and the IT sector have already been initiated, for example in Austria, Slovenia and Croatia, as Professor Alan Uzelac (University of Zagreb, Croatia) indicated. Some of these have been more successful than others, but opportunities remain ample. To illustrate this point, Professor Pablo Cortes (University of Leicester, the United Kingdom) outlined the opportunities arising from e-Justice regarding especially the promotion of early settlement in small claims cases.


Still, there are many difficulties in the creation of a common structure for the communication of legal data through technological means.

The tower of Babel

Apart from the already challenging task of collaboration in a Europe that speaks 24 different official languages and that has almost as many flavours of legal procedure, the task ahead for collaboration in the legal sphere also entails bringing together digital technicians with legal professionals and getting them on the same page – getting them to speak the same language. In terms of streamlined collaboration and inter-jurisdictional

communication through digital means, this aspiration is more than an abstract notion and boils down to very concrete ways of designing digital environments that are able to capture and communicate complex legal concepts effectively. From this perspective, Ewout Boter's (Data Expert at the Dutch Ministry of Justice) insistence on the need to create a common language with shared vocabulary to help bridge the gap between the different communities rings very true.

It goes to show that tasks that lay ahead for the challenge taken up by the e-CODEX project are difficult. At the same time, the different e-Justice communities share a sense of conviction and determination. To paraphrase the Portuguese Secretary of State for Justice, Anabela Pedrosa, there is a pressing need for ever closer collaboration to improve access to justice throughout Europe. There appears to be no shortage of enthusiasm for fulfilling this need, and if the 'e' meets Justice conference is any indication, the years to come should show promising next steps towards improving the exchange of cross-border legal information and ultimately enhancing the access of citizens and businesses to legal means in Europe.



The years to come should show promising next steps towards improving the exchange of cross-border legal information.

Sustainable digitalisation of legal decision making and the need for interdisciplinary collaboration

RIIKKA KOULU

Dr Riikka Koulu (LL.D. trained on the bench) is an **ASSISTANT PROFESSOR** of Law and Digitalisation at University of Helsinki. She is also the **DIRECTOR** of the Legal Tech Lab, an interdisciplinary research hub that focuses on legal digitalisation. She completed her doctorate on dispute resolution technology, exploring technology-enabled privatisation of coercion. In her postdoc projects, she examines different facets of automation and digital technologies on legal practices, e.g. algorithmic fairness and transparency processes, conflict management in digital environments and decentralised ledger technologies. **THE LEGAL TECH LAB**'s work currently focuses on algorithmic decision making in government, foundations of legal digitalisation and the challenges of AI techniques for legal work.

The digitalisation of civil justice is by default an interdisciplinary exercise that requires dialogue between different academic fields as well as between theory and practice.

THIS was the starting point for our panel discussion 'Insights on the collaboration between academia, IT specialists and practitioners from several Member States', held at the *'e' meets Justice* conference. Ultimately, the promise of collaboration resides in gaining a better understanding of the complexity of the issues involved in the digitalisation of civil justice. But what would such collaboration be,

and how do we incentivise it? Incentives for collaboration may vary depending on the context, project and people involved. This article will briefly describe two different initiatives at the University of Helsinki Legal Tech Lab that have involved inclusive collaboration between academic and non-academic stakeholders and where the focus has been on knowledge exchange.



HACK THE LAW

Students work together to produce a solution or a prototype for a given challenge.

Digitalisation of civil justice is not simply about technology.

Hackathon collaborations

Firstly, at the lab, we are experimenting with research-based hackathons called 'Hack the Law!'. Our hackathons are weekend-long design sprints where multidisciplinary teams consisting of students of law, service design as well as data and computer science work together to produce a solution or a prototype for a given challenge. Our challenges are formulated based on the research conducted at the lab and we partner with different stakeholders to provide workshops, tutorials, and mentoring for the teams. For example, in the first 'Hack the Law!', we focused on improving laypersons' access to legal information, which was identified as one of the obstacles for accessing justice in a survey study that same year. For the challenge, we partnered up with a legal publishing company that maintains an open-access database on legislation. In 2018, the teams were able to choose between two tracks: developing tools either to empower people with disabilities to seek their legal rights, or to support legal professionals working on criminal justice in small law firms. For these challenges, we partnered up with law firms and disability

law advocates. One advantage of hackathon collaborations is the relative ease of including partners due to the limited duration and clear-cut tasks.

Long-term dialogue

Secondly, collaboration can take the form of more long-term dialogue, where practice feeds influences for research simultaneously as research facilitates reflection on practical challenges associated with digitalisation. An example of such more long-lasting theoretical and practical collaboration is a research project we conducted at the Lab on 'Algorithms as Decision Makers? The potential and challenges of AI in public decision making' in 2018-2019. The project was funded by the Prime Minister's Office of Finland to produce an overview of the regulatory framework and international trends that might influence the use of automation tools. The final report discussed issues of rule-based and data-based automation in terms of rule of law, good governance, and due process safeguards and identified commonalities across sector-specific solutions.

In addition to the practice-oriented approach, the project also provided the research team with an internal perspective on the digitalisation of public administration. The project produced important insights into how public software development processes are organised and how legal and IT experts collaborate on a daily basis to produce a functional system. Interestingly, some government authorities adopted or developed their own emerging practices and grassroots level policies that facilitated further automation within the organisation's decision-making processes. For example, some organisations allowed automated decisions only in cases which were decided according to the citizen's application. Unfavourable or rejecting decisions were then channelled to human decision makers, who were seen more able to provide grounds and justification for these negative outcomes. Although outside this project's scope, these observations will encourage future research on best practices for sustainable digitalisation.

Practicalities of IT development processes within justice systems

How can theoretical insights be translated into IT development? During the breakout session 'Technical perspective', we discussed the practicalities of IT development processes within justice systems: what is needed for successful software development in the legal domain? How to encourage sustainable and accountable digitalisation, which is a foundational prerequisite for legitimacy and trust towards the judiciary?

The demands for sustainability and accountability demonstrate that digitalisation of civil justice is not simply about technology. Instead, at the core lies the assessment of our existing working methods and processes that have largely developed organically. This re-evaluation means asking:

What are our existing (mostly human-driven) legal processes?


Which elements of these processes are fundamental to the legitimacy and feasibility of civil justice?

Which elements are redundant or even harmful for effective access to justice?

Simply put, sustainable digitalisation should be about the critical assessment of the status quo. This means identifying the current functional and dysfunctional structures and processes of civil justice. Problems and obstacles for access to justice are often context-dependent, as can be seen in cross-border civil procedures. In some jurisdictions, the small number of cases, lack of routine and language issues might impose problems, whereas in others, the lack of interfaces between courts might be decisive.

Improving the quality of civil justice

It should be noted that digital technologies are no silver bullets for systemic problems of civil justice. However, digitalisation may help the identification of relevant problems and challenges that need to be addressed. In any case, it is important to be aware of the implicit assumptions and expectations we impose on digitalisation. For example, the development and implementation of technology do not automatically lead to a more cost-effective distribution of justice, as many studies demonstrate. What is worse, such expectations of fiscal savings might actually hinder the realisation of digitalisation's full potential, which resides in improving the *quality* of civil justice. Finally, we should understand the promise of quality in terms of inclusivity so that new digital tools and processes do not deepen existing social inequalities but instead help marginalised groups to access justice. Here, legal design can provide tools to support inclusivity. However, it is important to recognise that inclusive design and extensive end-user testing with different groups require time, resources, and structures. This needs to be taken into consideration in software development.



Simply put, sustainable digitalisation should be about the critical assessment of the status quo.

The future of e-Justice in the EU

HRVOJE GRUBISIC

As an **OFFICIAL OF THE EUROPEAN COMMISSION, DG JUSTICE AND CONSUMERS** in the area of private international law since 2014, Hrvoje Grubisic has served as the **SECRETARY** of the European Judicial Network (EJN) in civil and commercial matters since 2017. In this position, he works closely with civil and commercial law judges on issues of application of EU law, particularly on issues having a practical component and relating to e-Justice.



Starting point 1999 Tampere Council

A General European Area of Justice

When discussing the matter of European civil and commercial justice, it is impossible to expect a discussion with any degree of seriousness and not have it start with the 1999 Tampere Council as its cornerstone. Held on the 15th and 16th October 1999 in Tampere, Finland, the special meeting of the European Council was dedicated to putting forward political guidelines leading to the establishment of a cohesive European area of freedom, security and justice. Under the chapeau of 'A General European Area of Justice', the Council laid down the foundations for EU-wide judicial cooperation and better access to justice in civil and commercial matters by calling for the adoption of instruments tasked with harmonising the determination of jurisdiction, applicable law and recognition, and enforcement of judicial decisions in the EU. At its

heart, the program very much aimed to facilitate travel, business and life in a cross-border context.

On 29 January 2019, almost 20 years after the Tampere Council conclusions, the final two instruments – aimed at clarifying the rules applicable to property regimes for international married couples or registered partnerships – have entered into application, completing the cycle of instruments foreseen in 1999. After two decades of having dominated the landscape of European civil and commercial justice, the Tampere Program had finally been completed, leaving in its wake a coherent and integrated ecosystem of private international law instruments.

However, even though the rules brought to life under this program assure citizens and businesses alike that their rights and obligations as established

e-Quality = Equality

by courts and similar authorities will follow them as they move throughout the EU, and even though rules on jurisdiction of courts and law applicable to proceedings have been tailor-made with their needs in mind, the question whether this constitutes a complete and seamless 'General European Area of Justice' still presents itself.

From roadblocks to building blocks

In the consideration and the attempt to answer the above question, a very short reply imposes itself as the correct one: no. Unfortunately, regardless of the significant positive impact that the harmonisation of conflict of law rules in the EU has had on the legal certainty of living and doing business in the Member States of the EU, certain practical matters provide a persistent roadblock in this regard. Namely, such issues as geographical distance, language, costs, the (un)familiarity to foreign law, and others still prevent equal access to justice for many European citizens, denying to a degree the concept of borderless justice in the EU. It is against this background that e-Justice and the principles it embodies become a supremely relevant building block for European justice.

Currently driven by the 'e-Justice Strategy and Action Plan' for the period of 2019-2023, e-Justice constitutes a collection of principles and initiatives aimed at improving access to justice in a pan-European context by digitising judicial procedures, as well as enabling access to relevant legal information to citizens and legal professionals alike. Indeed, as much as harmonised conflicts of law rules are a prerequisite to the opening of borders to the justice-related needs of citizens, so is the assurance that the same citizens can be informed about the relevant laws of a given Member State – to submit

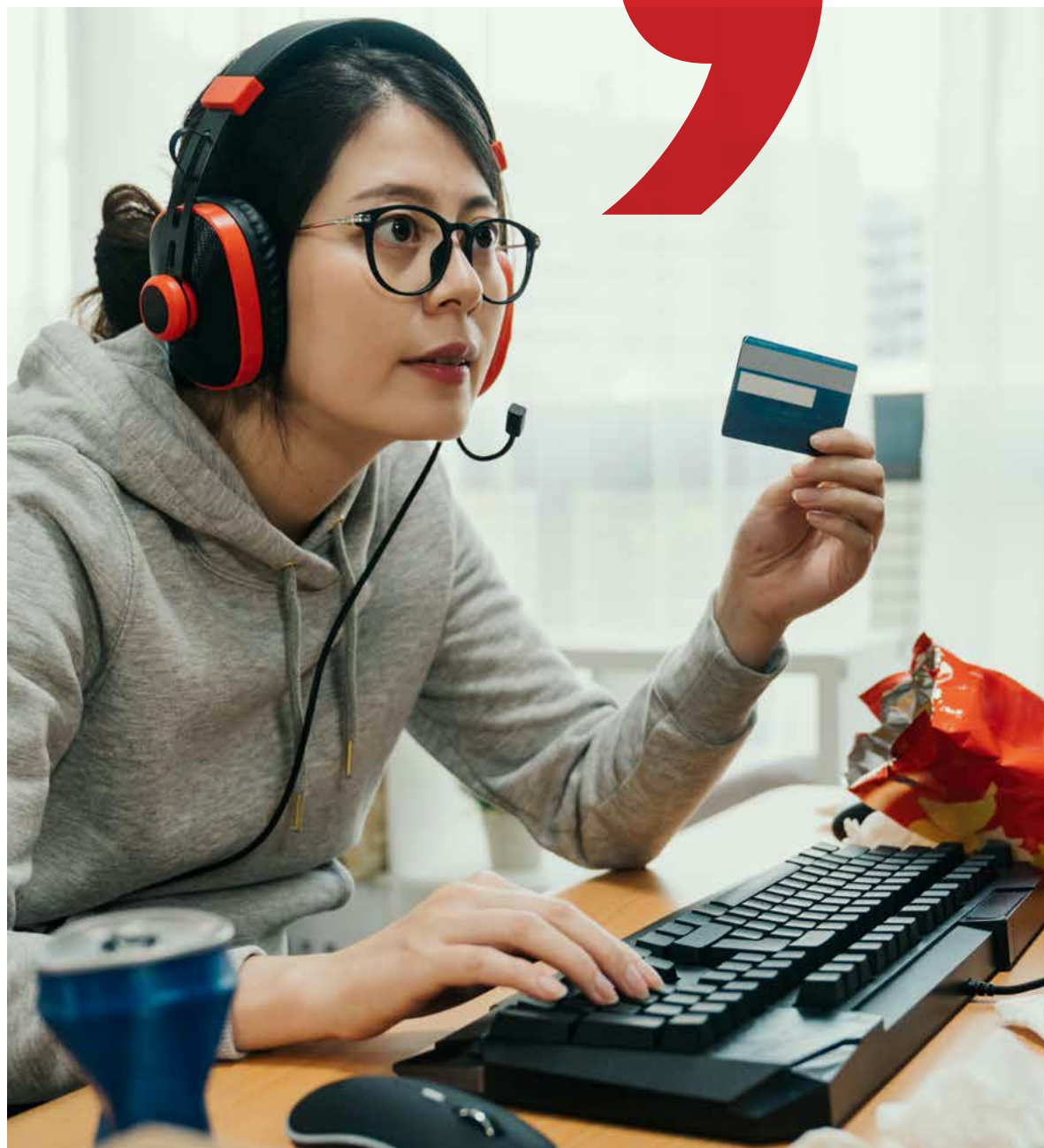
a claim to an authority, be heard before a court or to find legal representation without travelling across the continent – an integral part of practical equality before justice.

Even though the concept of e-Justice sets itself as a natural extension of the EU's private international law rules in the ongoing effort to cultivate a 'General European Area of Justice', it should not be considered an instant panacea for all ills besetting European justice and national justice systems in particular. Naturally, the prism through which many relevant actors may view e-Justice and the push towards the digitising of judicial procedures and the access to the law will be that of greater efficiency (and perhaps more importantly – cost efficiency) of justice and judicial operation in general. However, while the digitisation of justice carries with itself an implied promise of efficiency, this should not be the guiding rationale in the realisation of e-Justice. Just as a cohesive area where individuals and businesses are not prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States was the guiding idea behind the conclusions of the Tampere Council, so too should the doing away with practical obstacles facing citizens and businesses be at the heart of e-Justice.

e-Quality

It is an amusing coincidence of language that adding the ubiquitous 'e-' prefix to the word 'quality' results in 'e-quality', but this play on words very conveniently mimics the fact that in the effort to improve the quality of justice that European citizens have access to, e-Justice has a significant potential to improve their equality before justice.

CONSUMERS ARE OFTEN UNAWARE OF THEIR
FULL RIGHTS AND OBLIGATIONS, AS WELL AS
THE COMPLEXITY OF CROSS-BORDER ISSUES.



Human contact in digital times

EVA CALVELO MUIÑO

Eva Calvelo Muiño is the **DIRECTOR** of ECC the Netherlands. The European Consumer Centres Network (ECC-Net) is co-funded by the EU (DG JUST) and its national governments to help consumers with practical cross-border problems. Advising citizens on their consumer rights and providing easy access to redress enables them to purchase goods and services with full knowledge of their rights and duties.



CONSUMERS NEED HUMAN
INTERACTION TO HELP THEM
DECIDE THEIR NEXT STEPS.

THE UNPRECEDENTED INCREASE IN ONLINE PURCHASES

Innovative big data research and market studies continue to show the rapid increase of cross-border e-commerce. Transactions are no longer bound by national borders and consumers increasingly engage in online transactions with merchants abroad. Accompanying this sizeable increase is the rising number of complaints and disputes, such as non-delivery, fraudulent transactions, guaranteed compliance and payment issues.

Moreover, national differences in legislation, geographical distances, language barriers, cultural differences, prejudices and the complexity and length of cross-border legal procedures all add further obstacles to obtain compensation in consumer conflicts.

The EU has created numerous laws and diverse protection measures to protect consumers. The establishment of the European Consumer Centres Network, the creation of the ODR platform, and the introduction of court proceedings such as the European Small Claims Procedure (ESCP), are all aimed at facilitating consumer redress and strengthening confidence in the Single Market. Solutions to consumer problems should be quick and easy. Those who contact the European Consumer Centre (ECC) for legal assistance expect thorough, rapid intervention and most seek a fair solution to their disputes and claims. Yet consumers are often unaware of their full rights and obligations, as well as the complexity of cross-border issues.

A CONSUMER PROBLEM

The main objective of introducing the ESCP was to provide a cheap, easy and simple procedure enabling consumers to go to court by themselves. The question is: is it really efficient? We asked many consumers who contacted our office. Sometimes, due to lack of cooperation from merchants, the ECC's legal advisors were unable to resolve a dispute between the consumer and merchant. The antagonism between both parties would then have to be resolved by a court decision. However, when mediation is unsuccessful, we have found that Dutch consumers often choose not to take their complaint to court.

I WOULD LIKE TO SHARE ONE OF THE MANY COMPLAINTS CONSUMERS HAVE MADE IN THE LAST FEW YEARS THAT SHOWS HOW THE PROCEDURE IS NOT ALWAYS EFFICIENT.

A Greek consumer living in the Netherlands encountered a problem during his holiday in Spain. He had made an online booking with a Spanish airline for his flight home, but when he checked in for departure – two and a half months after making the reservation – he noticed his booking had been cancelled. Apparently, his credit card had been rejected. He was forced to buy two new tickets on the spot to fly home, costing him almost €900. Not a great way to end a vacation.

He turned to the airline to claim the refund for the undue payment. The airline waived this claim, arguing that his credit card had been declined.



THE CONSUMER WAS ASTONISHED, AS HE HAD MADE A VALID BOOKING AND THE PAYMENT HAD INITIALLY GONE THROUGH.

As no solution was offered, he decided to proceed with an ESCP. With the information he found online, he understood that the court in the town he was living in would be competent. But this was not the case. This court declared itself unable to take his case and the form was signposted to the Court of North Holland (Haarlem), taking into account ECJ ruling July 9, 2009, C-204/08, Rehder v Air Baltic Corporation. The Court of North Holland finally admitted the case.

The airline invoked several arguments to show that the cancellation was caused by several mechanisms in place to prevent fraudulent electronic payments, as the consumer's booking was labelled that way. The problem was that the airline failed to inform the customer until after the flight had taken place. The court ruled in favour of the consumer, as he had a confirmed booking saying the payment had been successfully completed. The agreement of the airline with third-party payment providers should not influence its obligation to comply with its arrangement with him. Therefore, the damage had to be compensated. The consumer was entitled to a full refund of the newly bought tickets, and also the processing costs (at that time €77).

DIGITALISATION WILL MAKE GETTING COMPENSATION EASIER, BUT BEFORE ARRIVING AT THAT POINT, THE HUMAN FACTOR AND INTERVENTION WILL STILL MAKE A DIFFERENCE.

BIG RELIEF! OR NOT...

The consumer's relief was huge, but regrettably, this was not the end of the story. Despite repeatedly contacting the airline to secure his refund, the airline refused to comply with the ruling. At this point, the consumer had relocated to work in Asia. Luckily, a friend of his in the Netherlands tried to help him by contacting the Dutch ECC for advice. We then contacted the airline several times but to no avail. In the end, he was forced to contact a bailiff, who then retrieved the payment nearly three years after the event occurred. The consumer finally recovered his money and there was a success at long, long last.

DIFFICULT AND... COMPLICATED?

I understood the consumer's frustration going through all the steps to obtain a ruling, knowing he was entitled to a refund and would have to fight for his money. We often observe how consumers are unwilling to devote the time to pursuing a court case. On the one hand, their claim is indeed 'small', which makes them decide to accept the loss, rather than go to court. On the other hand, going to court brings up a lot of uncertainty and questions. How do I prepare my case and describe my claim in the best way? Which is the competent court? How do I get support from specialised advisors? Which bailiff can help me, if needed? Finding the right competent court straight away and getting advice on the actual scope of the allegations would have led to a quicker, perhaps even better outcome in our example.

In the end, consumers need human interaction to help them decide their next steps. People helping people. In addition to translating complex rules into understandable advice, legal advisors can offer impartial guidance, manage expectations, remove

difficulties and provide reassurance. Digitalisation will make getting compensation easier, but before arriving at that point, the human factor and intervention will still make a difference. Therefore, digitalising redress mechanisms only works when it offers tailored advice and encouragement to consumers.

So how can European procedures like the ESCP help the underdog (often the consumer) defeat their stronger opponent (often the merchant) to reach what they are legally entitled to? The main thing I have learned from talking to consumers and handling over a thousand consumer complaints is to be realistic, straightforward, clear and practical. As we live in a digital world, digital tools certainly help make life easier for many claimants. However, that does not mean that everyone knows how to take advantage of today's digitalised climate – not because they do not want to, but more so because they do not dare to.

**CONSUMER
RIGHTS DO
NOT STOP AT
THE BORDER,
BUT
SOMETIMES
THEY NEED
EXPERT HELP
CROSSING IT.**

Realising cross-border justice in Europe: the e-CODEX method and philosophy explained

Digitalising judicial services is not for the faint-hearted.

THE judicial sector is subject to many unique features and involves a plethora of different actors or user communities. Yet e-CODEX has managed to do so successfully. Its effectiveness lies not so much in technological innovation, but rather in the method and philosophy it is based on. All the more reason to take a closer look into some pivotal underlying principles of the system.

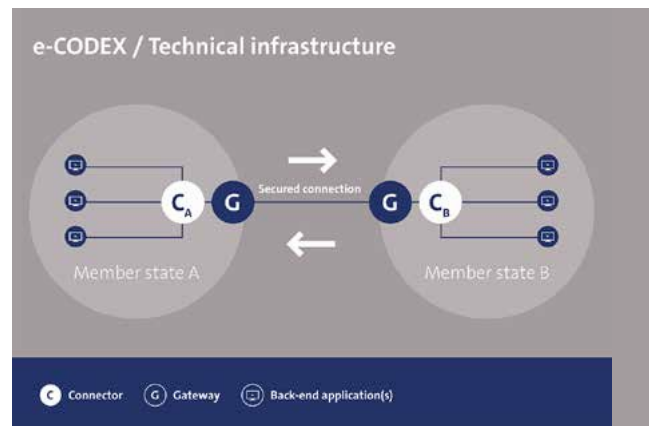
e-CODEX is not a ground-breaking technical or legal invention. It is innovative in terms of deploying technology in the legal domain. Generally speaking, e-CODEX is about the digital transmission of case-related data and documents in the legal domain. For example, over the years, several legal procedures have been introduced at a European level to help citizens or businesses to deal with cross-border litigation, such as the European Payment Order (EPO). The pure existence of an instrument like the EPO does not depend on e-CODEX. e-CODEX merely digitalises what is already there: this does not make the offered services new or special, but it does make their use easier and faster.

The principles that underlie the e-CODEX method are worth investigating. In particular, the ideas of subsidiarity, connection flexibility and its aims to reduce complexity and to safeguard reliability.

Subsidiarity

Subsidiarity is at the centre of the e-CODEX method. It means that all issues have to be resolved at the lowest possible level. For e-CODEX, it appears in different forms.

First and foremost, the principle of subsidiarity happens by dividing up the different aspects of e-CODEX in different 'layers'.



The technical infrastructure consists of a connector and a gateway. The installation of the gateway ensures a secured connection with a gateway in another Member State. The connector carries out the adaptations required for receiving encrypted data by the corresponding service provider in another Member State.

For example, the EPO involves the political or business layer; the decision to establish the procedure. There is also the semantic layer



e-CODEX merely digitalises what is already there: this does not make the offered services new or special, but it does make their use easier and faster.

that drafts the EPO legal forms based on the requirements of the legal procedure. From a cross-border perspective, it is important to make sure that the exchanged information is interpreted in the same manner by all Member States. e-CODEX achieves this by using common document standards and semantics to ensure mutual equal interpretation of the exchanged data. Every legal form can be based on those standards and thus make use of e-CODEX.

The technical layer is the underlying technology platform on which a particular service is running. In the case of the EPO, the procedure can be perceived as a European legal transaction service using the e-CODEX infrastructure to exchange information.

To a certain extent, these layers are interdependent, especially the business layer and the semantic layer. A business decision to change the EPO requires follow-up by changing the form at the semantic level. Of course, in the big picture, this interdependency also exists between the business, semantic and technical layers, because without a form or a procedure, there is nothing for e-CODEX to transmit. However, the technical layer is far less affected by changes in the other two layers, since the e-CODEX method is based on 'service loose coupling', meaning that the connections between all the different layers affect e-CODEX as little as possible.

Technical autonomy

As a result, e-CODEX has 'technical autonomy': changes in the business and semantic layers do not affect the technical layer and vice versa. So, if the application form (the semantic layer) for the EPO is changed, you can still send that form through e-CODEX, using the e-CODEX infrastructure.

The laws or rules may change, but the e-CODEX infrastructure can still serve as the underlying technology platform a particular service is running on.

Subsidiarity is not only essential for e-CODEX internally, but also for its relations with participating Member States. Everything that can be arranged more easily at the national level should be arranged at this level and not through e-CODEX. There is no need for e-CODEX to impose more restricting or more demanding technical requirements on Member States than strictly necessary. Moreover, the strict division between the e-CODEX 'common' level and the national 'own' level means that complexity and technical problems are contained to those levels respectively, without affecting the other levels. Nevertheless, optimal deployment of e-CODEX does require good cooperation between all the layers.

Connection flexibility

To further understand how technical complexity may be reduced, we first need to discuss how the connection of a Member State to e-CODEX works.

e-CODEX does not rely on the use of specific hardware. Anything can be used to connect to e-CODEX, as long as it supports certain standards. Standards are, simply put, the language e-CODEX uses to communicate. It is like one person using a Windows computer and another an Apple computer. They are both still able to send each other emails, because both computers use the same standards, despite having different hardware. Hence, to use e-CODEX, Member States can use any hardware as long as it supports the language e-CODEX uses for communications; the ebXML standards stack and ETSI REM standards.



The technical infrastructure of e-CODEX connects different legal systems and ensures fast access to justice past borders.

Easy connection

This means that it is easy to connect to e-CODEX. Practically anyone speaking the right language can do it. This connection flexibility also leaves room for Member States to invest in their own national IT projects. e-CODEX does not impose rigid requirements or make invasive demands. Even though EU hardware is available for connecting to e-CODEX, there is no European way in which Member States should organise their national system in order to connect to e-CODEX nor do they have to buy new products to do so. They just have to ensure that their own products of choice support the same standards as e-CODEX.

Again, the idea of service loose coupling characterises the connection flexibility of e-CODEX because of the subsidiarity in the differentiation of layers. Should e-CODEX decide to use different standards as of tomorrow, this would not affect the services itself. The use of different standards does not change the offered services, provided that all partners use the same new standards.

Reduce complexity

This brings us back to how subsidiarity in the external dimension of e-CODEX helps to reduce

complexity. No matter how easy it would be to connect to e-CODEX, no one would do it if it meant getting saddled with the technological issues of everyone else. By making the connection to e-CODEX merely dependent on the use of certain standards, the national and European layers can function separately. e-CODEX does not depend on certain national features and does not stop working if the system of one Member State faces problems. Specifically, the responsibility for national complexity remains with the respective Member State. National issues or changes do not affect e-CODEX nor the ability of other Member States to connect to e-CODEX.

An affair of each Member State

The reduction of complexity is thus inherent in the design of e-CODEX. e-CODEX creates an interface connecting the national level to the European one, enabling everyone to communicate. In other words: national systems need not turn it all around to fit in e-CODEX, but e-CODEX must fit in with everything else.

This also applies to the business layer of e-CODEX. The business complexity remains an affair of each Member State. National processes and procedures already exist through national cases. e-CODEX creates an interface from this national process design to the European design, in all Member States. As such, the tasks of the staff remain the same. There is no need for staff to learn how to

fill in specific European forms, nor does a German member of staff need to know how certain procedures work in every other Member State in order for the system to function.

Reliability

Dealing with sensitive data always requires a safe and secure connection. However, e-CODEX also has to consider the sensitivities of exchanging judicial data. Any 'physical' legal interaction requires identification and expression of will. For example, if you want to file a court case, you need to identify yourself, sign the application and if necessary, express who will represent you. These physical requirements for judicial interaction are also incorporated in the e-CODEX method, via the already developed European 'building blocks', the e-Signature and the e-ID.

Circle of Trust

The use of these two building blocks is based on the principle of mutual trust. All participating Member States signed a 'Circle of Trust' agreement, indicating that, if certain conditions are met, they trust electronic signatures and identification methods used by other Member States in their national systems. e-ID and e-Signature provide the national identification and electronic signature with a Trust-OK token, meaning that all other Member States, on the basis of mutual recognition, will subsequently accept this identification and signature without imposing further requirements. Therefore, legal

communication through e-CODEX does not have to forego on the very basics of judicial interaction. To send legal information across European borders, only the 'address information' needs to be filled in to make sure that the information is received by the right recipient. Along the way, it is not possible to see the actual content of the information that is being sent. Information sent via e-CODEX is namely 'sealed' or encrypted, which represents an evident but very important level of security.

Conclusion

The principles of subsidiarity, connection flexibility and its aims to reduce complexity and to safeguard reliability have proven instrumental to the success of the e-CODEX method.

An important reason why e-CODEX works is that it does not force one European system upon all participating Member States, nor does it oblige Member States to reinvent their systems. By using open international standards, e-CODEX does enable existing systems to securely communicate with each other, without being affected by technical issues or changes in other Member States.

e-CODEX is not an unprecedented technological innovation or complicated legal construction. What makes the project stand out is the fact that it deploys proven technology in the legal domain, enabling the effective and active involvement of all user communities while respecting the national differences and judicial peculiarities.



An important reason why e-CODEX works is that it does not force one European system upon all participating Member States, nor does it oblige Member States to reinvent their systems.

Enhanced cooperation to provide citizens access to justice throughout the EU

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Our daily lives are increasingly blending with the digital world. Our society has been faced with a rapidly evolving internet uptake and a more general increase in the pace of technological developments.



THE EU internal market is also subject to this development. The growing number of EU citizens engaging in online transactions with national as well as international businesses in virtual market places results in a rapid increase in e-commerce.¹ Along with the rise in online transactions, comes a rise in online disputes. A further increase in e-commerce, however, is hampered by the lack of existing mechanisms for resolving the growing amount of online (cross-border) business to consumer (B2C) disputes. In particular, the cross-border claims pose obstacles for access to justice, due to factors such as differences in language, differences in legislation and lacking knowledge on how and where to submit a claim in another Member State.²

¹ Iris Benöhr, 'Alternative Dispute Resolution for Consumers in the European Union', in: Christopher Hodges, Iris Benöhr, Naomi Creutzfeldt-Banda, Consumer ADR in Europe, 2012, pp. 1 – 23, p. 1.

² Xandra Kramer, Procedure Matters: Construction and Deconstructivism in European Civil Procedure, Erasmus Law Lectures 33 (inaugural lecture Erasmus School of Law 2012), The Hague: Eleven International Publishing 2013; DG-Sanco, Study on the Use of Alternative Dispute Resolution in the European Union, Final Report, submitted by the Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC) 2009, p. 9; European Commission, Commission Staff Working Paper, Impact Assessment Accompanying the document – Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for Consumer disputes (Directive on consumer ADR) and Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR), (COM(2011) 793 final, SEC(2011) 1409 final, p. 20.

*Digitisation can offer
key access to justice
and is essential to keep
pace with developments
in society.*



EU cross-border procedures

The lack of effective redress mechanisms creates a pressing need to facilitate access to justice and to enable further development of cross-border trade and e-commerce in the EU internal market. Several European cross-border procedures are created as a response. The European Small Claims Procedure (ESCP), established by Regulation 861/2007, became applicable on 1 January 2009 and revised to extend the scope and improve its rules in 2015. The ESCP aims to speed up and simplify the procedure for small claims in cross-border litigation.³ With the introduction of a common European procedure, the ESCP contributed to the creation of a level playing field throughout the EU.⁴ However, several concerns were raised regarding the functioning of the ESCP including lack of awareness among judges, lack of information for consumers, language issues increasing the costs of the procedure, the enforcement of judgements and a lack of statistics.⁵ The European Payment Order (EPO), established by Regulation 1896/2006, and applicable since 12 December 2008, entails a simplified procedure for cross-border money claims which are uncontested by the defendant.

Using ICT to make justice accessible

The unique possibilities of Information and Communication Technology (ICT) are often regarded as a promising potential to mitigate these barriers and facilitate access to justice. The use of ICT may clearly save costs and time through the provision of information online, assisting users digitally and enabling online communication between the parties.⁶ Digitisation can therefore offer the key to access to justice and is essential to keep pace with developments in society.

The e-CODEX project was launched in 2010, under the header of the European e-Justice Action Plan 2009-2013.⁷ e-Justice aims at enhancing access to justice through the digitalisation of judicial procedures and providing stakeholder with access to information. Essential for the improvement of information exchange is enhanced cooperation between the different national legal systems. Most importantly, e-CODEX aims to ease this information exchange by enabling the digital exchange of information by providing a secure and effective environment for data exchange.⁸ Successful pilots have been completed to get the ESCP and the EPO procedure and other European procedures to be conducted online.⁹

European cross-border procedures should thus also be accessible online. This requires the Member States to have a proper digital 'infrastructure' within their national legal systems. e-CODEX should enable and should secure the interoperability and the connectivity of the different systems existing within the Member States. Making use of ICT technologies, e-Justice is the first step towards the creation of an EU judicial area.¹⁰ Digitalising justice, however, not merely requires cooperation between national legal systems, but also requires interdisciplinary collaboration between the legal world and IT experts.

EU citizens should have a single point of entry to these digitised European procedures to secure their access to justice. This single point of entry should be designed in order to be accessible to all citizens, including more vulnerable citizens. It should fit the needs and wants of the users.

³ Elena Alina Ontanu (2017). Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures (Ius Commune Europaeum, 159). Antwerpen: Intersentia, p. 22.

⁴ Zampia Vernadaki, 'Civil Procedure Harmonization in the EU: unravelling the Policy considerations', *Journal of Contemporary European Research*, Vol. 9 Issue 2 (2013), p. 300.

⁵ ECC-Net European Small Claims Procedure Report, September 2012, p. 3-6.

⁶ Julia Hörnle, *Cross-border Internet Dispute Resolution*, Cambridge: Cambridge University Press 2009, pp. 87-89.

⁷ 'Multi-Annual European E-Justice Action Plan 2009-2013', OJ C75/1

⁸ Council of the European Union, 'Roadmap on the sustainability of e-CODEX', 20 November 2015, p. 2.

⁹ Marco Velicogna & Giampiero Lupo, 'From Drafting Common Rules to Implementing Electronic European Civil Procedures: The Rise of e-CODEX', in Burkhard Hess & Xandra Kramer, *From Common Rules to Best Practices in European Civil Procedure*, Nomos/Hart Publishing 2017, p. 181-212.

¹⁰ 'Multi-Annual European E-Justice Action Plan 2009-2013', OJ C75/1, p.(20).

'e' meets Justice in Portugal

Being aware that digitisation is the key for legal procedures to become more accessible to citizens, but also with the realisation in mind that there is a need for cooperation between the field of IT and the field of law, the Dutch Ministry of Justice and the Erasmus University Rotterdam joined forces. With the aim to evoke discussions, enable the exchange of knowledge and in particular to seek a bridge between experts from an IT background and experts from a legal background, we organised a two-day conference in the beautiful city of Lisbon, Portugal on 2&3 May 2019. The conference aimed to provide a platform where different stakeholders could meet at the crossroads connecting a legal world with a digital world, arriving together at 'e-justice'. Among the many attendees were experts from multiple backgrounds such as academics, ICT experts, policy makers, representatives from interest groups, from the government of Portugal and EU institutions. Lisbon was not a random choice. Portugal has undertaken one of the most remarkable transformations of justice reform in the last years. Portugal managed to improve their court infrastructure and shorten disposition time by using digital technologies and better management. It certainly did so by placing court users at the focal point of their reform, through an action plan aimed at a closer, more humane, innovative and agile Justice (the *Justiça+Próxima*). Along with placing the users at the core of transformation, the focus was furthermore placed on the use of clear language and on creating a new interface for judges in the electronic case management system. So Lisbon did not only serve as the meeting point of the conference but also as a model of inspiration for the further development of e-CODEX.

Challenges which lie ahead

There are real opportunities within technology to increase access to justice, but the challenges may not be undermined. The use of ICT methods and online tools remains controversial as it entails several challenges, including technical issues, unequal access to or illiteracy with online tools, the loss of a human face in the judicial process, privacy issues and data protection issues." An EU system of e-Justice must be accessible to the users of the system: citizens, businesses, legal practitioners and judicial authorities. So a challenge lies in designing a system which fits the needs of all those who use the system, including the more vulnerable users. We need to bring the justice system to the people. e-Justice cannot be a privilege of the few but should be the bridge to enable access to justice for all.

Another challenge lies in safeguarding that norms and values such as transparency, fairness and lawfulness will not be subordinate to the efficiency and cost-cutting aims of digitising justice.

This publication

The publication lying before you gives an insight into the speeches, discussions and lessons learned at the e-meets Justice conference in Lisbon. Several speakers from different disciplines and backgrounds wrote a short paper on their perspective on 'e-Justice'. With this publication, we hope to create awareness of the importance of enhanced cooperation between the IT sector and the legal sector to truly provide citizens access to justice within the EU area of freedom, security and justice.



Making use of ICT technologies, e-Justice is the first step towards the creation of an EU judicial area.

¹¹ Giesela Rühl, 'Alternative and Online Dispute Resolution for Cross-Border Consumer Contracts: a Critical Evaluation of the European Legislature's Recent Efforts to Boost Competitiveness and Growth in the Internal Market', *Journal for Consumer Policy* 2015, vol. 38, issue 4, pp. 431-456, p. 448.

Connecting the legal and the technical world

FRANCESCO ROMEO

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Are we prepared to regulate the connection between the legal and technical world?



Law and technology have been governing two different, albeit sometimes overlapping fields.

However, IT research, and especially the Artificial Intelligence and Cognitive Sciences studies, have changed the relation between law and technology.

Law and technology: diverging goals and efficiency paradigms

If we ask 'why does a plane fly?', the normal answer is that 'in nature', there are no planes and they do not fly, but a plane will fly if (and only if) people build it in a specific way. However, the captain too would not work in order to let the aeroplane fly 'in his natural state'. He will only cooperate if he is trained for it and encouraged with money or other incentives. Technology and law are sets of rules directed to change the 'natural' environment, both of things and humans.

In everyday life, the flight of a plane needs new things to be built in specific ways, like airports and control towers. But it also needs the cooperation of thousands of individuals who are unknown to each other and who would probably neither cooperate nor trust each other 'in nature'. If either of these variables is not set correctly, the plane will not fly or it will crash.

Legal rule

diverging goals

Technical rule

Law and technology: diverging goals
and efficiency paradigms

Resolution of
social conflicts

Transformation
of the world

In order to set the variables correctly, we need both legal and technological rules to regulate human behaviour:

- **The technological rules state how to behave in order to build technological objects and enable them to function;**
- **The legal rules state how to behave interacting with other people and objects.**

The two types of rules can generate conflicts or contradictions in what they order as due behaviour because they partially rule the same domain – human behaviour – but the goals that they intend to reach are different. A tragic example happened in 2002 when two aeroplanes collided near Ueberlingen, Germany. As the planes approached one another, the Honeywell ‘Traffic Collision Avoidance System’ (TCAS) – a technological innovation that does what it says on the tin – instructed one pilot to move up and the other to move down to avoid a crash. The human operator in the sky tower gave the exact opposite orders. Had both pilots followed either the legal order or the technical rules, they would have avoided each other. In 2002, the discrepancy between legal and technological rules resulted in a disaster.

It is evident today, even if it was not so evident a few years ago, that the object of sciences of control and direction of actions – such as cybernetics and

robotics – really overlaps with that of law. Cybernetics is the science that studies how to control the actions of others, just like the science of law consists in the study of norms which are acts of will addressed at other people’s behaviour, as stated by Hans Kelsen¹.

However, the ways in which the actions of others are regulated differ, between law and technology, for the different purposes for which the respective rules are designed. Legal rules tend essentially to resolve conflicts within a given social group; cybernetic rules tend to transform reality.

The optimal legal rule is often not the same as the optimal technical rule because they tend towards different, sometimes divergent, purposes and therefore their efficiency – understood as optimal use of resources to achieve the goal – will be assessed differently.

Conflict of interest

I was asked to ‘highlight the challenge of connecting the legal and technical world’, but they are already necessarily connected. The technical domain of IT rules human behaviour with regard to other human behaviours, doing what legal rules are intended to do. In the same domain, the need for a new regulation of IT – known as ‘legal protection by design’, in which the legal norms will regulate the technology also in ‘how to make it’ – is becoming more and more pressing. But from this

¹ H. Kelsen, *Reine Rechtslehre*, Wien 1960, p. 5.

statement arises a threatening question and this is the challenge: are we prepared to regulate this connection between the legal and technical world? The answer is unambiguous: No, we are not.

We still have to combat a glorious, but aged, philosophical opinion that separates the two fields of research: natural from human sciences. Students are as jurists far from technology and unable to understand how it works and thus unable to regulate it, but also unable to grasp the expansion of technology to their domain.

Turning point

Is there a turning point? Can we define it? Yes, there is and we can define it: the new technologies of information will challenge the human decision and argumentation process, reproducing it artificially or introducing new possibilities. The legal domain will change quite a lot because it is based on rules- and value-oriented arguments that constitute the process of reaching a decision. The values are set or codified in the legal rules and these are valid for everybody in the same way. They apply equally to all those who turn to the law for the solution of their case.

An algorithmic solution may be closer to the citizens than a solution fixed in legal rules. A well-known example was the starting point in decision theory and it led to the elaboration of a large number of algorithms. If a cake needs to be divided into equal parts and shared between two contenders, the best method, which leads to an envy-free division, would be to let one party cut the cake and the other party have the first pick. This way, unfair situations are avoided and different solutions, adapted to the scale of values of the parties, are allowed. The cake will either be divided into two perfectly equal parts or, if the cutter decides to cut unequal parts, this is done knowing that the other party will most likely take the greater part. As such, this donation will be the result of their own values. The algorithm here is just a procedure that reflects the values of the parties better and allows the parties to adjust their positions better than a fixed rule.

Two more questions before reaching the conclusion of these reflections:

1. Will IT replace the legal expert artificially?

2. Will the law be replaced by technical rules or new types of regulation?

It is wrong to think about replacing the jurist, especially the lawyer and the judge, with a robot able to perform their roles. This image, which is also very frequent in the scientific field, is unrealistic and misleading. It is misleading because it hides the fact that legal rules will have to change and be adapted, even in their deepest structure, to the new environment in which humans live: the electronic world. No 'machine' will replace the judge, the lawyer or the legislator, but we will have to rethink the legal institutions for this new social reality, consisting both of human beings and technical objects acting together. All the institutions, even the most traditional ones, will have to be rethought by us. Algorithms are procedures, and in part, they will be the new legal procedures. It is now up to us to train, through our teaching, those who will succeed in being the jurists of this reality.



DURING two days, IT experts, scholars, law practitioners, politicians and relevant organisations were invited to feel comfortably uncomfortable while trying exchange ideas, engage in discussions and develop a mindset to foster the future of e-Justice in the EU.



Thank you for joining us on this journey.

THIS publication is the consolidation of the joint efforts of e-Justice communities from around Europe to lay the foundations for more accessible justice for all, at the 'e' meets Justice conference in Lisbon. During the two days, IT experts, scholars, law practitioners, politicians and relevant organisations were invited to feel comfortably uncomfortable while trying exchange ideas, engage in discussions and develop a mindset to foster the future of e-Justice in the EU.

Special thanks are due to the Portuguese Ministry of Justice and the Polícia Judiciária for hosting the conference at their headquarters in Lisbon and making sure all guests were comfortable; and to the e-CODEX Plus project, the 'Building EU Civil Justice' project run by the Erasmus School of Law of the Erasmus University in Rotterdam, and all speakers, for driving home the uncomfortable truth that there is a long way to go before we reach our shared goal. The resulting state of happy confusion is a necessary first step in the direction of multidisciplinary cross-border cooperation towards access to justice for all, throughout the EU. Last but not least, I would like to thank Sandra Taal and Josje Groustra for their indispensable role in organising this conference, both at an organisational level and in terms of expertise.

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