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NOTE

From: The Presidency
To: Coreper/Council
Subject: Council Conclusions on the sustainability of e-CODEX

I. Introduction

1. E-Justice is a policy development tool through which access to legal information is being simplified and improved and cross-border legal procedures are being digitalised. It also aims to enable the judicial authorities to use electronic means of communication within various existing EU procedures. E-Justice is a specific independent area within e-Government aimed at enhancing judicial cooperation at EU level, but is not limited to one particular field of law - it is a horizontal domain encompassing all fields of law which have cross-border dimensions in the areas of civil, criminal and administrative law.
2. The large-scale pilot project e-CODEX was launched under the multiannual European e-Justice Action Plan 2009-2013¹, with the aim of working exclusively on the realisation of some of the foreseen functions of European e-Justice as described in this Action Plan, especially the dematerialisation of judicial proceedings and communication between judicial authorities.

¹ OJ 2009/C 75/01

3. The e-CODEX project, which has been co-financed by the European Union budget, will come to an end in 2016.
4. The Council Working Party on e-Law (e-Justice) has closely followed the progress made within e-CODEX, and has acknowledged, in the Strategy on European e-Justice 2014-2018¹ and the subsequent Action Plan 2014-2018,² the sustainability of the results achieved as being of the utmost importance.
5. This second multiannual European e-Justice Action Plan 2014-2018, adopted in June 2014, foresees that a solution for the consolidation of the results of the e-CODEX project should be further explored³ in the form of an appropriate governance structure with a view to ensuring the long-term sustainability of the technical solutions developed by the project.
6. The Working party on e-Law (e-Justice) has, during the second half of 2014, examined the possibilities for finding a feasible solution to this issue.

II. Developments at European level

a) e-SENS and Connecting Europe Facility

7. Since April 2013, the Commission has been co-financing by the Competitive and Innovation Programme ICT Policy Support a new large scale pilot project called e-SENS, which will develop a comprehensive digital infrastructure for improving the quality of public services in the EU. e-SENS will build on the experiences of earlier large-scale pilots, such as e-CODEX, with a view to providing interoperable technical solutions working on the basis of common standards across different domains, focusing in particular on solutions needed for e-Delivery, e-Identity, e-Signature and e-Documents.

¹ OJ 2013/C 376/06

² OJ 2014/C 182/02

³ OJ 2014/C 182/02, paragraph 43

8. Simultaneously, the deployment and operation of e-Identity, e-Signature and e-Delivery 'Digital Service Infrastructures' (DSIs) are also important elements in the Connecting Europe Facility (CEF), a financing programme of the Commission aimed at stimulating and supporting projects of common interest for the deployment and operation of DSIs.¹ Both in the context of e-SENS and CEF, the solutions developed within e-CODEX are being looked at and considered.

b) Specific projects in the area of e-Justice

9. The maintenance of pilot projects that have already been developed and gone live within e-CODEX cannot be financed by the e-SENS project. Moreover, in the future it will be necessary to continue to develop new interconnections between decentralised national systems and/or specific technical applications for the field of cross-border justice to make e-Justice a reality in practice².

10. Whilst these efforts may contribute to finding an appropriate solution to maintain the results of the e-CODEX project, it still appears to be necessary to find a suitable structure for the governance and maintenance of both the results currently achieved and their future development as well as for the solutions to be designed in the long term.

11. The objective would be to entrust a stable governance and maintenance structure with the task to take the necessary measures considering two temporal perspectives:

a) in the short term: for the sustainability of the e-CODEX project after its end (May 2016)

b) in the long term: to implement e-Justice on dematerialisation of judicial proceedings and communication between judicial authorities at European level³, including the development of specific IT-based solutions for the legal domain, on the basis of guidelines given by the Member States and in full cooperation with the Commission.

¹ Regulation (EU) No 1316/2013

² The Commission has indicated that the CEF programme may offer an opportunity to support building blocks which are currently in production, such as those developed within e-CODEX, in 2015 for the core platform or for Member States' infrastructure.

³ Area supported by e-Codex.

III. Possible options for the future governance and sustainability of e-CODEX

12. The Working Party on e-Law (e-Justice) has considered three possible options as follows:

Option 1:

13. In this option, the Commission could be invited to assume the responsibility for the continued maintenance of the e-CODEX solutions which was considered by some Member States.

Option 2:

14. A second option could be to assign responsibility to one or more Member States. Comparable experiences have, however, shown that this may create structural, organisational and technical difficulties and therefore such an approach might not be a viable solution.

Option 3:

15. A third solution would be to entrust an independent existing EU agency with these tasks.

16. During the discussions in the Working Party on e-Law (e-Justice), several Member States considered that a more suitable solution in the short term would be to entrust an existing EU agency with the maintenance and operational management of e-CODEX. Regarding future specific IT-based solutions for e-Justice domain in the long term, these should be developed under the political guidance of the Member States and the Commission. Some delegations considered that as an interim alternative, the Commission could assume the responsibility for the maintenance of e-CODEX solutions in the short term, after the conclusion of the e-CODEX project in 2016.

17. In any case, when considering a future long-term solution for e-Justice operations in the EU, the principles which have been laid down in the Strategy on European e-Justice 2014-2018 must be respected. These principles include voluntary action, decentralisation, interoperability and independence of the judiciary. These principles should be taken into account at all levels, including the technical and managerial level with appropriate safeguards for data processing. At the same time the interests of those Member States not currently participating in the e-CODEX project should be adequately taken into account.

18. Likewise, the principle of allowing the Member States to monitor the activities with a view to giving guidance to the work in this area and to be part of the decision-making process in cooperation with the Commission should be respected. The participation to the management board of an existing EU agency that would take responsibility for the sustainability of e-CODEX implementation is an important issue and will need further debate.

IV. Legal instrument

19. It should be taken into account that if an EU agency is made responsible for the full lifecycle of development and operational management of the e-CODEX solutions in the short term and, after due consideration, for the full lifecycle of development and operational management of the interoperability of decentralised IT systems in the area of e-Justice in general in the long term, a specific legislative instrument to be submitted by the Commission will be necessary.

V. Conclusions

20. The Working Party on e-Law (e-Justice) invites Coreper/Council to:

a) confirm the need to establish a sustainable framework in terms of full lifecycle of development and operational management for the technical solutions developed in the context of the large scale e-CODEX project and in the long term for the dematerialisation of cross-border judicial proceedings and communication between judicial authorities in the area of e-Justice¹, taking into account the principles of voluntary action, decentralisation, interoperability and independence of the judiciary, and the need to take into account the interests of those Member States not currently participating in the e-CODEX project; and

b) invite the Commission to finalise its internal reflections and to submit to the Council solutions for the sustainability of the e-CODEX project in the short term and, in the long term, on the aspects concerning the future governance of e-Justice at EU level, including the possibility of using an existing EU agency.²

¹ Area supported by e-Codex.

² Given the fact that the negotiations of such an instrument will require a substantial amount of time and that the e-CODEX project will come to an end in May 2016, the first steps should be taken as soon as possible.