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Accompanying document to the Communication to the Council, the European Parliament and the European Economic and Social Committee "Towards a European strategy on e-Justice"

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

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Executive Summary of the Impact assessment of the Communication to the Council, the European Parliament and the European Economic and Social Committee "Towards a European strategy on e-Justice"

1. The political background

In June 2007, the JHA Council (doc. 10393/07 JURINFO 21) has identified several priorities for the development of e-Justice in the European Union:

- setting up a European interface (e-Justice portal);
- creating the conditions for networking of several registers, such as criminal records, insolvency registers, commercial and business registers and land registers;
- starting the preparations for the use of ICT for the European payment order procedure, in conformity to Regulation (EC) No 1896/2006;
- improving the use of video-conference technology in cross-border proceedings, in particular concerning the taking of evidence
- devising support tools for interpretation and translation.

During the German, the Portuguese and the (current) Slovenian Presidencies, work on e-justice has steadily progressed.

Work done in this framework must:

- ensure that priority be given to operational projects;
- give preference to decentralized structures, while providing for coordination at European level;
- draw on existing legal instruments and employ IT tools to improve their effectiveness.

The European Parliament has also expressed its support for the e-Justice project.

A number of initiatives already exist at European and national level in this field. (Doc. 6358/08, JURINFO 14).

The use of modern information technologies has consistently been encouraged by the Commission, both in the civil and in criminal field. Several instruments already adopted in the framework of the judicial cooperation in civil matters foresee this possibility, such as the European payment order, the Regulation on the taking of evidence and the European small claims procedure. Furthermore, the Commission has been managing since 2003, in close cooperation with the Member States, the "portal" of the European Judicial Network in civil and commercial matters accessible to the citizens in 22 languages. The Commission has also designed and set up the European Judicial Atlas, an electronic tool at the disposal of judges

and legal practitioners, which enable them to handle on-line cross-border proceedings. These two tools are undeniably precursory elements of a future European framework for e-justice.

In the criminal field, the Commission is working on a tool aiming to permit the exchange of information extracted from criminal records of the Member States. Eurojust has also developed secure communication systems with national authorities in particular under the E-POC project.

In coming years, e-Justice will offer many opportunities to make the European judicial area more concrete for citizens. In order to set up an overall strategy for this important issue the Commission would like to adopt in May a Communication on e-Justice. This Communication seeks to lay down objective criteria for identifying priorities, especially for future projects at European level, in order to attain concrete results within a reasonable time.

2 The definition of the problem

As the demand for justice increases across Europe and its transnational dimension grows steadily, because of enhanced mobility of economic operators and citizens, the traditional justice systems fail to provide adequate response to new needs. Transnational justice presents peculiar features and poses particular challenges which require adequate and innovative solutions.

The main drawbacks of transnational justice can be summarised as follows:

- Information deficit about procedures applicable in other Member States;
- Language barriers;
- Difficulty in the exchange of information between judicial authorities of different Member States;
- Lack of trust between judicial authorities of different MS;
- Insufficient implementation of existing EU instruments;
- Problems related to the security and authentication of documents.

The variety of existing national initiatives in this field, while signaling the importance of the phenomenon, could lead to the adoption of different, and diverging technical solutions at national level. Significant problems of interoperability may therefore ensue. The e-Justice initiative seeks to avert this risk by proposing a common approach to the issue.

3 Objectives of the initiative

The Communication aims at the following objectives:

- To promote an easier access to information, by making information accessible on-line and by keeping it up-to-date.
- To speed up the procedures, in particular by streamlining recourse to videoconference and by supporting the coordinated development of e-Justice.

- To improve the mutual trust between judicial authorities, in particular by removing obstacles linked to multilingualism and by providing reliable tools to ensure security and authentication of data.
- To reinforce the mechanisms of cross-border judicial co-operation, in particular by devising practical tools and by facilitating the application of existing EU instruments.
- To coordinate existing projects and to ensure their consistency.

4. Policy options

The IA report explores four different policy options to address the problems, including a status quo option (option 1).

- a) Option 1 Status quo: e-Justice left to MS - continuation of existing projects
 - + No resources needed
 - Current problems unlikely to be solved - risk of divergent technical solutions
- b) Option 2 Support for transnational actions and promotion of exchange of best practices
 - + National projects likely be boosted - Limited resources needed
 - Limited ambition and problem-solving capacity
- c) Option 3 European e-Justice initiative: on the basis of four criteria, the strategy may focus on the following actions: use of videoconference; creation of e-Justice portal; improvement of translation facilities by developing automatic on-line translation tools; improvement of communication between judicial authorities; increased interconnection between national registers; on-line tools for European procedures (e.g. European Payment Order)
 - + Combines European dimension and national competence - allows economies of scale
 - Different projects require separate assessment of feasibility
- d) Option 4 Legislative action: horizontal instruments to impose common technical and legal standards for e- Justice
 - + Maximum effectiveness of common solutions
 - Legal basis, political sensitivity of the field

5. Preferred option

The Option 3 - which incorporates elements of option 2 - is the preferred policy option.

Why?

- It fosters the development of concrete projects improving judicial co-operation (translations, videoconference, etc.)
- It encourages e-Justice initiative at national level, in conformity to the principle of subsidiarity, while ensuring consistency at European level through the exchange of best practices.
- It avoids risks of divergent technical solutions, while stopping short of imposing single standards.
- It permits economies of scale and cost savings for national administrations and citizens, without creating an excessive financial burden for the EU and for MS.
- It provides the basis for a pivotal role of EU institutions, while avoiding the (legal and political) pitfalls of legislative action.

6. Who is affected?

- The Member States, with whom lies the primary responsibility for providing effective and trustworthy justice systems.
- The European Commission, in its role of guardian of the treaties.
- The judicial authorities of Member States, which need more sophisticated tools to communicate, especially in cross-border cases.
- The legal professions, citizens and businesses, who all advocate better use of IT tools with a view to achieving more satisfactory responses to their 'justice' needs.

7. Who was consulted?

The IA report has been prepared taking into account the reactions of the Member States, judicial authorities, legal professions, citizens and business. All these actors have been consulted, directly or indirectly, prior to the drafting of this IA.

The result of a Eurobarometer on civil justice has been used to measure the needs of citizens in relation with civil justice. The views of the legal practitioners have been gathered through a questionnaire disseminated by the judicial network in civil matters and the judicial network in criminal matters. The views of the judicial authorities of Member States have been gathered through questionnaires on the use of ICT in Member States' judicial systems, on insolvency registers and on videoconferencing disseminated by the Council.

As concerns the internal consultation, the author DG has developed close contacts with DG DIGIT, DGT, ENTR, INFSO, MARKT, TREN; OLAF; OPOCE and SG.