INTRODUCTION

In the last years information and communication technologies (ICT) have pervaded in different areas of the EU Member States' judicial systems, opening new opportunities to improve the internal management of justice as well as the delivery of its services, called for this purpose e-Justice.

The availability of web services, the possibility of consulting online court registers, legislation and case-law, the use of electronic filing, the electronic exchange of legal documents or the publication of jurisprudence online are only some examples of key e-services aimed at significantly improving the efficiency, transparency and accessibility of the judicial administration.

The benefits of reforming judicial systems in order to allow the use of ICT in their administration are multiple and can be identified at different levels, from citizens involved in a court procedure, to lawyers, judges, prosecutors and court civil servants, as well as governments.

Among the potential advantages brought by the development of e-tools for justice, we could mention:

- a more efficient judicial system, increasing productivity and diminishing costs of transaction, while being highly information intensive;
- a more effective judicial system through reducing the duration of procedures – thus both saving time and lowering costs – and putting systems for document resource administration as well as other associated tools (video-conferencing, software for working in collaboration online, etc.) within the reach of judges and courts. The most important of these benefits is "time saving". Indeed, for a number of procedures physical interaction between a civil servant and a citizen is not needed. Similarly, documents can be exchanged outside regular office hours through electronic mails. Additionally, disabled persons are ensured better access to court proceedings. Finally, these reforms contribute to the speedy delivery of judgments and judicial proceedings in general.
- increasing citizens' level of access to the judiciary by providing the best information available and a better understanding not only of the way the courts work but also, more importantly, of the legal instruments within their reach to ensure recognition of their rights;
- improved transparency of the way the judiciary works, in that the technologies facilitate an improved control of cases and allow a better qualitative evaluation of outputs;
- increasing the confidence of citizens and businesses in the judicial system.

The sum of these all results in a greater legitimacy of judicial power.

As frequently underlined by the actors of the justice system (judges, lawyers, prosecutors, etc.), if ICT can undeniably lead to positive effects, the modalities of their implementation should be done in a way that guarantees the basic principles of legal certainty, integrity, and authenticity of documents, data privacy, and an independent judiciary. As long as the judicial debate can always take place and that the rights of defence are safeguarded, the development of e-justice may have a positive effect on access to justice; it should contribute to reduce backlogs and to shorten court proceedings – or at least to improve their foreseeability.

In recent years, public authorities around the world have begun to adopt several statutory reforms to incorporate ICT into everyday tasks of judicial systems' actors. In the European sphere, the concept of e-justice has been mainly developed in justice administration, with a number of exceptions, with a policy aiming to improve and modernise the delivery of justice in two categories of litigations. On the one hand, these are litigations completed internally in the national judicial orders and on the other, cross-border litigations. For the European Commission, e-Justice's primary objective is to help justice to be administered more effectively throughout Europe, for the benefit of citizens.

Nowadays, basic computer technologies are widespread in courts around Europe. According to the 2008 data collection exercise of CEPEJ (European Commission for the Efficiency of Justice), out of 46 European countries surveyed, 41 had basic computer and word processing facilities in 100% of the courts, and 5 in more than 50%. Diffusion of such technologies started during the 1980s but in many cases their introduction has been all but easy and plain. The development of these applications was often carried out locally, in many cases to meet specific and urgent business needs within specific offices, or within ad interim pilot projects (e.g. Italy, Ireland, Belgium). It is only over the course of the 1990s that many European governments started to supply the courts with equipment and office applications in large quantities and in a more systematic way. Basic technologies are standard products that can be easily acquired on the market. They mainly consists of hardware and software used to create, collect, store, manipulate, and relay digital information needed for accomplishing basic office tasks.

Almost all EU Member States manage registers electronically. However, only half of the EU Member States have technical standards for electronic communication and have implemented full electronic access to case files. Moreover, the use of electronic methods of communication (such as teleconference) in court proceedings is very limited and, where it is adopted, the rate is consistently lower than 10%. In many cases and for a long time after their introduction, automated registers did not substitute the paper based ones as official documents, thus requiring clerks and administrative personnel to deal with parallel procedures and producing duplication of work.

At national level numerous projects are helping litigants proceed with their cases more effectively and link them with the courts. These projects aim to provide information on judicial proceedings, legislation and cases through the use of online computing systems, and introduce fully electronic court procedures and electronic recording of hearings. France, Germany and the United Kingdom, for example, offer their citizens free access to all their national legislation and jurisprudence.

The more widespread method for provision of electronic information is the use of internet websites. Four core elements have been proven to be very useful in analysing and comparing the electronic exchange of information between courts and other parties through the internet. These elements are: the organisation of the web service provision, access to information (graphics, structure etc.), users (people, parties, lawyers, experts and other frequent users) and content (service typology).

The organisation of web information provision by courts varies widely across Europe. In some cases, web information organisation and provision is centralised, with the highest courts, Ministries of Justice and judicial councils playing a prominent role. In other cases, information provision is delegated within common frameworks. Finally, in some cases, complete freedom and local initiative are the rule. In Austria, for example, single court web sites are not allowed and information about the courts is made available only through the official web site of the Ministry of Justice. In the Netherlands, the Council for the Judiciary provides a single point of access to information on courts, judicial organisation, functions and processes. Very limited initiative is granted to individual courts. In other countries, such as Belgium and France, each court can develop its own website, following the guidelines established by the Ministry of Justice. In some other countries (e.g. Finland, Italy), courts can create their own website without following any specific rules.

The EU approach on E-Justice

The e-Justice approach uses ICT to improve citizens' access to justice and to make legal action more effective, the latter being understood as any type of activity involving the resolution of a dispute or the punishment of criminal behaviour.[1]

Initially, e-justice, as an EU policy, gained specific significance primarily as a tool under the Justice and Home Affairs policy, targeted at improving the effectiveness of the EU's judicial system through measures such as online access to case-law, or introduction of electronic procedures such as submitting applications to the court through online procedures.

However, in the present framework, e-justice has gained a much broader value. Its mission goes beyond the application of a number of selective measures. The increasingly integrated internal market and the growing

[1] "Towards a European e-Justice Strategy" – European Commission, COM(2008)329 final" Brussels, 30.5.2008.

mobility within Europe has hugely increased the number of cross-border litigations and produced further challenges regarding language diversity, distance and non-familiarity with different national legal systems.

The first systematic appearance of the term "e-justice" at EU level, was identified in 2007, in a number of Council's working documents, even though some initiatives had already appeared since 2003.

The Commission Communication entitled "Towards a European e-Justice Strategy", published in May 2008, is considered as a milestone in acknowledging the concept of e-justice. As the first solid attempt to introduce the concept of e-justice, it was a response to "the need to improve justice, cooperation between legal authorities and the effectiveness of the justice system itself". This document observed that e-justice was a specific field under the more general umbrella of e-government, the latter being understood as the application of Information and Communication Technologies (ICT) to all administrative procedures.

In March 2009, the Council adopted a multi-annual action plan on European E-Justice,[2] agreeing that its implementation requires a systematic and coordinated planning strategy and not fragmented state interventions. The objectives are: a) improved access to information in the field of justice, both for European and Member State legislation and case law, b) the *dematerialisation* of cross-border judicial and extrajudicial proceedings through electronic means of communication, c) simplifying and encouraging communication between judicial authorities and Member States and d) the establishment of a European e-Justice Portal,[3] which will provide access to the entire European e-Justice system, (e.g. to European and national information websites and/or services). This last ambitious goal is planned to allow interchange of cross-border data and documents and inter-operability between internal and external users of the Member States' courts.

The European E-Justice Portal will have at least three functions:

a) Access to information

The portal will have to provide European citizens, in their language, with data on judicial systems and procedures. Ignorance of the rules in force in other Member States is one of the major factors preventing citizens from asserting their rights outside their home country.

In particular, the portal will contain:

- European and national information on victims' rights in criminal cases and their rights to compensation;

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[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:075:0001:0012:EN:PDF

[3] https://e-justice.europa.eu/home.do. For a short presentation of the EU-justice portal goal see http://www.euregov.eu/workshop/presentations/02.pdf

For the technical aspect of the EU e-Justice portal see the EC document of February 4th 2009 http://www.ccbe.org/fileadmin/user_upload/document/EJustice_Portal/05_03_2009/English/EN_Portal_Description_of_Services.pdf

- the fundamental rights enjoyed by citizens in each Member State (rights of persons charged in criminal proceedings);
- the fundamental principles relating to citizens' ability to initiate proceedings before a court in another Member State, or to their defence when summoned to appear before such a court.

The portal will also provide practical information, in particular regarding the competent authorities and how to contact them, the use (obligatory or optional) of lawyers and the procedures for obtaining legal aid.

Some of this information already exists on the site of the judicial network in civil matters. It will be integrated into the portal and added to, as regards criminal law and victims' rights.

b) Referral

The portal must also refer visitors to existing sites (Eur-lex, Pre-lex, SCADPlus, Eurovoc and IATE), to European legal institutions and to the various existing legal networks and their tools.

Moreover, the portal will direct visitors to certain registers interconnected at European level via links to the bodies that manage these projects.

c) Direct access to certain European procedures

In the long term, fully electronic European procedures could be created. Legal bases already do exist, such as for example the "small claims" regulation and the "payment procedure" regulation.

The possibility of using the portal to pay, for example, court fees should also be studied; as should, for the long term, the possibility for citizens to request their criminal record online and in the language of their choice.

Fostering e-cooperation on transnational judicial proceedings

One of the main aims of the EU consists of the creation of a real European area of freedom, security and justice and a real internal one single market. An area of justice in the EU requires the elimination of all the obstacles to the free movement of European citizens from one Member State to another. Such obstacles prevent the correct functioning of the internal market. Since the Treaty of Amsterdam (1997) the EU institutions have competence to adopt measures of judicial cooperation in civil matters with cross-border implications. Among these measures, the principle of mutual recognition of judicial and extrajudicial decisions and the creation of uniform conflict rules and uniform jurisdiction rules are of the essence. A unique Community private international law system makes sense as a legal tool to promote the internal market in the EU as well as to create a Justice Area in the EU as it has been conceived in the Lisbon Treaty. According to studies carried out by the European Commission, about 10 million people are currently involved in cross-

border civil proceedings. This figure is destined to rise as a result of the increase in the movement of persons within the EU.[4]

The transnational *e-cooperation* also focuses on the management of trans-border or trans-national criminal proceedings and the interaction between national criminal justice systems. Introduced by the Maastricht Treaty in 1993, judicial cooperation in criminal matters comes under Title V of the Treaty on the Functioning of the European Union. Based on the principle of mutual recognition of judgements and judicial decisions by Member States, it involves – where necessary – the approximation of related national laws and the application of common minimum rules, in order to facilitate cooperation between legal practitioners (judges, prosecutors and defence lawyers) and their counterparts in other Member States. The minimum rules mainly relate to the admissibility of evidence and the rights of crime victims as well as of individuals in criminal procedures.

The EU has adopted several legislative instruments in accordance with the principle of mutual recognition:

- the European Arrest Warrant,
- the European Evidence Warrant,
- freezing of assets and evidence,
- confiscation orders,
- exchange of information on convictions/criminal records,
- decisions on (non-custodial) pre-trial supervision measures,
- mutual recognition and execution of convictions, both custodial and non-custodial.

Finally, another initiative aimed at fostering judicial cooperation in criminal matters is the so-called "Stockholm Programme", which sets out a new list of objectives for the period 2010 – 2014:

- to develop instruments implementing the mutual recognition principle in each phase of criminal proceedings;
- to approximate national procedural law and substantive law where necessary to improve mutual trust and mutual recognition;
- to develop common minimum standards to ensure that trials are fair throughout the EU;
- to develop and assist EU bodies or instruments of judicial cooperation such as EUROJUST and the European Judicial Network in criminal matters;
- to improve mutual confidence between EU national judicial systems by developing a European judicial culture through training and networking of legal practitioners;
- to monitor the implementation of EU laws that have already been adopted;
- to take account of external aspects of EU judicial cooperation (for example negotiation of agreements with non-EU countries, evaluation of judicial systems of countries applying for – or considering applying for – EU membership)

[4] "Multi-Annual European E-justice Action Plan 2009 – 2013" – (2009/C 75/01).

E-Justice and its areas of application

Despite the ambitious targets set by the EU, in practice, the implementation of e-justice in national judicial proceedings depends primarily on the Member States' goodwill.

The diversity of institutional settings within Europe thus implies a variety of solutions adopted by individual countries, regarding the technical and managerial judicial applications of information and communication technology (ICT) to support the administration of justice. The purpose of this compendium is to provide an overview of this diversity of approaches on the use of e-tools and case management indicators, focusing on the following case studies: Belgium, England and Wales, Finland, Germany, Greece, Italy and Spain.

Given the multiplicity of judicial systems in the EU, there are inevitably many different concepts of E-justice. Regrettably nobody is in a position to give a comprehensive overview of the main technical concepts used in Europe and of the current state of play as regards the overall use of information and communication technology in Member States' judicial systems.[5]

Nonetheless, based on the various studies and reports available, we can assert that E-justice could refer to three separate areas: 1. crime prevention (e.g. electronic criminal records); 2. administration of justice (e.g. judicial proceedings); 3. law enforcement (e.g. electronic surveillance of convicts).

We can also distinguish the areas of application of ICT focusing on the different actors involved as e-tools users.

1. Exchange of information among legal professionals through e-tools

ICT within the Court

These technologies can be divided into four groups based upon their technological but also organisational characteristics and functions:

1. basic computer technologies such as desktop computers, word processing programs, spreadsheets and both internal and external e-mail for judges as well as administrative personnel;
2. applications used to support the court's administrative personnel, which include automated registries and case management systems;
3. technologies supporting the judges' activities, such as law and case law electronic libraries, and sentencing support systems;
4. technologies used in the courtroom.

[5] Report by the Council Working Party on Legal Data Processing (E-justice) 10393/07.

ICT and communication exchange between courts, parties and professionals of law

Although e-mail technology has been diffused between the judges all around Europe, in most cases it is used as an informal means of communication. This is mainly due to the fact that, in many countries, the law requires both certified e-mail and digital signature for official communications (e.g. Belgium, France, Greece, Italy). In most of the cases, such technologies are not provided, while several countries have run pilot projects experimenting with such technologies (e.g. Belgium, Italy). Forums and discussion groups in which judges can 'virtually' meet and discuss legislation, procedures and cases, have been an important development.

In some cases, with the reduction of opportunities for judges to work in panels (e.g. in the Netherlands), electronic forums and discussion groups have been thought to be a tool providing an opportunity for judges to share information and receive support (and training).

Judicial institutions and courts interact and exchange information in order to provide their services or because they are seen as their stakeholders (lawyers, parties, the population in general, etc.). Different groups of users have different information exchange needs. Furthermore, different groups have different technical and legal competences. Specific phrasing and short hand conventions employed by specific groups of users to facilitate communication with the court, on the one hand allows easy exchange of information between those groups and the court, but on the other hand, creates a barrier to access to other groups who do not use these short hand conventions or specific jargon. In some cases all the information is provided through multipurpose websites (portals), while in other cases there has been a trend towards focusing on providing services dedicated to specific groups of users.

2. Access to justice by to the citizens through e-tools

Information provided by judicial websites can be divided into four groups with respect to their content: general information, information on court activities and organisation, legal information, and case information.

1. General information provides details on the mission, addresses, and opening hours, possibly some official documents of relevance to the public. Other services could include search capabilities, host forms and applications to download, and links to other sites, as well as e-mail addresses of offices, court administrative personnel and, more rarely, judges.
2. Information on court activities and organisation provides data on statistics of the courts' productivity, different divisions, organisation of the work, and publication of judgments. A very limited number of websites provide this kind of information. Typically, websites of higher courts, Ministries of Justice, Judicial Councils and court services provide such data.

3. Legal information can be divided into general, specific and case law. General legal information concerns general rules, procedures, practices, examples of forms or pleadings for the guidance of litigants, the explanation of terms and documents used in court process, etc., which can be applied to each and every court. As an example of procedural information, several Italian courts' websites provide information on tariffs/fees due for copies of judgments and files and other court documents. Specific information pertains to an individual court's rules, procedures, practices, forms, etc. Although many websites provide forms for downloading, there are just a limited number that provide more detailed information on completion of forms or on general court procedures. Furthermore, although many court websites provide electronic forms to be filled, usually the forms have to be printed out and submitted in paper format (Belgium, Italy).
4. Case law provides online access to decision databases. While information related to legislation, court procedures and practices is generally free of charge, for case law it is not always the case. Some countries offer free of charge and free access case law (e.g. England and Ireland, BAILII; Norway, Lawdata) but other countries restrict the access to specific categories of users through technical means (e.g. lawyers in the case of PolisWeb in Italy) or require the anonymisation of the parties, such as in Belgium, Finland, France, Germany, Greece, Italy, and Spain.

The EU priority actions until 2013 in the area of e-Justice should enable citizens, particularly when they have been the victim of a criminal offence, to access information without being hindered by the linguistic, cultural and legal barriers related to the multiplicity of systems. This action should also support mechanisms promoting cooperation between legal authorities (item 1) – for example, the **e-Justice portal** facilitating access by citizens and enterprises to justice in Europe. This portal should increase the visibility of European action and help improve access to justice in Europe. It is also significant to mention in relation with this item the work of the "European Judicial Network in civil and commercial matters" which has very detailed information about access to justice, in general, for each country of the European Union.

A recent judgment of the European Court of Human Rights (ECHR) found that a State may, under specific conditions, be found liable if it fails to introduce measures of e-justice. In this way ECHR ruled against Slovakia for failing to create the appropriate infrastructure regarding the submission of applications through electronic procedures. In this ECHR decision it was held that, if submitting an application electronically is necessary due to objective circumstances, a limitation imposed by the state may violate article 6(1) ECHR, meaning the fundamental right of access to justice and the right to fair trial. The state's behaviour was found to be *"a disproportionate limitation on the applicant's right to present his case to a court in an effective manner"*.