



LEGAL CERTAINTY IN THE DIGITAL WORLD: LESSONS FOR EUROPE

EVENT REPORT | DECEMBER 2020

<https://eurac.tv/9R-w>

With the support of





LEGAL CERTAINTY IN THE DIGITAL WORLD: LESSONS FOR EUROPE

EVENT REPORT

<https://eurac.tv/9R-w>

Over the course of this year, European citizens have had to radically realign their lives to the new reality brought on by the coronavirus crisis. For the most part, this has meant rapidly migrating our personal and professional lives online.

In the judicial world, this has presented a series of challenges, but also opportunities. For their part, notaries across the EU have had to quickly adapt to this new context and in Brussels, the Commission has also published its digitalisation of justice strategy – aiming to support and foster the uptake and deployment of digital tools across all levels of the judiciary.

This event report covers the main messages in this field discussed during the Notaries of Europe annual conference on 10 December.

Contents

EU notaries highlight concern over ‘control and access’ in
judiciary digitalisation 4

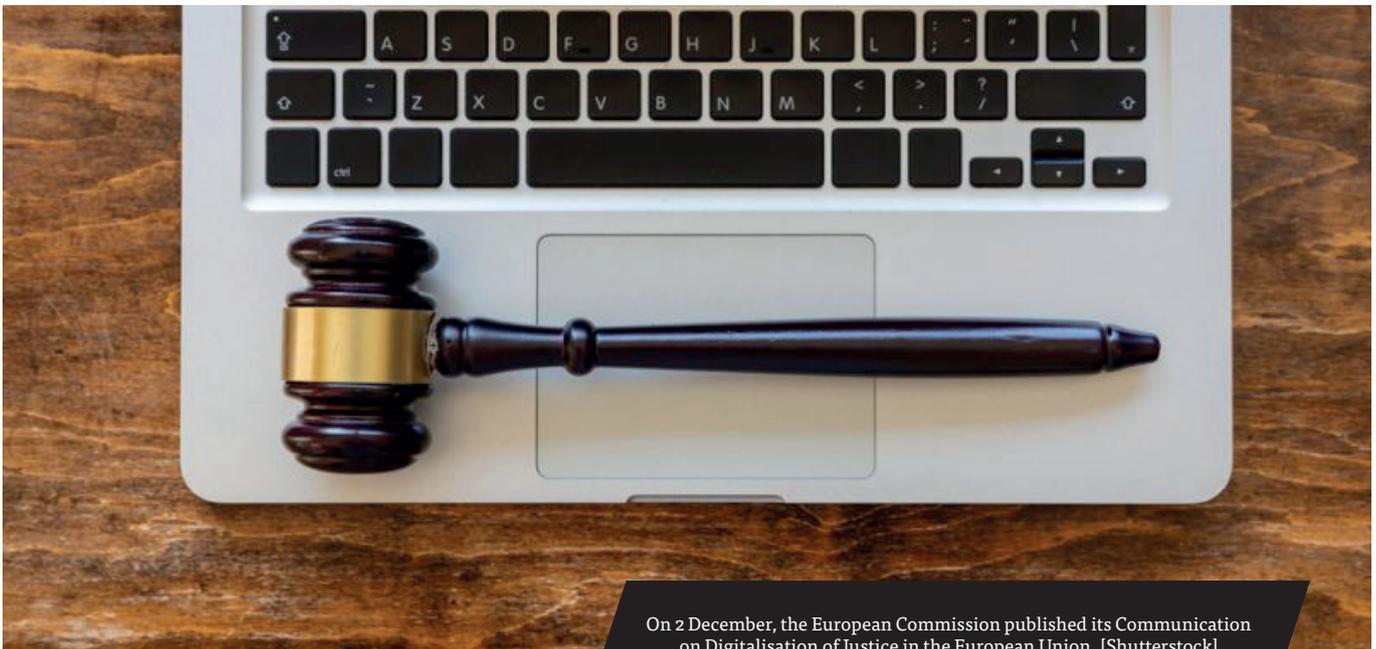
Explained: The Commission’s plans to digitalise the
judiciary 6

Digitalisation of Justice must be based on the experience of
practitioners 9

EU notaries highlight concern over 'control and access' in judiciary digitalisation

.....

By Samuel Stolton | EURACTIV.com



On 2 December, the European Commission published its Communication on Digitalisation of Justice in the European Union. [Shutterstock]

Notary services from across the bloc have said that the EU should pay attention to which global actors have 'control and access' to key technologies used in judicial processes in the ongoing digitalisation of the sector.

The call comes after the European Commission presented its communication on digitalisation of justice in the EU, aiming to foster greater uptake of digital tools in the sector and increase the ease of access to information in cross-border cases.

And while professionals in the field have welcomed the commitment to advance digitalisation in judicial affairs, the Commission should also consider measures that could further assure legal services and citizens alike that sensitive data processed using next-generation technologies is properly protected.

"I am convinced that, on this issue, ultimately, the stumbling block is not so much the nature of such digitalisation, but control and access to it," Georgios Rouskas, President of the Council of the Notaries of the

European Union, told an online event last week.

"The European Commission's Communication does not dwell on these aspects."

Rouskas added that there were a number of pressing questions in the rapid digitalisation of notary services that should be addressed going forward, including how the EU could ensure that sensitive data are protected and that the judiciary is independent in the use of IT systems.

Continued on Page 5

Continued from Page 4

“How can we reconcile artificial intelligence and human control? How can we avoid excluding the elderly or people with disabilities from the process and not reinforce the digital gap which already exists among our populations?,” Rouskas added.

This was a concern echoed among other notary professionals during last week’s event, hosted by Notaries of Europe, a member organization featuring notaries from 22 European countries.

For his part, Jens Bormann, President of the Federal Chamber of German Civil Law Notaries told the online audience that Commission President Ursula von der Leyen’s objective of attaining European digital sovereignty is as relevant in the notary world as in any other European sector.

“What we really need to be asking ourselves is who has control over the technologies that we are using on a day-to-day basis, and, by extension, what other organizations are able to access this very sensitive data that we are working with,” Bormann said.

On this point, in particular, David Ambrosiano, President for the Higher Council of the French Notariat, concurred, drawing attention to previous concerns highlighted over the US Cloud Act, and the provisions it contains for American authorities to force service providers to hand over EU data.

The Cloud Act gives US law enforcement agencies the legal right to force the release of customer data outside the US, resulting in an “extraterritorial reach of powers”, according to the European Data Protection Board.

Ambrosiano noted that legislation such as the US Cloud Act could compromise Europe’s control over sensitive data and that the ownership of the key technologies used for the processing of such data should be taken into account.

More broadly, EU notaries last week welcomed the Commission’s renewed plans to foster the uptake of digital tools in the judicial sector, particularly for streamlining cross-border sharing of evidence required for cases involving several EU member states.

Moreover, the European Judicial Training Strategy for 2021-2024, which broadens the scope of training to include new subjects such as digitalisation or artificial intelligence, was also well received.

In line with such efforts, Rouskas revealed that from 2021, Notaries of Europe would establish a new training programme, “including the creation of an online training platform for EU notaries, which will eventually include all areas of EU law of interest to the notarial profession.”

More broadly, the Commission’s plans on the digitalisation of justice comes at a time when notary services have been forced to radically adapt to remote working amid the coronavirus pandemic.

Remote authentication, electronic archiving, long-distance video conferencing, and electronic identity verification, have become more prescient.

By the end of 2021, the Commission will table legislation to build on cross-border judicial cooperation procedures in civil, commercial, and

criminal matters.

2021 will also see draft legislation on digital information exchange for cross-border terrorism cases, as well as plans for a Joint Investigation Teams Collaboration Platform to be used by cross-border authorities.

On the subject of cross-border cases, Eurojust’s case management system will be updated to facilitate better collaboration between national authorities for a crime that involves a multi-nation element. In addition, the Commission is seeking to improve the use of e-CODEX – the main tool for secure cooperation in civil, commercial, and criminal law proceedings across borders – across all member states.

Speaking at last week’s event, Salla Saastamoinen, acting director-general for the Commission’s DG for Justice and Consumers, highlighted the importance of greater digitalisation in the sector.

“The digitalisation of justice is now not just a nice ‘thing’ to have, but it has become a necessity,” Saastamoinen said.

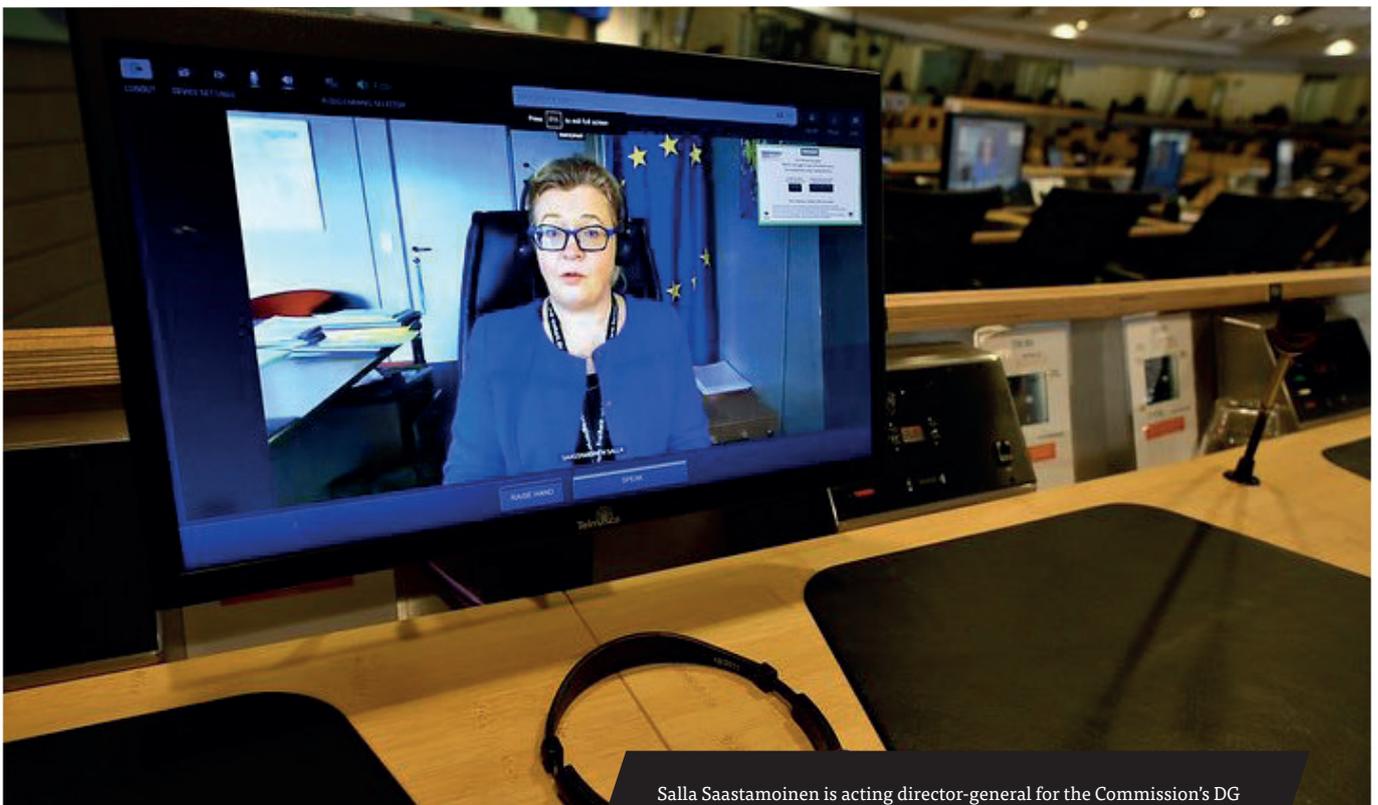
“If we want our justice systems to be more effective, accessible, and resilient at all times. Legal professionals are an integral part of the legal order, and hence the need for their involvement in the digital transformation process is incontestable.”

INTERVIEW

Explained: The Commission's plans to digitalise the judiciary

.....

By Samuel Stolton | EURACTIV.com



Salla Saastamoinen is acting director-general for the Commission's DG for Justice and Consumers. [EU Regions Week [Flickr]]

The COVID-19 crisis has brought the need for digitalisation of justice to the forefront, says Salla Saastamoinen, stressing that “concerted effort is urgently needed, both at the national and EU level, to accelerate the digital transformation process of the justice sector”.

Salla Saastamoinen is the acting director-general for the Commission's DG for Justice and Consumers.

EURACTIV caught up with her to hear about the EU executive's plans for fostering digitalization in the justice sector.

The European Commission has recently adopted a new package of initiatives to modernise the EU justice systems, with particular attention on digitalisation. How will this package help the crime-fighting and judicial process? In what ways can it be of benefit to justice

professionals and those working in the sector?

We have set out our strategic vision on how to make progress with regard to the digitalisation of justice in the “Communication on digitalisation of justice in the European Union”. This vision includes both the national and the EU level, and is in full respect of the principles of subsidiarity and proportionality. We propose a

Continued on Page 7

Continued from Page 6

toolbox of different measures, which aim to improve access to justice and the effectiveness of justice systems through better use of digital technologies.

As for crime-fighting, firstly, the Commission's Communication proposes an update of the Eurojust Case Management System (CMS) to allow its proper functioning and ensure it addresses the needs of its users. In addition, the Commission will establish a Task Force to improve the possibilities for data exchange by "hit/no-hit" checks between Eurojust and its partners, to help in identifying links between ongoing investigations and prosecutions.

Secondly, the Commission announced legislative initiatives on digital information exchange on cross-border terrorism cases and on the establishment of a Joint Investigation Teams Collaboration Platform.

Finally, the Commission announced a legislative initiative on the digitalisation of cross-border justice in civil and criminal justice. Such an initiative would make the digital channel the default in judicial cooperation between competent authorities in EU cross-border cases, including in criminal matters. It would also introduce an obligation on member states to provide an option for citizens, legal practitioners and businesses (including SMEs) to communicate with justice systems by digitally in EU cross-border cases. Member states would still be allowed to maintain paper channels of communication, as we are conscious of the risks of social exclusion.

These measures will considerably

increase the efficiency and effectiveness of judicial cooperation across borders. Making digital the default option in cross-border judicial cooperation will give all actors in the EU security chain the opportunity to keep up with the fast pace of technological development and the rapidly evolving threat landscape.

In what ways has the COVID-19 crisis highlighted the importance of rapid digitalisation in the justice sector?

While the digitalisation of justice has been considered as important for many years, it is indeed correct that the COVID-19 crisis brought the need for digitalisation of justice to the forefront. In broader terms, the pandemic has led to a greater use of digital tools by the public, and by the public authorities. The crisis has also considerably impacted the functioning of member states' justice systems and adversely affected EU cross-border judicial cooperation. This has led in many cases to substantial obstacles to access to justice for citizens, legal practitioners and business.

Justice needs to keep pace with societal developments, including the ever-present process of digital transformation in accordance with our political priorities. Significant work has yet to be done, especially to fully grasp the benefits of digital technologies in judicial proceedings, including with regard to cross-border judicial cooperation.

Therefore, we consider in the Commission that concerted effort is urgently needed – both at the national and EU level – to accelerate the digital transformation process of the justice sector.

Last week's initiative also seeks to foster the digitalisation of databases used by judiciary services, highlighting that databases are easy to consult, they minimise costs for users and are resilient to crises. What are the potential risks in terms of the digitalisation of registers for security and trust, for example? How can these risks be mitigated?

Digitalisation of public and restricted access databases can certainly contribute to greater transparency, ease of access and foster trust in the internal market. At the same time, it implies greater cybersecurity risks. We have witnessed such a trend during the COVID pandemic. Criminals have adapted their *modi operandi*, and we have observed an increase in cybercrime activities. For example, recently, malicious actors have targeted the COVID vaccine supply chain and allegedly state-sponsored actors breached a major cybersecurity firm.

The implications of course are clear – digitalisation of databases and registers needs to go hand in hand with the need for appropriate cybersecurity risk and threat assessment and the diligent implementation of practical preventive and reactive measures.

This need is not limited to the digitalisation of databases, however. Cybersecurity is a horizontal challenge in the digital transformation process. As mooted in the Communication, the upcoming EU cybersecurity strategy will provide a cross-cutting framework, accompanied by legislative proposals to further enhance the security of network and information systems.

Continued on Page 6

Continued from Page 7

Cybersecurity is one area where national justice systems need to adapt. That is why, in the new EU Strategy on European judicial training, we have identified the need for new training offers, including on cybersecurity.

The Commission also published its 'mapping exercise' along with the new initiatives last week. What does this mapping exercise tell us about the disparities across member states in terms of the digitalisation of justice? What are the risks to a lack of harmony in this regard, for example to cross-border cases?

We are strongly committed to base its policies on concrete fact-findings. Therefore, the Communication on the digitalisation of justice was drafted based on the mapping of the situation in all member states.

The digitalisation mapping leads to the conclusion that in a number of Member States progress is evident, but that is not the universal case. There are still many areas that could significantly benefit from digitalisation. We will continue to regularly monitor the evolution of the digitalisation of justice systems in the member states. This will be done through the Justice Scoreboard.

The state of advancement at national level also correlates with member states' readiness to employ digital means of communication in the context of EU judicial cooperation. The Communication explores how the Commission can best support member states in both respects.

Could you tell us a bit more about how the EU Strategy on Judicial Training takes into account the new challenges for justice professionals in terms of their reskilling and upskilling in fields

such as digitalisation and artificial intelligence, for example. Why is this new training necessary?

EU law only serves citizens if properly implemented. Training of justice professionals on EU law is essential to ensure that this law applied correctly and coherently across the EU. We aim to improve mutual trust and to foster a common judicial European culture, including on the rule of law.

The EU is facing a number of new developments and challenges that need to be addressed by judicial training. I would mention for example a deterioration of the rule of law and attacks on fundamental rights in some member states, the exponential digitalisation of our societies and the prospects of EU membership for the Western Balkans. Moreover, the level of participation in training must be elevated and balanced as it still differs considerably across member states and among justice professions. More professions must be addressed with training of even higher quality. I consider that European judicial training will, thanks to the new strategy, go beyond legal education and support the development of professional skills.

The respond the challenges that I mentioned, judicial training should promote a common rule of law culture, upholding fundamental rights and upscaling the digitalisation of justice. It should help professionals to keep pace with developing EU law. This applies to the key EU instruments for cross-border judicial cooperation and the establishment of the European Public Prosecutor's Office (EPPO). Further, combating terrorism, organised crime, cybercrime, preventing and countering radicalisation leading to violent extremism and fighting money

laundering remain key training topics. Training should assist in protecting the rights of victims, including of gender-based violence, the rights of children and of people with disabilities. Training is also needed in particular on consumer rights, single market rules, EU company law, EU competition law and EU environmental legislation. There are indeed a lot of areas benefiting from the judicial training!

In fields such as digitalisation and artificial intelligence it is the training that should raise the awareness of justice practitioners of the impact that digital tools and technologies have on handled cases. With training, professionals will be ready to use such tools properly in daily practice, including the new EU digital tools, such as computerised system for communication in cross-border civil and criminal proceedings (e-CODEX) and e-Evidence Digital Exchange System (e-EDES), which simplify cross border cooperation. Professionals need to secure adequate protection of individuals' rights and personal data in the digital space, in particular so that parties can access files and attend court hearings. Training methodology should make better use of new technologies.

PROMOTED CONTENT

DISCLAIMER: All opinions in this column reflect the views of the author(s), not of EURACTIV Media network.

Digitalisation of Justice must be based on the experience of practitioners

.....
By Georgios Rouskas | Notaries of Europe



Georgios Rouskas, President of the Council of the Notariats of the European Union.
[Notaries of Europe]

On 2 December, the European Commission published its Communication on Digitalisation of Justice in the European Union. It recalls in the preamble that “effective justice systems are also essential for the functioning of the internal market and a prerequisite for economic growth. Access to justice needs to be maintained and to keep pace with change, including the digital

transformation affecting all aspects of our lives”.

Georgios Rouskas is the President of the Council of the Notariats of the European Union

This need for justice actors to deepen the transition towards digitalisation was particularly acute during the Covid-19 crisis. During this crisis, the notaries of Europe

have taken action to ensure that their activities, recognised as an essential service of general interest by their supervisory authorities, could continue throughout Europe. New procedures were tested and proposed. However, they were based on a solid foundation that had been in place for several years: the creation and interconnection of registers, the dematerialisation of data transfer, setting up companies online,

Continued on Page 10

Continued from Page 9

the deployment of e-signatures, electronic authentic instruments, videoconferencing and others.

The Communication from the European Commission is part of this evolution, setting out several objectives. Firstly, to make digital technology the default option in cross-border judicial cooperation. This is an objective to which we fully subscribe. In many countries, communication between notaries and judicial authorities is now conducted in a dematerialised manner. This is the case, for example, for consultation and registration in public registers kept by notaries or by the state. Thanks to the European Network of Registers of Wills Association, the registers of wills kept by the notarial profession are even interconnected at the European level and enable citizens to find out whether last wills and testamentary dispositions concerning them are registered in another country. This is also the case for setting up companies online, as required by a European directive. The European notariats are working together with their ministries of justice on innovative solutions for the effective transposition of the directive by August 2021.

A second objective of the European Commission is to promote better access to information. Europe's notaries have been pioneers in this area, often with the financial support of the European Union. We are the first legal profession to have proposed a European directory of our members (www.annuaire-des-notaires.eu) to enable citizens to find a notary who speaks their language anywhere in Europe. We were also the first to offer multilingual information sites, for

example on inheritance law in EU countries (www.successions-europe.eu) or on family law (www.couples-europe.eu). This content has been added to the European Commission's e-justice portal, which must now be further consolidated.

The Commission also underlines the role of e-CODEX as the main tool for secure cooperation in cross-border civil, commercial and criminal proceedings. Notaries have been supporting the implementation of e-CODEX since its creation in 2010 and we will continue to work on its development.

Finally, the European Commission sets ambitious objectives in its European Judicial Training Strategy for 2021-2024 and broadens the scope of training to include new subjects, such as digitalisation or artificial intelligence, and innovative themes and methods. We will, once again, be active in this field. Since 2014, and through our training programmes supported by the European Commission, several thousand notaries have been able to follow training courses in European law or the law of another Member State. Furthermore, the notarial profession has committed itself to shifting gears and, within two years, will be equipped with an integrated European platform for online training in EU law.

On the issue of the digitalisation of procedures, ultimately, the stumbling block is not so much the nature of such digitalisation, but control and access to it. The European Commission's Communication does not dwell on these aspects. How can we ensure that sensitive data are protected? How can we ensure that the judiciary is

independent in the use of IT systems? How can we reconcile artificial intelligence and human control? How can we avoid excluding the elderly or people with disabilities from the process and not reinforce the digital gap which already exists among our populations?

In Europe, the law is based on the principle of preventive justice and effective regulation of economic operators. In 22 Member States, notaries have been guaranteeing legality for several centuries and have always been able to adapt to societal changes. The notary's function is about authenticity, truth, security and the preservation of data on which the trust of States and our fellow citizens is based. At a time when forgery, fake information, falsified data, money laundering and cybercrime are on the increase, this truth and security are more than ever essential for society.



For information on
EURACTIV Event Reports...

Contact us

Teresa DOMINGUEZ

EU Affairs Manager

teresa.dominguez@euractiv.com

tel. +32 (0) 47 601 78 26

Samuel STOLTON

Technology and Digital Affairs Journalist

samuel.stolton@euractiv.com

tel. +32 (0) 2 2 26 58 26