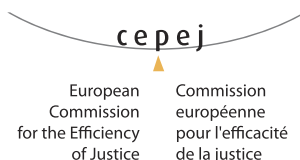# EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)
GUIDELINES ON HOW TO DRIVE CHANGE TOWARDS CYBERJUSTICE

Stock-taking of tools deployed
and summary of good practices

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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

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As adopted at the 28th meeting of the CEPEJ on 7 December 2016

Council of Europe

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Introduction

1. In recent years all Council of Europe member States[1] have deployed information technology (IT) tools with a view to improving the performance and efficiency of their judicial systems. Whether on a small or large scale and with more or less significant financial implications, the introduction of digital tools was often regarded in itself as a means of modernising justice. However, it was rarely accompanied by prior consideration of the overall impact it would have on modernised judicial systems. There is general agreement today that the justice system cannot remain on the side-lines of a development that is having a huge impact on the societies within which it operates and on the populations for whom it is intended. However, it must be acknowledged that the challenge of incorporating information and communication technologies (ICTs) into the justice system without distorting its underlying purpose and values is still an area that has been too little documented.

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1. - The data provided by Cyprus does not include data of the territory which is not under the effective control of the Government of the Republic of Cyprus.
    - The data provided by the Republic of Moldova does not include data of the territory of Transnistria which is not under the effective control of the Government of the Republic of Moldova.
    - The data provided by Serbia does not include data of the territory of Kosovo* (* all reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo).
    - The data indicated for Ukraine do not include the territories which are not under the control of the Ukrainian government. All activities of the Council of Europe concerning the Autonomous Republic of Crimea and the City of Sevastopol aim at fostering human rights in the interest of the people living in this territory. They cannot be interpreted as recognising neither the authorities that exercise de facto jurisdiction nor any altered status of the territory in question.
    - The results for the United Kingdom are presented separately for England and Wales, Scotland and Northern Ireland, as the three judicial systems are organised on a different basis and operate independently from each other.

Nonetheless, the development and maturity of certain technologies applied to the judicial field since the early 2000s allow an initial assessment to be made of their use fifteen years later, on the basis of the experience of Council of Europe member States.

2. Through these Guidelines, the CEPEJ wishes not only to contribute to documenting this field by compiling details of the most recent experience gained in the context of European judicial systems, but also to take a critical look at IT development as applied to the justice system in recent years and at the challenges it poses for both justice professionals and policymakers. The CEPEJ's intention in focusing on "cyberjustice" is to encourage debate on this issue and to provide those judicial systems that so wish with expertise extending beyond questions to do with the development and operation of software tools, so as to embrace all the current developments affecting the way in which justice is administered by harnessing the ICTs. Used in preference to "e-justice", which implies that the use of IT is a means of applying justice in the digital world, the term cyberjustice in fact refers to a body of literature which is now extensive and cross-disciplinary and has its origins in information theory. This literature points to the depth of the changes taking place in human organisations and activities that make use of information systems in order to better identify the challenges facing them. Cyberjustice is therefore broadly understood as grouping together all the situations in which the application of ICTs, at least, forms part of a dispute resolution process, whether in or out of court.

3. While the digital tools of cyberjustice now often contribute to the greater efficiency and effectiveness of judicial systems, within a general context of scarcer resources, it is crucial that their deployment should take account of both the requirement to guarantee higher quality standards for the public justice service and of the expectations and needs of justice system professionals and users. In particular, the development of justice information systems should not call into question the basic principles that underpin judicial activities. The right to a fair trial safeguarded by the European Convention on Human Rights and Fundamental Freedoms (ECHR) as well the instruments for promoting the quality of justice drawn up by the CEPEJ must not be undermined but, on the contrary, must have their effects extended by IT, which does not constitute an end in itself but a means available to policymakers, professionals and parties to proceedings.

4. These Guidelines thus have a dual objective. Firstly, they take stock of existing solutions at the European level, while at the same time considering the

aims they pursue and their ability to improve the quality and effectiveness of judicial systems. In keeping with this approach, the various applications of cyberjustice identified have been divided into four main categories according to their intended aim: access to justice, communication between courts and professionals, court administration and direct assistance for the work of the judge and the registrar. The following details will be provided for each category: the benefits expected by introducing the tool, the possible long-term developments that will result from its use, the aspects essential for the success of the planned innovation, and the potential risks associated with its use.

5. Secondly, the aim of these Guidelines is to help policymakers master the change process towards cyberjustice by putting into perspective the general principles, along with some feedback considered particularly useful in connection with the development and the implementation of European digital justice policies.

6. These Guidelines have been drawn up on the basis of the detailed data and information gathered by the CEPEJ in the course of its work, particularly in the context of the evaluation of European judicial systems (CEPEJ-GT-EVAL). In this connection, it is worth mentioning that the 2016 assessment cycle (data from 2014) gave considerable prominence to the question of ICTs by producing a specific report, published in September 2016 and drawn up on the basis of member States' replies to a dedicated questionnaire. This comprehensive report accurately determines the level of development of each country in this field and also elaborates on previous CEPEJ analyses of the impact of IT on the effectiveness and quality of judicial systems. These data have been supplemented by original information on specific IT projects gathered in spring 2016 from representatives of member States on a voluntary basis and from various discussions among CEPEJ members and the Network of Pilot Courts.

7. Lastly, critical areas for reflection have been outlined and discussed by the CEPEJ Working Group on Quality of Justice (CEPEJ-GT-QUAL) on the basis of the experience of each group member. With the aim of following on from the work of this group, these Guidelines endeavour to indicate the links between the subject-matter of this report and the issues at stake as far as the quality of justice is concerned. In particular, reference is made where relevant to the "Checklist for promoting the quality of justice and the courts" (CEPEJ(2008)2E), an instrument taking the form of a self-assessment tool for policymakers and legal practitioners that aims through a variety of ques-

tions to improve legislation, policy and practice with regard to the quality of justice. An additional checklist specific to the field of cyberjustice is proposed in an appendix to these Guidelines in order to extend and facilitate this self-assessment in connection with the development of ICTs in the administration of justice. It is followed by a short bibliography referring to the various Council of Europe instruments and documents directly connected with the subject of cyberjustice.

Part One: Cyberjustice tools already deployed in European judicial systems

8.   This section provides an overview of existing cyberjustice systems at European level on the basis of the data available in the last CEPEJ-GT-EVAL report[2], to which information has been added on initiatives already noted by the CEPEJ in connection with the "Crystal Scales of Justice" competitions. It is also supplemented by information provided by member States, which were invited to contribute to this study on a voluntary basis by sharing their chosen experiences with the scientific expert. Finally, it incorporates the content of discussions with CEPEJ members and the Network of Pilot Courts.

9. The systems identified have been grouped according to the aim pursued by their promoter: access to justice, communication between courts and professionals, direct assistance for the work of judges and registrars and, finally, court administration. This breakdown is clearly academic in nature, and the boundaries may at times prove somewhat blurred. Some of the more advanced examples could therefore have been included in several categories because they link together tools aimed at improving access to information and staff communication, a case management system and aids for professionals. However, to avoid repetition, the chosen approach will be to mention them only once, in view of the specific characteristic of the tool to be highlighted at that moment in the sample concerned.

10. These Guidelines include a general analysis of the potential of each category of tool, which consists in systematically examining the identified

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2.   "European judicial systems: efficiency and quality of justice: Use of Information and Communication Technologies in European Judicial Systems", CEPEJ Studies no. 24, 2016 Edition (2014 data)

benefits for the justice system, the possible developments for judicial systems, points to consider in their implementation and, finally, the potential risks inherent in their introduction. Each subsection accordingly provides an overview of the issues to be considered followed by an infographic summary of the systems existing in each country and a sample of available tools to illustrate the diversity of member States' experience in this matter.

Access to justice

11. This notion must be understood here in a broad sense, as it includes both ways of accessing the law (online information on one's rights, publication of case law) and access to dispute settlement procedures (online granting of legal aid, referral to a court or mediation service)[3] . Access to justice is a notion frequently advanced by judicial systems to justify the use of digital tools, which, depending on the context, are intended to increase the amount of information or level of services available to court users or to lower the barriers (taken to mean the material and financial costs) to accessing existing services.

12. As early as 2008, the CEPEJ's "Checklist for promoting the quality of justice and the courts" (CEPEJ(2008)2E) underlined the important link between IT and access to justice by devoting an entire section to the subject[4]. More recently, a Council of Europe Parliamentary Assembly resolution of November 2015 pointed out that access to justice "is a cornerstone of any democratic State based on the rule of law, and a prerequisite for citizens' effective enjoyment of their human rights |and that] access to the justice system often entails high costs in terms of time and money". The Assembly also welcomed the fact that "efforts are being made in a number of States to reform court processes in order to accelerate procedures and make them more affordable, in particular through the use of modern forms of information and communications technology (ICT)"[5].

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3. See Resolution 2054 (2015) of the Parliamentary Assembly of the Council of Europe, Committee on Equality and Non-Discrimination, entitled "Equality and non-discrimination in the access to justice", which considers that the broad concept of access to justice covers the various elements resulting in appropriate redress for the violation of a right, such as information on rights and procedures, legal aid, legal representation, legal standing or general access to courts.
4.   See in particular section III of the checklist entitled "Access to justice, communication to citizens and public".
5.   Resolution 2081 (2015) of the Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, entitled "Access to justice and the Internet: potential and challenges", paras. 1 and 2.

13. Information technology therefore holds out the promise of a more accessible public justice service, as long as citizens themselves are connected to the Internet and are prepared to accept this new relationship, and provided that judicial systems are prepared to invest sufficiently in ever more advanced and more complex tools, which necessitate or lead to a reshaping of their organisation and interrelationships, and sometimes even new skills that they must integrate so as to derive full benefit from the new digital services offered to litigants and citizens in general.

Improvements aimed at users and the quality of the public justice service

14. The development of IT has led everywhere to an expansion of the capacity for interaction between individuals, with the result that public services, including the justice service, have sought to take advantage of the new digital tools so as to reconsider the ways in which they communicate with their users[6]. Providing more information and improving its delivery are the two objectives that seemed to operators of judicial systems to have become possible at lower rollout cost thanks to IT. The focus is on deriving two sets of benefits: improving the quality of the service rendered while at the same time controlling the operating costs of the justice system.

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6. See the relevant recommendations of the Consultative Council of European Judges in its Opinion No. (2011)14 on "Justice and information technologies (IT)", paras. 19 to 24.

15. **The primary objective of the many information websites set up in the last few years is to provide citizens with a basic level of information**[7] in advance of an any dispute or lawsuit, available from their home and in a language they understand, through the development of a user-friendly interface that informs them about the extent of their rights and the procedural steps to be followed so as to exercise or defend them. Information portals are therefore gradually being set up in all countries and very often involve the courts as well as bar associations or other associations in order to provide a level of information that are as complete and uniform as possible, accessible from anywhere in the country. It should be noted that the European Union is furthering this effort by working on interconnecting information and has set up a portal, in the EU countries' languages, for accessing national information provided by States.

16. **The development of online information services now focuses on assisting the citizen through the provision of practical information concerning the procedures to be followed**[8]. By completing a kind of dynamic questionnaire designed to narrow down their request both with regard to its

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7. An objective that directly complies with the following items in the Checklist, III.1.2: "Are there free (non-fee paying) Internet sites providing access to legal texts?"; III.1.4: "Are court judgments and decisions accessible on court Internet sites?".
   On the same subject, the "Magna Charta of Judges" adopted by the Consultative Council of European Judges (CCJE) in 2010 emphasised in paragraph 14 on access to justice that "justice shall be transparent and information shall be published on the operation of the judicial system".
   The CCJE already pointed out in para. 6 of its Opinion No.7 (2005) on "Justice and Society" that "(t)he development of democracy in European States means that the citizens should receive appropriate information on the organisation of public authorities and the conditions in which the laws are drafted. Furthermore, it is just as important for citizens to know how judicial institutions function". Subsequently, in para. 13, it states: "The CCJE has already stated in general terms that courts themselves should participate in disseminating information concerning access to justice (by way of periodic reports, printed citizen's guides, Internet facilities, information offices, etc.); the CCJE has also already recommended the developing of educational programmes aiming at providing specific information (e.g., as to the nature of proceedings available; average length of proceedings in the various courts; court costs; alternative means of settling disputes offered to parties; landmark decisions delivered by the courts) (see paragraphs 12-15 of the CCJE's Opinion No. 6 (2004))"..
8. Functions covered by the following items in the Checklist, III.1.9: "Is information on the functioning of courts available and easily accessible to citizens?"; III.1.10:" Is information concerning the rights and obligations of citizens (as stated in the law) widely available to them (for example via a general telephone number)?"; III.1.13: "Is there an up-to-date list of lawyers/barristers available at the court reception and/or on its website?"!; III.2.3: "Are the costs/fees for a proceeding transparent?"; II.8.1: "Is there an up-to-date list of court experts, interpreters that can be consulted?".

nature, the sum involved and the geographical location concerned, citizens can visit these new-generation portals and obtain personalised and contextualised information enabling them to continue their path through the appropriate institutional channels, such as contacting a lawyer, being put in touch with a conciliation or mediation service or, of course, referral to the relevant courts. Citizens are also sometimes given more precise information on the arrangements for referring their case to the institution together with the documents to be completed (downloadable online), a list of documents to be provided in support of an application, the institution's postal or email address, the access plan, the institution's internal organisation and, possibly, the waiting periods and deadlines involved. In the States' experience, these services require a significant amount of work to overhaul the provision of information, simplify the language used, take account of ergonomic principles, and sometimes even streamline procedures[9].

17. **Some judicial systems consider the development of "open data" as the ultimate goal of policies concerning access to justice.** A clear trend has emerged in the last few years, with strong political support at international level[10], for some countries to move towards opening up judicial data to the general public. The aim is to make all judicial decisions available to everyone online free of charge (with various restrictions with regard to personal data – names of the parties, addresses, etc. – according to the legislation in force in the country concerned)[11]. These "open data" policies constitute a considerable theoretical advance in access to the law by making court decisions and judgements available to everyone under the same conditions. At the same time, they raise many questions on the real accessibility of law made avail-

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9. Compare with the aforementioned Council of Europe Parliamentary Assembly Resolution 2054 (2015) on "Equality and non-discrimination in the access to justice", which states in paras. 4.1 and 4.2: "... the Assembly calls on member States to (4.1) promote and improve legal awareness by exploring and implementing specific information mechanisms and innovative communication strategies; (4.2) ensure that adequate information on rights and procedures is available in different languages and formats and in plain language, relying on the support of civil society intermediaries for the dissemination of targeted information".

10. See in particular the Open Government Partnership launched in 2011, which was based on a group of States with proactive policies in this area, as well as the numerous national variations it may inspire.

11. See in this respect paragraph 16 of the Preamble to Directive 2003/98 /CE of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information «Making public all generally available documents held by the public sector —not only the political branch but also the legal and administrative branch — is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutions at every level, be it local, national or international.»

able to citizens in a raw form and foreshadow fundamental changes in professional circles as far as counselling and judicial publishing are concerned.

18. This therefore means that the impact of the development of open judicial data on access to justice must be qualified. In order to be effective this process must take into consideration the fact that it is in practice no easy task for citizens to pick their way through such a wealth of information and utilise it to support their claim or defend their rights. In many cases they need to contact a professional intermediary because the law or the case is complex. In some countries, new intermediaries may even emerge to process the free and open legal and judicial information. In addition, judicial systems have to weigh the advantages of making these data available online for certain activity sectors (insurance, banking or the employment market) and the individual or statistical use they may make of them. Public authorities can agree to put data online, sometimes without the knowledge and possibly to the detriment of those they are supposed to serve and protect – i.e., justice system users, only under certain conditions, failing which they are at risk of triggering mistrust in the judicial apparatus[12].

19. **Judicial systems are increasingly implementing active institutional communication policies on the Internet by exploiting the power of multimedia and the social networks[13].** At the level of a court or network of courts, countries are trying out a new form of relationship with their citizens

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12. It is necessary to recall here the protection afforded by Article 8 of the European Convention on Human Rights in connection with the confidentiality of personal data from the point of view of respect for private life. This even goes as far as recognising that restrictions apply to the *audi alteram partem* rule in order to protect confidential documents in the context of court proceedings (decision delivered on 21 June 2007 in the *Antunes and Pires v. Portugal* case, Application No. 7623/04). According to the Court, judicial Information systems must therefore ensure the total inviolability of data transmitted and full compliance with professional secrecy, in application of both the rights of defence enshrined in Article 6 of the Convention and respect for private life guaranteed by Article 8 (see the decision of 24 July 2008 in *André v. France*, Application No. 18603/03).
    For its part, the Consultative Council of European Judges stated in para. 17 of its Opinion No. (2011)14: "Having regard to the nature of the disputes brought before courts, the online availability of certain judicial decisions could place privacy rights of individuals at risk and jeopardize the interests of companies. Therefore courts and judiciaries should ensure that appropriate measures are taken for safeguarding data in conformity with the appropriate laws".
13. In line with the viewpoint of the CCJE, which "encourages the development of IT as a tool to improve communication between the courts to the media, for example, by giving the media easier access to judicial decisions as well as notice of forthcoming hearings", Opinion No. (2011)14, para. 18.

that enables the justice system to report on its work in various ways[14] (like the other branches of power – the executive and the legislative – on their websites) by introducing genuine communication strategies and policies via the web: press releases (sometimes in several languages), video broadcasts of all or part of a hearing (mostly in the case of supreme or constitutional courts), or a Facebook page or Twitter account, to mention only the two most commonly used social networks. The justice system views all these new tools as direct opportunities to make itself heard and understood by a national or local audience utilising these new media.

20. The simplicity and very affordable price of installing certain tools today must, however, not cause us to overlook a much more complex situation according to the judicial systems that have experience of it. The investment made in developing communication tools, raising great expectations in the population, must be followed by even more substantial investments in communication techniques and public relations through the recruitment of professionals and the on-going training of various players within the institution concerned. Accordingly, the establishment of a genuine communication policy should also go hand in hand with a debate on the limits to such a policy for a judicial institution. This means considering the type of information to be put online, or not, and the appropriate handling of that information[15]. For the sake of the image and dignity of the judicial institution it is imperative to answer these questions calmly and in a well-reasoned way before throwing one body and soul into the most fashionable means of communication. Furthermore, the response to all these questions no doubt differs according to the type of court and the kinds of cases it deals with[16].

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14. Such a policy contributes to the implementation of item I.2.2 of the Checklist: "Does the court management give wide publicity to the mission/vision and strategy among stakeholders, judges and prosecutors and court staff?".

15. In section II, the Checklist contains a number of questions on this subject that enable measurement of the diversity of the information that can be made public: II.10.4: "Is there a policy on the publication of the evaluation results?"; II.10.7: "Is the percentage of cases with a full-bench division (panel of judges) recorded and published?"; II.10.8: "Is the number of successful challenges recorded and published?"; II.10.9 ". Is the percentage of appeals recorded and published?", II.10.12 "Is the length of proceedings systematically recorded and published?"; On the other hand, the checklist does not cover the dissemination to the public of the following information but only its recording for internal use: II.10.10 "Is the productivity of judges and court staff recorded and published?"; II.10.11 "Is the percentage of quashes recorded?".

16. On these questions, see the CCJE's Opinion No. 7 (2005), especially the recommendations made in section C on "relations of the courts with the media".

21. **Paperless communication with court users regarding their cases is already up and running in some countries and being developed in others**[17]**.** These primarily consist in services for referring a matter to a court directly online, mainly designed for proceedings not requiring compulsory representation: these services spare the citizen the trouble of sending documents in paper form through the post or delivering them by hand to the court registry. Under this approach, the information systems recently introduced enable citizens, whether or not assisted by a lawyer, to receive notifications concerning their cases in paperless form by means of SMS alerts or email, inviting them to visit a secure online account and/or contact their lawyer. Some countries have also introduced paperless systems for delivering notices to attend hearings and for confirming the litigant's intention to attend by a message sent to his/her telephone a few days beforehand, thereby permitting a significant increase in court appearance rates for both sides in proceedings and, as a consequence, a lower proportion of hearings postponed. Other countries make the court's decision on the case available to the parties within their secure personal space, followed by information on the legal remedies available (whether or not online) to challenge it or have it enforced.

22. **The introduction of information systems potentially improves physical reception of the public within courts and elsewhere**. Apart from the benefits for users, who are individually no longer obliged to travel to courts in person to obtain information or initiate proceedings, these online services facilitate the organisation of the court as they enable a reduction in waiting times at court reception desks, or even eliminate waiting times for anyone able to obtain the information they are looking for on a PC. The time gained by no longer having to inform people who can search for the information they need directly on the Internet also enables trained staff to concentrate on helping those without these facilities or whose cases require a specific level of information, or an interview with a professional. It should be noted that some countries supplement this information offer made available both online and person to person at the court with a hybrid system involving use of telephone hotlines accessible nationwide. Others promote an even more ambitious policy of relocating physical access points to the law by setting up local agencies shared between public services, whose staff are specially

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17. See the following items in the Checklist: III.6.7: "Do parties have the possibility of receiving, at any given moment, information about the stage their proceedings have reached: directly (through the reception of information or Internet)? Indirectly through their legal counsel (i.e. lawyer or legal representative)?"; II.7.2: "Is there a system of notification of judicial decisions?".

trained in cross-sectorial work and can navigate the various information systems concerned and provide citizens with on-the-spot assistance, if necessary with the help of a court's judicial staff.

23. **Other arrangements that make it possible to avoid travelling to the courts are being developed through the use of videoconferencing**, which is being systematically introduced in every country, including for the purpose of judicial co-operation between countries. These arrangements, which are available to a category of individuals or in specific situations[18] in connection with preparing a case for trial or for certain parts of a hearing (expert report, lodging a complaint, questioning or remote testimony), are seen as a significant means of saving time and expense in both civil and criminal cases. On the other hand, from a quality standpoint many practitioners in the member States think the use of videoconferencing still requires a number of improvements on the technical side and with regard to hearing records. This was emphasised by the rapporteur who drew up the Parliamentary Assembly's resolution on access to justice and the Internet: "courts that use videoconferencing should continue to explore ways to mitigate these disadvantages, such as pursuing technological advances that would improve the quality of the videoconference and encrypting the video signal to protect against interception. Lawyers, judges and court staff should also familiarise themselves with common differences between in-person testimony and videoconference testimony in order to increase their awareness of how these differences may have certain implications for videoconference testimony. For example, persons testifying via videoconference tend to look at the screen to see the other person rather than into the camera, therefore eliminating the appearance of direct eye contact with the people in the courtroom. Understanding this and other differences can help lawyers, judges and courtroom staff to modify their expectations of videoconference testimony, as opposed to in-person testimony." These matters are, of course, of concern when it comes to ensuring the quality of justice.

24. **Websites designed for the online settlement of disputes have also recently been developed in some of the Council of Europe member States**. In civil cases, they are generally used to deal with small claims (consumer disputes, residential leases) or specific proceedings involving

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18. This case-by-case principle must be underlined as, according to the European Court of Human Rights, "although the defendant's participation in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim", ECtHR, *Marcello Viola v. Italy*, 5 October 2006, Application No. 45106/04, §67.

payment orders, but they are also developing in the area of family disputes (divorce proceedings). Both public and private operators provide online dispute resolution (ODR) services directly accessible by litigants. Some judicial systems regard this as an alternative service while others see it as a complementary offering provided in advance of the possible referral of the case to a court. This approach makes a significant contribution to preventing court congestion by encouraging the settlement of a dispute through conciliation or computerised mediation. If conciliation or mediation fails, switching to the traditional court system is then possible but made easier – when the information system is linked up or recognised by the public authority – because of the automatic transfer of information concerning the parties and the case, which is then almost ready for trial, thus avoiding the need for court clerks to manually create a new entry in their case management system, and for the parties to restate their claims and provide the same information and documents supporting their case[19].

25. It should be noted that the Parliamentary Assembly of the Council of Europe recently called on member States to "make voluntary ODR procedures available to citizens in appropriate cases; raise public awareness of their availability, and create incentives for participation in such procedures, including by promoting the extrajudicial enforcement of ODR decisions and by enhancing the knowledge of legal professionals about ODR". Reference is also made to the need to control the contribution of ODR so that it is able to provide citizens with quality justice, which for States consists in "ensuring that existing and future ODR procedures contain safeguards compliant with Articles 6 and 13 of the European Convention on Human Rights, which may include access to legal advice"; "(ensuring) that parties engaging in ODR procedures retain the right to access a judicial appeal procedure satisfying the requirements of a fair trial pursuant to Article 6 of the Convention"; (and finally) "undertaking to develop common minimum standards that ODR providers will have to comply with, inter alia in order to ensure that their procedures do not unfairly favour regular users over one-time users, and strive to establish a common system of accrediting ODR providers satisfying these standards"[20].

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19. Use of information systems – cf. item 1.4.5 of the Checklist: "Are the effectiveness and efficiency of judicial and ADR proceedings systematically evaluated?"
20. Parliamentary Assembly of the Council of Europe, report preceding Resolution 2081 (2015), "Access to justice and the Internet: potential and challenges", Doc. 13918 of 10 November 2015, paras. 27 to 30.

26. **Access to justice via information systems – reducing costs and real-locating resources.** As a result of all these innovations aimed at ensuring that the parties have to visit the court building only when strictly necessary, reform of the judicial map to reduce the physical presence of courts in a given area has been implemented or is under consideration in some countries[21]. These reforms are, incidentally, often described as the ultimate advantage of using digital services, since the costs of developing and operating information systems are perceived by States as being far lower than those of procuring and maintaining judicial buildings, and they even produce savings in human resources at the local level.

27. However, some people point out that such a calculation does not necessarily take account of the hidden costs of switching to paperless services. Firstly, this involves a transfer of costs from the operator (the judicial system) to the user (the citizen), the main costs being related to the time spent by the person who inputs data into the information system, a form of transfer observed with most online public or consumer services. Then there are the incidental costs that have an impact on the associated savings, with online access to justice causing a dramatic shift in the role, the services and, consequently, the economic model of the legal and judicial professions. Finally, there are the new costs that have to be incurred for the deployment of a high-quality paperless service in the longer term, for example investing in the new human resource profiles that have become essential for online justice (mostly by recruiting new staff when training or retraining is not enough), although the statutory staff costs for judges, prosecutors and registrars should, for the moment at least, remain unchanged.

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21. Reference is made here to the "Guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties", CEPEJ(2013)7, which state in section 2.3.5 on computerisation: "Consolidation of courts though should be accompanied by increased utilisation of ICT to reduce the frequency of necessary visits in person by parties and lawyers to the courts. In addition, ICT should be used to increase the visibility of court proceedings. The greater the availability of software applications that substitute paper and the need of a physical presence on site, the more remote the location of the court could be. When looking at the geographical location for each court, computerisation may provide a degree of flexibility as to what services are provided at each individual court".
The CCJE is of a different opinion and states in para. 20 of its aforementioned Opinion No. (2011)14 that "IT development should not be used to justify courts being dispensed with". It no doubt has to be understood that this development is not sufficient in itself to justify this, which brings us back to the need to incorporate IT development in a broader strategy than that advocated by these Guidelines.

28. Operators of other judicial systems point out that simply putting services online is not sufficient to automatically achieve the quality improvement and cost reduction goals which are sometimes set. Making paperless services available involves a considerable long-term effort (and cost) to communicate with the public, through all possible channels, before it can be expected that: i) a sufficient number of citizens are aware of the availability of new tools; ii) the confidence that will enable the public to take the leap and make use of them is built up; and iii) recurring and lasting changes occur in citizens' habits as far as their relationship with the public justice service is concerned.

29. **In contrast to the all-out development of online services, some countries seem to want to limit the possibility of referring a case to a court by electronic means**, which they believe could result in trivialising recourse to the courts, leading to a sort of levelling down in relation to the various assistance services and online dispute resolution platforms. The debate among both supporters and opponents of the development of online services is in fact driven by the same questions: how to convince citizens of the benefits and safeguards the public justice service can bring them in terms of the defence of their rights, whether or not the service is paperless. In its Opinion No. (2011)14 on "Justice and information technologies (IT)" the Consultative Council of European Judges points out that "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"[22].

30. **At any rate, citizens' perception of fully electronic systems still has to be measured and evaluated** in order to establish whether the degree of confidence in online processing is the same as in the case of face-to-face interaction, as regards obtaining information on one's rights, placing one's case in the hands of an identifiable representative of an institution and the holding of a hearing by a justice professional in the presence of the various protagonists. This is particularly the case when it comes to assessing the conduct of the parties and their witnesses, which is an exercise undertaken in a courtroom by the competent judge. This approach appears all the more necessary given the need to take account of the specific requirements of individuals who for reasons of age or social status cannot easily access services and do not have a well-developed practical knowledge of digital services

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22. CCJE Opinion No. (2011)14, para. 6.

and interactions[23]. As the CCJE writes in its aforementioned Opinion: "Not all individuals have access to IT. At present, more traditional means of access to information should not be abolished. Help desks and other forms of assistance within courts should not be removed because of an erroneous argument that IT has made justice 'accessible for all'. This is a particularly pressing concern as regards the protection of vulnerable persons. The use of IT should not diminish procedural safeguards for those who do not have access to new technologies. States must ensure that parties without such access are provided specific assistance in this field"[24].

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23. The Parliamentary Assembly of the Council of Europe accordingly calls on member States to "use new technologies" to promote access to justice but to "ensure that categories of people disadvantaged in this respect have alternative forms of access to justice institutions", Resolution 2054 (2015), op. cit, para. 5.3.
In the same vein, the Court of Justice of the European Union (CJEU) points out in one of its judgments that the exercise of particular rights "might be rendered in practice impossible or excessively difficult for certain individuals – in particular, those without access to the Internet – if the settlement procedure could be accessed only by electronic means". Therefore, according to the Court, the judicial protection mentioned resulting from Articles 6 and 13 of the European Convention on Human Rights and 47 of the Charter of Fundamental Rights of the European Union is assured as long as electronic means are not the sole means for accessing the (settlement) procedure: Joined Cases C-317/08 to C-320/08, *Rosalba Alassini and Filomena Califano v. Wind SpA*, Lucia Anna *Giorgia Iacono v. Telecom Italia SpA* and *Multiservice Srl v. Telecom Italia SpA*, judgment of 8 March 2010, paras. 58 and 60.
For its part, the European Court of Human Rights imposes a positive obligation on States to equip courts and provide the means required to ensure the use of access-to-justice technologies: *Lawyer Partners v. Slovakia*, Application No. 54252/07, decision of 16 June 2009. In that particular case, the court had refused to register an action on the ground that it lacked the equipment to do so, whereas the law actually enabled the applicant to make submissions electronically.
24. CCJE Opinion No. (2011)14, op. cit., paras. 9 and 10.

31. The following chart gives a graphical overview of the points made above.

Benefits identified	Points to note
► Provision of information to litigants at all levels made easier (information on physical access to the court, on the way the court is organised and how to bring proceedings, on existing alternatives and on the online monitoring of proceedings; access to the decision as soon as it is delivered) ► Reduction in waiting times at "physical" court reception desks or some journeys rendered unnecessary ► Online settlement of some disputes before bringing proceedings in order to relieve the courts of simple cases	► Maintenance and durability of data, especially archives ► Significant reinvestment in human resources through recruitment or training plans for the new services proposed ► Account to be taken of the growing number of online dispute resolution (ODR) services provided by the private sector complementing or competing with the public sector
Possible developments	**Potential risks**
► Integration of access–to- justice tools into the general information system of the judicial services ► Rethinking the judicial map and investment in buildings in the light of the migration of some uses of the building to the court's online space	► Online court referrals: care must be taken to ensure that accessing justice is not trivialised ► Threatens the future of officers of the court, who are no longer obligatory intermediaries between the court and the litigant ► Perception of parties to proceedings: will they feel listened to and treated fairly if the alternative dispute resolution or judicial process takes place online? Might the potential character of the proceedings be affected? ► Retrieval by private companies of open judicial data for purposes other than access to the law

Sample of access-to-justice tools deployed in Europe

Austria: COURTPUB – Online publication of decisions (commercial courts) and single-window commercial information service *[source:* 2006 Crystal Scales of Justice*]*

Spain: Redabogacia – "One-stop-shop" for filing an application for legal aid via a physical reception desk and online access *[source:* 2014 Crystal Scales of Justice*]*

Estonia: AET – Online service for initiating proceedings and tracking information on a case, including the transmission of documents and an online fee-payment service *[source:* 2014 Crystal Scales of Justice*]*

France: Justice.fr – Dynamic Information portal for litigants enabling them in particular to identify the court responsible and download the relevant referral forms *[source: 2016 survey]*

France: Sagace – Administrative service enabling the litigant to consult summary information on his/her legal case *[source: 2016 survey]*

France: Consultation Avocats – National platform for consulting a lawyer (by appointment, by telephone or email) whose services are then covered by a fees agreement [*source: 2016 survey*]

France: JuriCA and JuriNET – Case law database of the appeal courts in civil and commercial cases (JuriCA) and the Court of Cassation in all cases (JuriNET) *[source: EVAL 2016, 2014 data]*

France: Medicys – Online mediation platform for consumer disputes provided by the Chambre Nationale des Huissiers de Justice de France *[source: 2016 survey]*

Lithuania: TEISMAS – Justice information portal facilitating communication with litigants via email alerts, the litigant can sign on to a secure server *[source: EVAL 2016, 2014 data]*

Netherlands : Rechtwijzer – Conciliation and mediation platform in advance of all proceedings concerning disputes involving human relations, especially lease related, neighbourhood or family disputes *[source:* 2015 Crystal Scales of Justice*]*

Council of Europe countries – European Court of Human Rights: HUDOC – Access to all of the Court's case law via an advanced search engine *[source: 2016 survey]*

Council of Europe countries – European Court of Human Rights: Webcasts of hearings – broadcasting of the Court's hearings on the Internet and provision of case data in several languages *[source: 2016 survey]*

EU countries: e-Justice Portal – information portal on European legal systems (judicial systems and professions, European case law) with a single identification number for court decisions in Europe *[source: 2016 survey]*

EU countries: Portal for the online resolution of consumer disputes – platform to enable communication between parties to a cross-border consumer dispute in Europe *[source: 2016 survey]*

United Kingdom: Make a plea – service for pleading guilty online to traffic offences, thus avoiding the need for the citizen to travel to the court when the offence is not disputed and enabling a court decision to be obtained within a shorter timeframe *[source: 2016 survey]*

Turkey: UYAP – Centralised information system providing an information portal on the legal system and procedures, with notification of events to users by SMS *[source:* 2008 Crystal Scales of Justice*]*

Overview of the extent of the development of access to justice tools deployed in Europe

Table 1: Communication between courts and users in 2014

| | Tools to improve the improve the quality of the service provided to court users | | | | | |
| | Website gathering national information | | Online services | | | |
	At national level	At local level	Submit a case to the court	Granting legal aid	e-Summoning	Monitor online the stages of a proceeding
Albania	Yes	50-99%	No	No	No	No
Armenia	Yes	No	No	No	No	No
Austria	Yes	No	Yes	Yes	Yes	Yes
Azerbaijan	Yes	100%	Yes	No	Yes	Yes
Belgium	Yes	50-99%	Yes	No	No	No
Bosnia and Herzegovina	Yes	100%	No	No	No	Yes
Bulgaria	Yes	100%	No	No	Yes	Yes
Croatia	Yes	50-99%	No	No	No	Yes
Cyprus			No	No	No	No
Czech Republic	Yes	100%	Yes	No	Yes	Yes
Denmark	Yes	100%	Yes	No	Yes	No
Estonia	Yes	100%	Yes	Yes	Yes	Yes
Finland	Yes	100%	Yes	Yes	Yes	No
France	Yes	100%	No	No	No	Yes
Georgia	No	50-99%	Yes	No	Yes	Yes
Germany	No	100%	Yes	Yes	Yes	No
Greece	Yes	10-49%	Yes	No	No	Yes
Hungary	Yes	100%	Yes	Yes	Yes	Yes
Iceland	Yes	50-99%	No	No	No	No
Ireland	Yes	100%	Yes	No	Yes	Yes
Italy	Yes	100%	Yes	No	Yes	Yes
Latvia	Yes	No	Yes	Yes	Yes	Yes
Lithuania	Yes	100%	Yes	No	Yes	Yes
Luxembourg	Yes	No	No	No	No	No
Malta	Yes	No	Yes	No	Yes	Yes
Republic of Moldova	Yes	No	No	No	No	Yes
Monaco	Yes	No	No	No	No	No
Montenegro	Yes	100%	No	No	No	Yes
Netherlands	Yes	100%	Yes	No	No	Yes
Norway	Yes	100%	Yes	Yes	Yes	Yes
Poland	Yes	100%	Yes	No	Yes	Yes
Portugal	Yes	No	Yes	No	Yes	Yes
Romania	Yes	100%	Yes	No	No	Yes
Russian Federation	Yes	100%	Yes	No	Yes	Yes
Serbia	Yes	100%	Yes	No	No	Yes
Slovakia	Yes	100%	Yes	No	No	No
Slovenia	Yes	100%	Yes	No	Yes	Yes
Spain	Yes	10-49%	Yes	Yes	Yes	Yes
Sweden	Yes	100%	Yes	Yes	Yes	No
Switzerland	No	100%	Yes	Yes	Yes	No
"The former Yugoslav Republic of Macedonia"	Yes	100%	Yes	No	Yes	No
Turkey	Yes	No	Yes	Yes	Yes	Yes
Ukraine	Yes	No	Yes	Yes	Yes	Yes
UK-England and Wales	Yes	No	Yes	No	No	Yes
UK-Northern Ireland	Yes	No	Yes	No	No	Yes
UK-Scotland	Yes	No	Yes	No	Yes	No
Yes	93%	71%	74%	26%	59%	67%
No	7%	29%	26%	74%	41%	33%
100%		56%				
50-99%		11%				
10-49%		4%				
1-9%		0%				
0% (NAP)		0%				
NA		0%				
Israel	Yes	No	Yes	No	Yes	Yes

Communication between courts and with professionals

32. The development of information systems that facilitate citizens' access to justice could not succeed without the underlying extensive electronic communications between the various institutions involved in handling litigants' cases: court-to court, between the courts and various State services and, naturally, also with officers of the court. Many judicial systems have therefore made improvements to communications between courts and with professionals the key focus of their digital strategy. The quality expected of justice is understood here to be more fluid communication enabling an individual's case to be dealt with more quickly and, of course, more reliably[25].

Tools to improve the flow and security of communications between professionals

33. While it has long existed, the consultation of computerised registers maintained by various administrative bodies (such as criminal records, land registers or personal insolvency registers) is now carried out directly by electronic means, either by sending a request to the department concerned or through direct access to data via one's computer. The compilation, updating and remote consultation of registers was felt to be a real challenge in some countries but is nothing compared with the now increasingly widespread use throughout Europe of electronic communications between all the players involved in court procedure. This is an even bigger challenge, as these players belong to various public or private professional organisations that must be consulted at the moment when each organisation is required to adapt to new working methods. This is moreover a challenge in terms of the legal issues surrounding such communications, which are of crucial importance for citizens.

34. **In most countries, lawyers are now able or will soon be able to communicate, entirely electronically with the courts** for the transmission of their procedural documents, submissions or other case-file documents[26]. Migration to a fully electronic system, which has been experienced as a major undertaking by all the countries that have embarked on it, generally

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25. Electronic communication can be seen to be one means among others of implementing item II.4.6 of the Checklist: "Are the proceedings organised in an expedient manner to solve the conflict?"

26. A contribution to the quality of justice directly addressed in item II.9.5 of the Checklist: "Is it possible to submit documents to the court in electronic form?"

comprises two stages: the establishment of secure communication through normal electronic mailboxes, which means that data have to be processed by a member of staff at the point of entry to the court system like any other mail unless already delivered in digital form together with the relevant documents, and the direct input of the lawyers' documents into the court's information system ("e-filing") without data being input or transferred at the point of entry to the court system by a member of staff, who in this case merely verifies their submission and their legal effects (opening a case file, interruption of a limitation period, etc.). The most advanced systems clearly reduce the work of court registries, and some countries are considering refocusing this work on high-value legal activities and assistance for judges and prosecutors.

35. **Some countries have extended the possibilities for communication with the courts by establishing specialised portals open to other officers of the court**, such as bailiffs (or other recognised enforcement officers) and experts. Electronic communication with the former makes it quicker and easier to monitor the execution of judicial decisions. As far as the latter are concerned, the filing of their reports in a shared space open to the court and the parties within a deadline set by the IT system enables the information to be transmitted with no disparities, and, according to the system's current users, permits more discipline in performing their tasks. In certain countries judicial service providers in general, first and foremost court-appointed experts or interpreters, now have access to a forum for sharing information with members of the judiciary and registries, thus enabling the ordering and payment of services to be speeded up and rendered more efficient via a single system, here too streamlining the ways in which those concerned work together.

36. **In some countries, the hearing preparatory phase is totally paperless:** judges and lawyers now send their written submissions solely electronically. Some countries are even considering the possibility of holding preparatory and directions hearings in different locations, with everyone – the judge and the representatives of the parties – communicating with one another by videoconference from their normal place of work or the closest connection point permitted by the system.

37. **The only limit to dematerialisation concerns the judgement hearing, for which the physical presence of the parties (or their representatives) still seems to be required**. This is very clearly the case regarding criminal trials in most countries, but with some variations with regard to civil

or administrative proceedings. Although remote court appearances are encouraged in some situations (in criminal cases, the savings on transfers and the convenience for detainees are often emphasised) certain, primarily legal, obstacles are encountered as far as the judgement hearing is concerned. However, there are also a number of obstacles regarding the quality of the justice rendered in this way: investments in videoconferencing equipment are deemed far from satisfactory in many countries as regards the quality of the hearing, and the situation cannot improve until the premises used for court appearances have been overhauled at both ends of the chain. The addition of a camera and screen, or even several cameras and screens, is not enough if they are not supplemented with suitable protocols and appropriate court procedures[27].

38. **As they have developed, information technologies have therefore enabled the arrangements for co-operation between the courts and the judicial professions to be redefined**[28]**.** Many people consider that they have thus provided an opportunity to review working methods in each of the professions concerned. More often than not, the primary aim of paperless or paper-light systems was to bring about a reduction in processing costs associated with generating and handling paper documents in both courts and law firms[29]. The work of court registries in particular has been transformed in some cases, while specialised assistants have been appointed in others. The standardisation of communication patterns can produce considerable efficiency gains and in some cases has enabled staff to be redeployed between different types of court affected to a greater or lesser extent by the automatic processing of certain tasks. "Change management" policies may have been lacking or, on the contrary, may have aided the transition in cases where the organisational and human consequences of the new methods of communication with the courts' partners have been anticipated as early as possible. Judicial systems have accordingly sought to make the development of electronic communications a means of speeding up the transmission and processing of information, ultimately transforming IT into a common structural

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27. See above with regard to other videoconferencing developments from the point of view of access to justice (section 1.1.1).
28. Thus contributing to the implementation of item II.8.2 of the Checklist: "Does the court collaborate with other institutions (police, lawyers, public prosecutors, social workers, custodians, experts, etc.)?"
29. See item II.4.7 of the Checklist: "Are the proceedings arranged and carried out in such a manner that the expenses for the parties and others involved in the proceedings are minimalised?»

element of legal procedure and of work organisation between the various operators involved.

39. **This new type of communication has required major changes to all the organisations' structural elements**. Firstly, legislation has had to be adapted so that electronic communications can have the desired legal effects (interruption of limitation periods, for example) and has been brought into line with new time constraints (with conclusions no longer delivered "at the last minute" but "at the last second") in order to continue to comply with the adversarial principle. The second change concerns everyday practices, with some countries pointing out, for example, that the limits on the volume of attachments inherent in the IT system sometimes make a lawyer's work very difficult. However, paperless communication also necessitates very good co-ordination between IT services from one end of the institutional chain to the other (courts and bar associations, for example) in order to ensure technical consistency and, of course, data security in view of the confidential nature of the interchange in question. Accordingly, and especially in the case of cross-border procedures, lawyers are confronted with new dilemmas regarding the right to (electronic) evidence and the harmonisation of codes of ethics in order to make paperless communication at least as secure as paper-based communication. Generally speaking, the development of paperless communications forces every country to consider the particular nature and role of digital evidence by enacting the appropriate specific legislation[30].

40. **An argument frequently heard regarding the development of electronic communication between professionals concerns the level of security**[31]**.** Some countries believe the justice system is vulnerable owing to the increasingly sophisticated and ever more numerous cyber-attacks to which administrative bodies are exposed, whereas others put this development into perspective by pointing to all the vulnerabilities and damage caused in the past by the paper system. One thing is certain: the vulnerabilities in the two systems – paper and digital – differ. Everyone underlines the need for

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30. See on this subject the study by the Council of Europe's European Committee on Legal Co-operation (CDCJ) entitled "The use of electronic evidence in civil and administrative law proceedings and its impact on the rules of evidence and modes of proof", CDCJ(2015), scheduled to appear at the end of 2016.

31. See on this subject section V of the Checklist and subsequent passages on security in that document from the point of view of the vulnerability of fully electronic administration of justice (section 1.4.1), and the security approach necessary in the context of project management (section 2.1).

proper means of protection and control and emphasises the importance of providing all staff with IT security training for online communications. Many means are deployed at the level of the State itself today and can, of course, be relied on by the judicial services, while at the same time raising the issue of the particular nature of the data they process. Attention is also drawn to the need to ensure that other State services cannot access judicial systems' substantive content. But data security would not be complete if we were not capable of ensuring its integrity, i.e. the quality thereof for an administrative body - that of justice –in which the confidence that the citizens have in its functioning and its decisions is a key driver

41. The following chart gives a graphical overview of the points made above.

Benefits identified	**Points to note**
► Cost reductions, speed of processing ► Organisational simplification	► Technical compatibility and reliability of the system between different entitles ► Change management policy to be rigorously determined ► Effects of blocking the communication chain in case of failure
Possible developments	**Potential risks**
► Definition of common communication patterns (starting from court services and continuing to all the services involved in the operation of the judicial system)	► Considerable loss of time in the event of an uncontrolled technical failure

Sample of tools for communication between courts and professionals in Europe

Germany: Electronic Court and Administration Mailbox at the Federal Patent Court – System of mailboxes that enables exchanges with the Federal Patent Court and archiving to be carried out entirely online *[source: 2016 survey]*

Germany: RegisSTAR – Electronic system for the management of commercial register data, accessible by citizens *[source: 2016 survey]*

Germany (Lower Saxony): elektronische Justiz Niedersachsen (eJuNi) – System available in the *Land* of Lower Saxony to provide support for the transition and switch to a fully paperless environment in Germany *[source: 2016 survey]*

Austria: ERV (Elektronischer Rechtsverkehr) – Online court referral system linked to the case management system *[source: 2016 survey]*

Bosnia and Herzegovina: Judicial Information System – Multimedia electronic communication system for the exchange of data and documents between professionals, linked to the case management system *[source: 2016 survey]*

Croatia: Electronic collaboration between national registers – Space interconnecting the various national registers of interest to the justice system and enabling the latest information available of relevance to a decision to be shared in real time *[source: 2016 survey]*

Spain: Electronic judicial auctions – Online judicial sales platform *[source: 2006 Crystal Scales of Justice]*

Spain: Lexnet – Advanced case processing system permitting exchanges of documents and the use of electronic signatures *[source: 2012 Crystal Scales of Justice]*

Estonia: E-Toimik (e-File) – System of advanced electronic communication between the courts, prosecution services, police, prisons, probation services, bailiffs, legal aid offices and Customs services, involving the exchange of case documents and moving towards totally paperless functioning *[source: 2014 Crystal Scales of Justice]*

Estonia: Digital Payment Order Procedure – Semi-automatic orders-for-payment case management system, enabling the assistant judge in charge

of this type of case to process data in a paperless environment, from the initiation of proceedings to the communication of the decision *[source: 2016 survey]*

France: RPVA (Réseau Privé Virtuel des Avocats) and E-Barreau – Platform for communications between lawyers, via their bar associations, and the courts in civil matters through its equivalent the RPVJ (Réseau Privé Virtuel Justice – Private Virtual Justice Network) [*source: 2016 survey*]

France: EIA – Inter-application exchanges between the Ministry of the Interior and the Ministry of Justice for the processing of criminal proceedings *[source: 2016 survey]*

France: OPALEX – Entirely paperless communication platform between experts and the courts in civil cases, which lawyers can also access to consult reports as soon as they are submitted *[source: EVAL 2016, 2014 data]*

France: CHORUS Portail Pro – Portal that permits the management and payment of service providers by the courts *[source: EVAL 2016, 2014 data]*

France: Télérecours – Online system for the commencement of proceedings available to lawyers and administrative authorities for all administrative disputes *[source: 2016 survey]*

Ireland: **Digital Evidence Bundles** – System for the digitisation of cases, including evidence, supplied in a single indexed and navigable PDF file for use at a hearing *[source: 2016 survey]*

Ireland: **Remote Witness Video Conferencing** – System available for vulnerable people, supervised by the judge in charge of the hearing *[source: 2016 survey]*

Italy: PCT (Processo Civile Telematico) – System for the communication and submission of electronic documents between lawyers and the courts in civil cases *[source: 2016 survey]*

Latvia: TIS (Tiesu informatīvā sistēma) – System allowing vulnerable people to give remote testimony by videoconference, supervised by the judge in charge of the hearing *[source: 2016 survey]*

Lithuania: e-Services System – Fully electronic system of communication with parties, including the payment of court costs and fines as well as consultation of audio recordings of hearings *[source: 2016 survey]*

Moldova: Integrated Case Management System (ICMS) – Computerised case management system, including a function for randomly allocating cases to trial and appeal court judges *[source: 2016 survey]*

EU countries: E-CODEX – Tools for interconnecting European systems of justice, available to States for the circulation of data and the management of cross-border cases *[source: 2016 survey]*

United Kingdom: Crown Court Digital Case System – DCS – Collaborative case management system for the Crown Prosecution services. Can be shared with court registries, defence lawyers and judges *[source: 2016 survey]*

Slovakia: Electronic Case File – Computerised case and timetable management system, linked to a case law database, available in some cases for the electronic production of documents *[source: 2016 survey]*

Overview of the rate of development of tools for communications between courts and professionals

Table 2: Communications between courts and professionals in 2014

	Communication between courts and law yers	Tools for improving the relationship quality between courts and professionals				Electronic signature	Online processing of specialised litigation
		Communication with other professionals					
		Enfocement agents	Notaries	Experts	Judicial police services		
Albania	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Armenia	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Austria	Yes	100%	100%	100%	100%	Yes	Yes
Azerbaijan	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Belgium	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Bosnia and Herzegovina	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
Bulgaria	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Croatia	No	0% (NAP)	10-49%	0% (NAP)	0% (NAP)	No	No
Cyprus	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Czech Republic	Yes	100%	100%	100%	100%	Yes	Yes
Denmark	Yes	50-99%	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Estonia	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes
Finland	Yes	100%	100%	100%	100%	No	No
France	Yes	50-99%	NA	100%	10-49%	Yes	Yes
Georgia	Yes	0% (NAP)	50-99%	0% (NAP)	0% (NAP)	No	No
Germany	Yes	10-49%	NA	1-9%	NA	Yes	Yes
Greece	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Hungary	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Iceland	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Ireland	Yes	0% (NAP)	NA	0% (NAP)	0% (NAP)	No	No
Italy	Yes	0% (NAP)	100%	100%	100%	Yes	No
Latvia	Yes	50-99%	0% (NAP)	50-99%	0% (NAP)	Yes	Yes
Lithuania	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes
Luxembourg	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Malta	Yes	NA	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
Republic of Moldova	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Monaco	Yes	0% (NAP)	0% (NAP)	50-99%	50-99%	No	No
Montenegro	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Netherlands	No	NA	0% (NAP)	NA	NA	No	No
Norway	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Poland	Yes	0% (NAP)	100%	0% (NAP)	0% (NAP)	No	Yes
Portugal	Yes	100%	100%	NA	50-99%	Yes	Yes
Romania	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes
Russian Federation	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Serbia	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Slovakia	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Slovenia	Yes	100%	100%	0% (NAP)	0% (NAP)	Yes	Yes
Spain	Yes	0% (NAP)	100%	100%	100%	Yes	No
Sweden	Yes	100%	NA	100%	NA	Yes	No
Switzerland	Yes	50-99%	50-99%	50-99%	0% (NAP)	Yes	Yes
"The former Yugoslav Republic of Macedonia"	Yes	10-49%	10-49%	0% (NAP)	0% (NAP)	Yes	No
Turkey	Yes	100%	0% (NAP)	100%	10-49%	Yes	No
Ukraine	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
UK-England and Wales	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
UK-Northern Ireland	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
UK-Scotland	Yes	50-99%	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Yes	74%					46%	37%
No	26%					54%	63%
100%		15%	17%	17%	11%		
50-99%		11%	4%	7%	4%		
10-49%		4%	4%	0%	4%		
1-9%		0%	0%	2%	0%		
0% (NAP)		65%	65%	70%	74%		
NA		4%	9%	4%	7%		
Israel	Yes	0% (NAP)	0% (NAP)	100%	0% (NAP)	Yes	Yes

Source: "European judicial systems: efficiency and quality of justice: Use of Information and Communication Technologies in European Judicial Systems", CEPEJ Studies o. 24, 2016 Edition (2014 data) – question 64 of the evaluation questionnaire

Assistance for the judge, prosecutor and registrar

42. This third example of the use of IT within the courts of Council of Europe member States focuses on the work of judges, prosecutors and registrars. There is no denying the importance attaching to information systems when it comes to aiding the work of lawyers, for example, and it is clear that a number of IT applications are today transforming both the practices and the structure of the profession, as mentioned above. Although some tools are common to all the legal and judicial professions, the focus here will be on court organisation and the support that IT can give to the actual work of a court.

Assistance for staff, the primary area of IT use within courts as a means of advancing legal certainty

43. IT first began to have an impact in the courts by replacing typewriters for the drafting of decisions, as well as by automating a number of repetitive tasks. Non-judicial staff and non-prosecutorial staff, who assist judges, followed by judges and prosecutors themselves, have made use of these tools so as to achieve considerable productivity gains as regards mass litigation. More recently, legal practitioners have used IT as an aid for the substantive aspects of their intellectual legal work, since it has become the key tool used by judges, prosecutors and registrars and a vehicle par excellence for improved legal certainty[32].

44. **Access to extensive knowledge databases has helped to make judges better equipped for their work**[33]**.** They mainly consist of legislative and case law databases that have been enriched over time and now facilitate searches through bodies of law and make a larger amount of data available to practitioners. Some regard this as progress in terms of legal certainty because the same, and all, sources of law are disseminated to the entire professional community, especially since these databases tend to develop in a number of

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32. See section II.3 of the Checklist, which makes express reference to legal certainty as a quality of justice objective, mentioning for example the contribution made by the use of an internal system for jurisprudence (II.3.2); or, more generally, the use of tools that help to ensure that judges meet the objective of carefully preparing case hearings (II.3.8).
33. Contributing to the implementation of the following items in the Checklist: IV.4.1: "Does the court management promote a culture of knowledge-sharing?"; IV.4.2: "Are sources of legal knowledge available and easily accessible?"; IV.4.6: "Do judges take part in discussion fora on their own rulings: with colleagues from other courts? with regular players, such as lawyers? with other third parties?" IV.4.9 "Is there sufficient opportunity for the self-training of judges and prosecutors?".

countries and are in their format open to all public and free, around a public service of legal data. Others perceive it as a drain on efficiency, because these databases bring along a significant increase in the number of sources and quotations included in lawyers' written submissions, with an attendant loss of hierarchical order regarding the authority of judicial decisions in particular, a phenomenon specific to the construction of these databases. In some countries the development of databases is alleged to have helped change the legal reasoning of practitioners, whose argumentation is less principle-based and more case-based as a result of the profusion of references to past judgements. In the context of computerised knowledge bases, mention can also be made of the development of online learning methods underway in European schools and training establishments, which in the case of the most recent platforms add multimedia and interactive learning formats to existing virtual libraries – tools that very broadly disseminate details of judicial practices and experience among all professionals, expanding upon the mailing lists that began to develop between judges at the early days of the Internet.

45. **The possibility of remote access to electronic court records amplifies cooperation arrangements within courts**. Initially designed for sharing information within the department concerned[34], access to electronic files now not only permits information to be shared between departments (when legally possible) but also enables judges in some cases to work from any location, such as their home or an office made available at a place other than the court in which they sit, while at the same time remaining in contact with their colleagues and using the same work tools. This has made it possible in some cases to adopt a new approach to the office space available in court buildings, whereby the permanent physical presence of staff on the court premises has become an optional working arrangement. A reduction in the amount of office space or the introduction of office sharing has been accompanied by an increase in, or designation of spaces for, social interaction. According to some sources, although online work increases flexibility and efficiency in many cases, it must not have the effect of eliminating the need for physical contact between professionals at the level of the court, or of reducing their number, but should instead serve as a reason for redefining the conditions under which they are received by the courts.

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34. Cf. the added value in terms of the quality of justice provided according to the Checklist by the following points: a judge's knowledge in real time of the state of pending cases in his/her department (II.4.1), information that may even be shared within the court (II.4.3); or as a tool in support of a policy for preparing hearings (II.5.1).

46. **The use of IT tools for procedural measures outside the courtroom increases the judge's powers and effectiveness when travelling.** As in the case of the police services and all the professions (such as bailiffs, when travelling, and courtroom lawyers) it has become possible for judges to work outside the office thanks to the development of mobile apps and the general availability of access to secure Wi-Fi networks. These 'mobility' tools make it possible to broaden the scope for judges to take on-the-spot evidence (for example, at a crime scene or a place where evidence is recorded) by making it easier for them to exercise their powers immediately and to take a better informed, approved and immediately communicated decision. For instance, through a direct interaction on the spot with the person whose consent or signature is obtained, in the case of a guardianship court. They also reduce the time taken to process information, an operation that does not have to be repeated on the judge's return to the court. In criminal cases, the consultation of criminal records from the place where the offence has been committed can provide better knowledge of the past history of the individuals concerned (especially given the interconnection of European judicial records) and thus improve prosecutorial decision-making.

47. **Judges' use of judgement templates and guides is proving to be a factor for ensuring the consistency of judicial practices.** The use of templates has enabled many courts to maintain a good standard of efficiency with regard to processing simple and repetitive cases. Together with grids for analysing cases by subject-matter, which serve as guidance for judicial reasoning, they ensure more consistency in judicial decision-making, which some believe leads to more equal treatment and greater predictability for parties to proceedings[35]. IT enables knowledge and practices to be shared within a professional community (judges responsible for supervising the execution of sentences, district judges, family court judges, etc.) in order to make better use of the collective intelligence of judges and prosecutors and disseminate good practices as standards to be met, so that the best practices

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35. It is in these terms that the rapporteur for Council of Europe Parliamentary Assembly Resolution 2081 (2015) sees the contribution of decision-making tools (here in criminal cases): "Sentencing support systems provide judges responsible for sentencing decisions with easy access to sentencing information on similar cases, whilst not restricting the judges' judicial discretion, with the aim of ensuring greater consistency in the practice of different courts and thus fostering equal treatment and legal certainty. (…)Technologies such as electronic case law databases and sentencing support systems may contribute to fairer, more equal and more predictable outcomes", Report, Doc. 13740 of 31 March 2015, paras. 65 and 66.

benefit the greatest number of people. It would therefore seem appropriate that templates should initially be based on sharing and exchanges between several judges and lawyers, be regularly updated and on no account result solely from the input provided by legal or software publishers[36].

48. **IT has gradually developed as a means of facilitating decision-making,** enabling easier access to a mass of information or making a complex case more easily understood. In such a context, decision-making by judges and prosecutors can be both strengthened by the amount of additional information made available to them to bring their case to a close, and strongly influenced by the profusion and nature of the information generated by IT systems and the links between individual items. Belief in an item of information as being the most recent and most reliable (linked to the methods of bringing cases before the courts) and the structuring of the information which is invisible to the user but presents the results of an application or evidence in a hierarchical manner (linked to the supposed neutrality of the algorithms): all of these elements are inherent in the information system and must therefore not only be guaranteed in terms of quality and neutrality but also brought to the knowledge of users in a format they understand. This applies especially to judges, whose independence when reaching a decision also depends on their ability to exercise caution with regard to the information system available or to free themselves from its constraints. As the CCJE notes in its aforementioned Opinion (2011)14: "The aids to judicial decision must be designed and seen as an ancillary aid to judicial decision-making, and to facilitate the judge's work, not as a constraint. (…) Instructions, templates or other suggestions as to form or content of decisions should not be addressed to judges by whatever other authority on the basis of needs reflecting the architecture of IT systems to be employed in the judicial process; rather, this architecture should be flexible, and ready to adjust to judicial case-law or practices"[37].

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36. The questions posed by the use of judgement templates and the limits thereto can be found in the following items in the Checklist, III.5.1: "Are the pronouncement and the reasons for the decision made by the judge comprehensible?; III.5.2: Are the reasons for the decision detailed and systematic?"; III.5.3: "Do the reasons for the decisions demonstrate a clear guidance for the parties and legal professionals of the fairness and lawfulness of the decision?"; III.5.4: "Are there specific rules and standards used for the presentation of judicial decisions?"; III.5.5: "Are the expectations of the parties, the lawyers, the lower or higher courts sufficiently taken into account when drafting judicial decisions?"; III.5.6: "Are 'standard' decisions and rules used for 'bulk' cases?".
37. Opinion No. (2011)14, op. cit., paras. 27 and 35.

49. **Respect for the principle of independence nonetheless requires that all judges can and must ultimately reach a personal decision after a reasoning process for which they must be able to assume personal responsibility, without regard for the IT tool used**. The use of templates and guides to deliberations must therefore not deprive judges of their decision-making capacity at any point in the chain by imposing on them a form of reasoning from which they may not depart if they so wish, or by confronting them with a workload that gives them no opportunity to reconsider the form of reasoning inherent in the IT tool. The European Court of Human Rights, while accepting that judges may resort to simplified deliberation processes in some circumstances, points out that they continue to be duty-bound to conduct a proper examination of the submissions, arguments and evidence adduced by the parties.[38] In its aforementioned Opinion (2011)14, the CCJE is categorical on this: "IT must not prevent judges from applying the law in an independent manner and with impartiality (…) over dependence on technology and on those who control it can pose a risk to justice. Technology must be suitable for the judicial process, and for all aspects of a judge's work. Judges should not be subject, for reasons solely of efficiency, to the imperatives of technology and those who control it"[39].

50. **A guarantee of the adversarial principle and equality of arms must also be provided in the same way as in proceedings without IT in** the light of the technological tools made available or which may be used by all the parties at their own discretion. The proceedings at the hearing stage must grant all the parties access to the same tools (for example, a tool for carrying out searches in a digital file) and guarantee that the technical limits imposed by the IT tool do not adversely affect the parties' rights and privileges. As the CCJE points out, "the use of IT should not, however, diminish the procedural safeguards (or affect the composition of the tribunal) and should in no event deprive the user of his/her rights to an adversarial hearing before a judge, the production of original evidence, to have witnesses or experts heard and to present any material or submission that he/she considers useful"[40]. The judge must at any rate be careful to ensure that no party is placed at a disadvantage as compared with another just because it does not have the resources to access the technology, especially electronic document management when the case-file is particularly voluminous, and also, for ex-

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38. ECtHR, decision of 21 March 2000 in the *Dulaurans v. France* case, Application No. 34553/97.
39. Opinion No. (2011)14, op. cit., paras. 8 and 34.
40. Opinion No. (2011)14, op. cit., para. 28.

ample, in the event of reconstruction of the facts by means of computer-generated images in a liability case.

51. **The use of big data as an aid for judges heralds the emergence of predictive justice.** This is a trend that is underway in some countries, where big data analysis tools are intended to provide support for prosecution, sentencing or compensation policies or help to anticipate the effects of a judgement (criminological analysis of a population or territory, scales for the payment of maintenance or compensatory allowances, assessment of the risk of re-offending). Some tools enable sophisticated analysis of case law in order to inform judges how likely it is that a decision in one direction or another has been taken by their peers. Other tools enable the situation to be put into context using statistical data unrelated to the case. With this type of system, the judge's own input into the judgement may be either supported or skewed by the effects of over-determination or "anchoring". The greatest caution must be exercised to these effects, as well as the nature of the data when it is not strictly the case law (e.g. the identity of judges, for profiling purposes).

52. The following chart gives a graphical overview of the points made above.

Benefits identified	Points to note
▶ Improvement in the formal quality of decisions	▶ For pre-established templates, ensure their quality (working group) and regular updates
▶ Access to large legal data bases	▶ Design tools in such a way that the judge retains the possibility of taking back control over the system at all times
▶ Time saved by the electronic administration of evidence	
▶ System facilitates remote working or the fairer distribution of cases among judges	
▶ In criminal cases, guarantee of acquiring a good knowledge of the past history of the accused to increase the number of individually tailored decisions	

Possible developments	Potential risks
► Lever to improve the dissemination of case law ► Harmonisation of practices with regard to the drafting and reasoning of judgements	► The decision should not be influenced by the constraints of a computer system ► The system should not undermine the independence of judges or cause a breach of the equality of arms between the parties ► When designing databases, need to ensure the neutrality of consultation criteria and that users understand them ► Risk of depriving the judge of his/her decision-making capacity or of confining his/her power to judge within too formal a framework (as a result of an excess workload leading to automation of the tasks performed or reliance on standard judgements)

Sample of tools deployed in Europe for assisting judges, prosecutors and registrars

Germany (Brandenburg): SAS - Justice used in the Public Prosecutor's Offices – Document templates and drafting assistance for prosecutors, including a voice input system and linked to a prosecution management system *[source: 2009 Crystal Scales of Justice]*

Germany: forumSTAR – System designed to facilitate the work of all judges and communication between judges on the basis of easy-to-use professional modules *[source: 2016 survey]*

Azerbaijan: e-Court system – Case management tool coupled with decision templates *[source: 2014 Crystal Scales of Justice]*

France: OARM – Drafting aid based on decision templates and ready-for-use arguments used in family cases *[source: 2016 survey]*

France: Persée – Tool developed for use with tablets to provide assistance with preparing and holding criminal hearings, including a function for integrating case data and documents into the diary, as well as assistance with drafting decisions using templates shared with professionals, a complete legal and case law database and samples of reasoned arguments *[source: 2016 survey]*

Ireland: Winscribe – Dictation system with voice recognition available on request to Supreme Court, Court of Appeal and High Court judges *[source: EVAL 2016 –2014 data]*

EU countries: ECRIS – European Criminal Records Information System, which organises the sharing of information between the EU member States concerned *[source: EVAL 2016 – 2014 data]*

United Kingdom (Scotland): Judicial Hub – Online training and collaborative work platform open to all judicial staff and accessible from different types of device *[source: 2015 Crystal Scales of Justice]*

United Kingdom: Professional Court User Wi-Fi – Equipping of criminal courts with Wi-Fi access for professionals on a secure network, available for use during a hearing (data consultation, document sharing) *[source: 2016 survey]*

United Kingdom: In-Court Presentation – Equipping of courts with means of easily connecting the computers of professionals to the on-screen courtroom-sharing system for the presentation of arguments and evidence in multimedia format *[source: 2016 survey]*

United Kingdom: HMCTS Store and Magistrates Bench Devices – Secure file-sharing system based on cloud-computing technology, the aim being to permit the electronic transmission of documents between the prosecution services and the court in criminal cases as they are presented at the hearing on a connected tablet *[source: 2016 survey]*

Overview of the rate of development of tools for assisting judges, prosecutors and registrars

Table 3: Direct assistance for judges, prosecutors and registrars in 2014

	Communication between courts and law yers	Tools for improving the relationship quality between courts and professionals				Electronic signature	Online processing of specialised litigation
		Communication with other professionals					
		Enforcement agents	Notaries	Experts	Judicial police services		
Albania	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Armenia	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Austria	Yes	100%	100%	100%	100%	Yes	Yes
Azerbaijan	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Belgium	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Bosnia and Herzegovina	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
Bulgaria	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Croatia	No	0% (NAP)	10-49%	0% (NAP)	0% (NAP)	No	No
Cyprus	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Czech Republic	Yes	100%	100%	100%	100%	Yes	Yes
Denmark	Yes	50-99%	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Estonia	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Finland	Yes	100%	100%	100%	100%	No	No
France	Yes	50-99%	NA	100%	10-49%	Yes	Yes
Georgia	Yes	0% (NAP)	50-99%	0% (NAP)	0% (NAP)	No	No
Germany	Yes	10-49%	NA	1-9%	NA	Yes	Yes
Greece	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Hungary	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Iceland	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Ireland	Yes	0% (NAP)	NA	0% (NAP)	0% (NAP)	No	Yes
Italy	Yes	0% (NAP)	100%	100%	100%	Yes	No
Latvia	Yes	50-99%	0% (NAP)	50-99%	0% (NAP)	Yes	Yes
Lithuania	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes
Luxembourg	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Malta	Yes	NA	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
Republic of Moldova	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Monaco	Yes	0% (NAP)	0% (NAP)	50-99%	50-99%	No	No
Montenegro	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Netherlands	No	NA	0% (NAP)	NA	NA	No	No
Norway	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Poland	Yes	0% (NAP)	100%	0% (NAP)	0% (NAP)	No	Yes
Portugal	Yes	100%	100%	NA	50-99%	Yes	Yes
Romania	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes
Russian Federation	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Serbia	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Slovakia	No	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	No
Slovenia	Yes	100%	100%	0% (NAP)	0% (NAP)	Yes	Yes
Spain	Yes	0% (NAP)	100%	100%	100%	Yes	No
Sweden	Yes	100%	0% (NAP)	100%	NA	Yes	No
Switzerland	Yes	50-99%	50-99%	50-99%	0% (NAP)	Yes	Yes
"The former Yugoslav Republic of Macedonia"	Yes	10-49%	10-49%	0% (NAP)	0% (NAP)	Yes	No
Turkey	Yes	100%	0% (NAP)	100%	10-49%	Yes	No
Ukraine	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
UK-England and Wales	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
UK-Northern Ireland	Yes	0% (NAP)	0% (NAP)	0% (NAP)	0% (NAP)	No	Yes
UK-Scotland	Yes	50-99%	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No
Yes	74%					46%	37%
No	26%					54%	63%
100%		15%	17%	17%	11%		
50-99%		11%	4%	7%	4%		
10-49%		4%	4%	0%	4%		
1-9%		0%	0%	2%	0%		
0% (NAP)		65%	65%	70%	74%		
NA		4%	9%	4%	7%		
Israel	Yes	0% (NAP)	0% (NAP)	100%	0% (NAP)	Yes	Yes

Court administration

53. Court administration tools are mentioned last, even though in their simplest form they were among the first uses of information technology in courts. From simple recording of the number of cases dealt with by a court to today's systems for managing all judicial activities, the power of IT has resulted in dramatic changes in the field of judicial administration, as it provides chief administrators of courts as well as all judges, prosecutors, registrars or other members of court staff with comprehensive information on their work and the ability to analyse it. The ever-increasing quantity of information generated by more and more numerous IT applications constitutes an unprecedented reservoir of data and metadata for running a court and has become a key component everywhere. It is in fact a real backbone of judicial work.

A driver of change for the managerial efficiency of courts

54. The use of information systems for the administration of justice goes back several decades and has undergone many developments as IT has itself developed, and experienced a number of failures too. These failures, rather characterised, depend sometimes on details, and can be summarized to the following frequent cases encountered by the European judicial systems: inadequate documentation or no documentation allowing full appropriation of the system, particularly when it is supplied by a service provider; the use of out-dated or marginal technology causing the rapid obsolescence of the information system in which it was invested; partial or insufficiently rapid development of the information system leaving different situations over a too long period, which at the end makes impossible a proper management; insufficient training or underestimated means causes that the best system in the world has no chance to be really invested by its users; an inadequate analysis of the needs finally leads to a marginalized product favouring old practices; a lack of assistance for users to quickly correct recurring errors or defects in the system in the early days of its deployment. The state of development and especially the quality of IT system of administration of justice vary at present amongst the judicial systems of the Council of Europe. The first to have embarked on this course are not necessarily the most advanced today, as they are burdened by big investments in old IT applications that are still operational and continue to carry out the role assigned to them at the time but permit neither extensive updating nor additional functions, let alone interconnections with other, more recently developed, application software. In other cases, judicial systems comprise a variety of courts, for

each of which it has been, or still is, necessary to develop specific administrative tools. Whatever the level of computerisation achieved and the extent of the difficulties encountered in the past, all judicial systems without exception seem to have set about constructing "new generation" systems for the administration of justice that promise to achieve unsurpassed managerial efficiency.

55. **Case management was the first area to be computerised and this happened faster and more extensively than in any other area[41].** By replacing the management of paper registers with electronic databases managed by staff duly trained for the purpose, case management systems have improved over the years and put behind them the frequently unfortunate experiences of their early days. Initially designed as separate, closed systems, these applications are today at the heart of judicial organisations and regarded as the core of a larger information system that integrates or brings together some very advanced features based on the import and export of data generated by other applications. Case management systems, which are of key importance for court administration and the allocation of the resources needed to try cases according to case flow and backlog data, produce the main input for the statistical apparatus available to courts, ministries and judicial councils[42]. They naturally also serve as benchmarks for court registrars and staff as far as the situation in their own offices is concerned[43]. As they are connected to personal assistance tools, the most advanced systems enable the monitoring of a case to be linked to the various applications already mentioned: hearing schedule, summons systems, electronic document management, decision templates, etc.

56. **These tools have, even more than others, facilitated the dissemination of the principles of New Public Management within courts** by structuring the work of registries in particular around new work organisation patterns. This has also affected the work of judges, for whom some countries have developed assessment policies based primarily on quantitative crite-

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41. In accordance with item II.9.1 of the Checklist: "Does a case management information system exist for the recording and monitoring of court files and cases?".
42. Compare with the following items in the Checklist, II.10.3: "Does the court management periodically evaluate court performance?"; II.10.13 "Is it possible to determine the total number of incoming, pending and decided cases in a given period?"; II. 10.14 "Is the nature of pending cases systematically analysed?"
43. See item I.3.1 of the Checklist: "Does a system exist to monitor the workload of each judge continuously?"

ria and on objective measurement by means of information technology[44]. Generally speaking, the statistical and IT tools to aid decision-making have enabled numerous schemes for modernising performance-based public management policies to be supported: annual distribution of budgetary and human resources correlated to case flow and backlog data, for example, by the administrative body that allocates the resources, plus distribution of resources during the year by the head of court[45]. These tools have also enabled Active Case Management solutions to be developed[46]. These are solutions that make it possible, for example, to correlate the progress of a case with the procedural timetable, permitting precise calculation of the case timelines, analysis of actions undertaken by the parties and a system to issue alerts regarding the urgency of taking action in a particular case – tools put in place that, in particular, make it possible to anticipate breaches of the reasonable-time rule enshrined in Article 6 of the European Convention on Human Rights[47].

57. Court administration applications, which are associated with tools for communicating with users and professionals and for assisting court staff, are at the very heart of a judicial information system as they can potentially breathe life into all these components and harmonise all the procedural and data models, thus structuring professional practices and local policies around the flow and analysis of information. As the information technologies are becoming a vital court reorganisation tool owing to their ability to

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44. See the following items in the Checklist: II.10.16 "Does a quantitative and qualitative evaluation system regarding the activity of each judge exist?"; II.10.18 "Is each judge granted access to the information regarding his/her own court department, his/her colleagues' department as well as to the data regarding the whole court?"
On the subject of evaluation, the Consultative Council of European Judges believes that IT "can play a role in relation to the evaluation of judges and courts. However, data collected from IT systems should not be the sole basis for analysis of the work of an individual judge", Opinion No. (2011)14, op. cit, para. 39.

45. In accordance with the following items in the Checklist: I.3.2: "Does the court have the possibility to reassign cases or assignments in order to increase efficiency in the court?"; II.5.5: "Is there an information system which is used for determining an efficient schedule of court sessions?".

46. Tools enabling the implementation of the following items in the Checklist: II.6.3: "Is there a policy for managing case flows preventing delays?"; II.6.4 "Are measures taken to speed up delayed cases and to reduce the backlog?"; II.7.4: "Is the timeframe between the final decision of a judge and the execution of the judicial decision periodically monitored?".

47. See on this subject the study by F. De Santis, "Actions to improve the functioning of justice and relieve judicial systems", CEPEJ-GT-QUAL(2016)1, scheduled to appear in late 2016, especially section 3.3 entitled "Computerisation of case registration and management and digitisation of casefiles and communications".

modify simultaneously the entire processing chain in all its dimensions (organisational, human, budgetary), their development is proving particularly important in strategic terms. It must not be left in the hands of programmers alone and needs to involve all users[48].

58. **The development of complete information systems makes the method of electronic administration a key source of vulnerability for judicial activities.** This vulnerability is twofold in nature: it can be both due to human error and IT-related. Many countries, even the most advanced, appear to be experiencing significant problems regarding the quality of recording of data in the information system, and such problems often remain an obstacle to the full, trouble-free use of the potential of IT. The information input stage is error prone (producing not computer errors but «bugs» in judicial procedures) and can be seen to constitute an even more important issue than the tendency of all users not to question the result produced by the machine. Data quality policies accordingly need to be put in place at both the national and local levels. For example, attention needs to be paid to the training and qualifications of data input staff, random samples should be taken to test the quality of data packets, and it is necessary to raise the awareness of everyone involved. Also, as regards human errors, significant differences between figures produced by IT applications and the perceived reality within courts raise important questions. Although they too can be ascribed to incorrect recording of the information, either because the software is not very user-friendly or because staff are insufficiently trained or qualified, analysis of data and, especially, their interpretation by senior judicial administration staff and users must not only be of a high standard, but must also be transparent and based on shared methods if they are to constitute genuine management tools accepted by all concerned[49].

59. As far as IT system vulnerability is concerned, while full systems have clear advantages in terms of data consistency, the resulting concentration

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48. See the second part of these Guidelines, in particular paragraphs 2.4 and 2.5. See also items V.2.4 and V.2.5 in the Checklist: "Does the information recorded in the court management information system give an overall picture of the court's performance?"; "Can the analysis of the data recorded in the court management information system be performed by all the court's staff (or authorised staff) or can only specialised staff (for example IT professionals) exploit these data?".

49. See for example item I.3.4 of the Checklist: "Has the court management defined an objective method for allocating cases between judges?"), elaborated on in the following question (I.3.5): "Is the information on the allocation of cases made available to the whole court organisation?".

entails many risks, and the system's technical reliability must therefore be rigorously guaranteed (by ensuring widespread availability of the necessary infrastructure), which can lead to considerable maintenance costs. The non-availability of such applications, which are real driving forces for making the courts more efficient, is a risk that must be seriously taken into account by judicial systems as it can quickly lead to the creation of a large backlog and jeopardise the expected benefits (in addition to the financial costs involved in an urgent response). As the Consultative Council of European Judges points out, "it is particularly important to ensure that difficulties in the functioning of IT do not prevent the court system, even for short periods, from taking decisions and ordering appropriate procedural steps. Appropriate alternatives should always be available whenever the IT system is under maintenance, or when technical incidents occur, in order to avoid any adverse impact on court activity"[50].

60. The developers of the most efficient IT systems have apparently foreseen several measures to counter a sudden total breakdown. First of all, the system is designed around software building blocks that communicate with one another. It is then possible to interrupt the operation of one of these communications for security or maintenance purposes instead of bringing the whole system to a halt (at the same time, this modular construction enables tools to be gradually made available and blocks to be updated and renewed one by one). Precise, clearly established protocols that are known to everyone and are tried and tested (both technically and at the legal level) must also be put in place to remedy a possible breakdown and clear the way for the system to be up and running again at the earliest opportunity, at the least cost and with the least possible damage to the service and its users. This means that all staff have to be trained for this even though the risk of an IT failure may be considered minimal.

61. **The transition from paper files to fully electronic court files is, however, far from being completed in the Council of Europe member States**[51]**.** Paper-based files are still a physical reality, indeed essential, in most European courts. This is mainly for evidence purposes since not all countries attach the same weight to paper evidence and its paperless equivalent. The same applies to documents exchanged between the parties and placed in the files, which in this transition period entails digitisation procedures and costs,

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50. CCJE Opinion No. (2011)14, op. cit., para. 11.
51. Compare with item II.9.4 of the Checklist: "Does a court system of electronic files exist?".

followed by archiving procedures and costs, which are redundant compared with the costs of investing in and running IT systems under development. Countries therefore now very often maintain two management workflow systems: paper-based to ensure the evidentiary value of documents and paperless for easier and swifter communication (essential in particular for large files). The prospect of justice with no paper (or almost) remains an objective for all countries, not without noting that the transition process will take time, and sometimes without knowing precisely if and when the goal is reached.

62. **The managing and handling of paper documents and any remaining physical media can be facilitated by employing a tagging system**, such as use of labels that can be scanned for incorporation into databases or, even better, a system where files, documents and seals are marked with RFID chips. The ability to geolocate files, documents and seals in real time on a map of a judicial building, and possibly outside the building, significantly improves document management performance according to those who use a judicial system that offers this possibility.

63. **One fast-developing field is that of making audio and video recordings of hearings on a digital medium for the use of the court and the parties**. The assumptions is that this enables the administration of justice to be carried out more efficiently when combined with the case management system and with the tools available to professionals (judges, registrars and, sometimes, prosecutors and lawyers), such as note-taking tools, and, of course, the record of the proceedings. The idea of recording proceedings from end to end, including the possibility of supplying a recording of the delivery of the decision as an enforcement order, or of using the recording of the trial as a support for the appeal proceedings is currently gaining momentum in a number of countries. This development, which certain judicial systems are already undergoing to varying degrees, is raising a number of new, IT-related issues (data integrity, survivability and security), for example when it comes to archiving all these multimedia data stored on servers. It also brings about other, more profound, non-IT related changes, in terms of modifications to court rituals, the necessarily greater importance attached to the orality principle in proceedings or the role devolving to appeal proceedings and other legal remedies in general on the basis of recordings.

64. The following chart gives a graphical overview of the points made above.

Sample of tools for the administration of justice deployed in Europe

Albania: ICMIS – System for the fully computerised tracking of cases brought before the courts *[source: 2016 survey]*

Azerbaijan: e-Court system – Case management tool coupled with decision templates *[source: 2014 Crystal Scales of Justice]*

Finland: Sakari – Integrated system for the management of the criminal justice chain between the courts and prosecutors' offices *[source: 2016 survey]*

France: Cassiopée, Minos – Combined criminal case management tools for the trial stage (covering both the activities of the Public Prosecutor's Office and of the court), structured exchange of data on judicial proceedings with the investigation services of the Ministry of the Interior in order to reduce data entry operations *[source: 2016 survey]*

France: PHAROS – System for monitoring the work of trial and appeal courts, integrating quantitative and qualitative parameters and involving the production of management information schedules and comparative data specific to the type of court *[source: 2016 survey]*

France: Pilot – System for managing the schedule of hearings and the resources allocated to them *[source: 2016 survey]*

France: OUTILGREF – Tool for the management and distribution of work among registry officials. Application for assessing the workload of registry staff and courts' staffing requirements on the basis of indicators that measure the case flow at the court concerned *[source: EVAL 2016, 2014 data]*

Georgia: COURT – Integrated case management system with work space for professionals and communication by Internet *[source: 2016 survey]*

Greece: ICMS-AJ (Integrated Case Management System for Administrative Justice) – Computerised system for the management of cases before the administrative courts in the form of a portal open to parties, together with a system for the electronic exchange of documents from one procedural stage to another and, finally, the production of case statistics, all available in several languages *[source: 2016 survey]*

Norway: LOVISA – Advanced case management system enabling each judge, especially the court president, to ascertain the status of a case and the number of cases currently being dealt with by each judge. The system

includes the proactive management of procedural deadlines using colour coding *[source: EVAL 2016, 2014 data]*

Poland: Audio Protocols in Courts – Recording of hearings with an indexation system linked to the case management interface and to the notes taken during the hearing by the judge and the registrar *[source: 2016 survey]*

Poland: Information management system based on RFID technology – Systematic labelling of documents and paper files of proceedings for geolocation purposes *[source: 2016 survey]*

Portugal: CITIUS – Combined case management and communication system in the form of a single portal for the interconnection of applications used by justice professionals, part of which can also be accessed and navigated by the public *[source: 2016 survey]*

Portugal: SITAF – Equivalent of the CITIUS portal for administrative and tax courts *[source: 2016 survey]*

Slovenia: Judicial Data Warehouse and Performance Dashboards – Tool for the real-time monitoring and management of the activities of the Supreme Court *[source: 2012 Crystal Scales of Justice]*

Slovenia: EVIP – Centralised case management system *[source: 2016 survey]*

Slovenia: Presidents' Dashboards – Complete statistical information tool enabling court presidents to ascertain the allocation of resources and productivity within the court in real time *[source: EVAL 2016, 2014 data]*

Switzerland: Judicial statistical database – System enabling the cantonal judicial authorities to make comparisons, if desired, with other cantons in order to justify requests or provide the reasons for a request or document specific judicial organisation projects *[source: 2016 survey]*

Turkey: UYAP – Centralised case management and information system on the state of proceedings in the form of a portal for both professionals and litigants, including a large number of interactive functions *[source: 2008 Crystal Scales of Justice]*

Overview of the rate of development of court administration tools

Table 4: Court administration and case management (Q63)

	Efficiency of the judicial system						Budgetary and financial management	Other tools	
	Electronic Case Management	Computerised registries			Statistical tools	Business intelligence		Workload monitoring	Videoconferencing
		Land registries	Business registries	Other					
Albania	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	1-9%	NA	0% (NAP)
Armenia	Yes	0% (NAP)	50-99%	NA	No	No	0% (NAP)	0% (NAP)	0% (NAP)
Austria	Yes	100%	100%	50-99%	Yes	Yes	100%	100%	100%
Azerbaijan	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	50-99%	1-9%	50-99%
Belgium	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	100%	1-9%	1-9%
Bosnia and Herzegovina	Yes	100%	100%	0% (NAP)	Yes	Yes	100%	100%	50-99%
Bulgaria	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	100%	10-49%	1-9%
Croatia	Yes	50-99%	50-99%	0% (NAP)	Yes	No	100%	50-99%	10-49%
Cyprus	No	0% (NAP)	0% (NAP)	0% (NAP)	No	No	0% (NAP)	0% (NAP)	0% (NAP)
Czech Republic	Yes	0% (NAP)	100%	100%	Yes	Yes	100%	100%	10-49%
Denmark	Yes	100%	NA	NA	Yes	Yes	50-99%	50-99%	10-49%
Estonia	Yes	100%	100%	100%	Yes	Yes	100%	100%	100%
Finland	Yes	50-99%	50-99%	0% (NAP)	Yes	Yes	100%	100%	100%
France	Yes	100%	100%	0% (NAP)	Yes	Yes	100%	100%	100%
Georgia	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	100%	10-49%	10-49%
Germany	Yes	100%	100%	50-99%	Yes	Yes	50-99%	50-99%	10-49%
Greece	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	10-49%	100%	1-9%
Hungary	Yes	0% (NAP)	100%	100%	Yes	Yes	100%	100%	10-49%
Iceland	Yes	100%	100%	0% (NAP)	No	No	0% (NAP)	0% (NAP)	0% (NAP)
Ireland	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	100%	0% (NAP)	10-49%
Italy	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	50-99%	100%	100%
Latvia	Yes	100%	100%	100%	Yes	Yes	100%	10-49%	50-99%
Lithuania	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	100%	100%	100%
Luxembourg	Yes	0% (NAP)	100%	0% (NAP)	Yes	No	100%	100%	100%
Malta	Yes	0% (NAP)	100%	NA	Yes	No	0% (NAP)	100%	100%
Republic of Moldova	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	100%	50-99%	0% (NAP)
Monaco	Yes	0% (NAP)	100%	0% (NAP)	Yes	Yes	100%	100%	100%
Montenegro	Yes	NA	NA	100%	Yes	No	100%	NA	1-9%
Netherlands	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	100%	50-99%	100%
Norway	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	100%	100%	50-99%
Poland	Yes	100%	100%	0% (NAP)	Yes	Yes	100%	1-9%	50-99%
Portugal	Yes	NA	NA	100%	Yes	Yes	100%	100%	100%
Romania	Yes	NA	NA	NA	Yes	No	100%	0% (NAP)	100%
Russian Federation	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	100%	NA	10-49%
Serbia	Yes	0% (NAP)	0% (NAP)	0% (NAP)	No	No	100%	100%	0% (NAP)
Slovakia	Yes	0% (NAP)	100%	0% (NAP)	No	No	100%	0% (NAP)	10-49%
Slovenia	Yes	100%	100%	100%	Yes	Yes	100%	100%	100%
Spain	Yes	0% (NAP)	0% (NAP)	100%	Yes	Yes	0% (NAP)	100%	100%
Sweden	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	100%	0% (NAP)	100%
Switzerland	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	50-99%	50-99%	1-9%
"The former Yugoslav Republic of Macedonia"	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	100%	100%	10-49%
Turkey	Yes	10-49%	50-99%	0% (NAP)	Yes	Yes	100%	100%	50-99%
Ukraine	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	0% (NAP)	10-49%	10-49%
UK-England and Wales	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	No	50-99%	0% (NAP)	50-99%
UK-Northern Ireland	Yes	50-99%	50-99%	50-99%	Yes	No	50-99%	50-99%	50-99%
UK-Scotland	Yes	NA	NA	NA	No	No	100%	NA	100%
Yes	98%				87%	50%			
No	2%				13%	50%			
100%		22%	33%	17%			67%	43%	35%
50-99%		7%	11%	7%			15%	15%	17%
10-49%		2%	0%	0%			2%	9%	24%
1-9%		0%	0%	0%			2%	7%	11%
0% (NAP)		61%	46%	65%			13%	17%	13%
NA		9%	11%	11%			0%	9%	0%
Israel	Yes	0% (NAP)	0% (NAP)	0% (NAP)	Yes	Yes	100%	100%	1-9%

Part Two: From a hardware approach to a strategic approach: developing information systems capable of improving the quality of the service provided by courts

65. In 2008 the Check-list developed by the CEPEJ working group on quality of justice (CEPEJ-GT-QUAL)[52] devoted an entire section to information systems in the chapter on the means of justice. Numerous other references cited throughout the document underlined the usefulness of information technology as a means of achieving certain quality objectives. The growth of cyberjustice, therefore, as the first part of these Guidelines has shown, is as much about improving court efficiency as it is about improving quality in the justice system, both of which are placed in the hands of the technology developers as well as its users. Besides introducing a new tool, therefore, the idea is to collectively cultivate among both developers and users of court information systems new practices that reflect the fundamental principles of justice and the objectives of high-quality service delivery in courts.

66. Following a detailed review of European achievements in the field of cyberjustice, the Guidelines aim to provide some additional information for decision-makers facing what appears from all the feedback to be one of the

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52. Checklist for promoting the quality of justice and the courts (CEPEJ(2008)2[E]).

main challenges in this area, namely how to drive change. If driving change has been chosen as the theme of these Guidelines, it is because this has proven to be a key factor in both the success and failure of policies when it comes to developing and delivering information systems. This second part therefore looks at the various issues which need to be considered when undertaking an IT project, i.e. a number of lessons that can be learned from our experience to date, not this time in terms of substance, as regards the changes under way in the judiciary, but in terms of project management. What Part Two seeks to do, in other words, is to provide a few tried-and-tested keys to the success of any IT project that aims to improve quality in the justice system.

67. The assessments and recommendations which appear in this part draw on the same sources as Part One (in particular the 2014 figures collected by the Working group on the evaluation of European judicial systems, CEPEJ-GT-EVAL)[53] with particular emphasis being given to the data gathering and additional interviews carried out in connection with the qualitative survey conducted in the spring of 2016. A summary of these assessments and recommendations appears in the appendix, in the form of questions which complement the 2008 Checklist and specifically concern the management of IT projects in the justice sphere. Before going into the details of these assessments and recommendations, however, it is important to put the growth of cyberjustice into context, in the light of the cases studied.

Some preliminary remarks on the development of information technology in the judiciary

68. Council of Europe countries typically prefer to proceed in a step-by-step, piecemeal fashion, according to the different types of courts or litigation. This is doubtless due to the fact that in the past, conditions have not been conducive to large-scale IT projects, because of the cost or complexity involved in executing them. For many countries, indeed, the infrastructure projects of the 1990s and early 2000s served as an object lesson in how *not* to proceed, leading them to opt instead for an incremental approach to IT development, one that allows greater flexibility during the development process and delivers one innovation at a time rather than all at once, as will be seen below.

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53. European judicial systems, efficiency and quality of justice: Use of information technology in courts in Europe", CEPEJ Studies No. XX, 2016 edition (2014 data)

69. **It is important to gauge the relative influence of the IT industry and social demand in the technology race before embarking on any IT project.** Public decision makers today can find themselves under considerable pressure to modernise the judiciary through IT solutions which are springing up in all sectors of society. While this trend is naturally in line with developments in public services in general and changes in how citizens interact with their governments, questions still need to be asked at every stage of an IT project about this or that party's interest in seeing one solution adopted rather than another, it being understood that decision makers have a responsibility here to act as guardians of the public interest, guided solely by the concern to promote justice. With IT companies regularly soliciting the judiciary and packaging their offerings using sophisticated marketing tools, a number of questions should go through the minds of decision makers when approached in this manner: is there a demand for the IT solution on offer? Does the said solution meet an identified need in the case of the organisation concerned? How will it help to improve quality in the justice system? Of all the possible solutions, both IT-based and non-IT-based, is this one the most likely to achieve better quality of justice in the area in question?

70. **It is also important to maintain a certain detachment from everyday technological applications,** rather than seeking to blindly replicate them in the judicial sphere. Far from shunning any innovation that hails from outside the justice system or public services in general, decision makers should take time to weigh up the costs, benefits and risks for courts, and to get an idea of the nature and long-term viability of the service in question and the added value it can bring to the justice system. In particular, they might wish to consider whether the proposed IT solution is detrimental to the image of the justice system, or whether, on the contrary, it is apt to enhance it.

71. **Information technology should be a means of improving the way the justice system operates.** It should not be an end in itself. IT projects (of any size) must be seen by all the stakeholders (developers and future users) as the chosen instrument for accomplishing certain reforms for the benefit of the justice system (organisational structure, judicial map, simplified procedures, shorter processing times, redeployment of staff, better working conditions, etc.), rather than as a response to pressure from either in-house IT departments (whose sole concern may be to cut costs) or hardware or software companies looking for new business opportunities. Accordingly, as observed by the Consultative Council of European Judges in its opinion on information technologies (IT): "IT should be a tool or means to improve the

administration of justice, to facilitate the user's access to the courts and to reinforce the safeguards laid down in Article 6 ECHR: access to justice, impartiality, independence of the judge, fairness and reasonable duration of proceedings[54]."

72. **Any failure in this area needs to be viewed in the context of the resources allocated and how the projects were designed.** The difficulties encountered by certain judicial systems in using IT tools (with major financial consequences, at a time when budgets everywhere are being squeezed) are not simply a matter of resistance to change on the part of judges, prosecutors, registrars or other legal professionals, but must be seen in the context of the ways and means employed by the individual countries concerned. The risk is, for example, that any approach which focuses on efficiency alone or an overly "technocratic" view of modernisation through information technology will quickly run up against the specific business needs and culture of the judiciary, as it would in any other professional sphere. When designing IT projects therefore, due account must be taken of the many non-technical aspects that will feed into the information system and help ensure that it is of practical relevance once deployed.

73. The changes brought about by the introduction of information technologies need to be supported. The deployment of hardware and software alone may have been perceived as a modernising factor per se, helping to make courts more efficient. The feedback received, however, has been much more mixed, showing that there are limits to what can be achieved merely by deploying new technologies on the ground: under-utilised hardware and/or software, adherence to old ways, widespread resistance to the new technology, attempts to bypass it, etc. Conversely, better results have been achieved in terms of take-up and correct use where the IT upgrade is part of a wider strategy for change that allows sufficient room for measures to support everyone affected, in order to convince them of the individual benefits to be gained. If the coaching of staff has become an essential part of any IT projects, it is because it has demonstrated it can reach opposite objectives: better rate of application and stronger diffusion of the implemented tools, right application in line with the proposed goals. This can be explained by the fact that any IT development is part of a global change strategy, which requires that any person affected by this change is convinced of the indi-

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54. CCJE Opinion No. 14 (2011) "Justice and information technologies (IT)", §5.

vidual benefit s/he can gain from the adoption of a new methodology or a new working tool.

74. **It is vital to conduct a comprehensive review of existing technologies before embarking on projects of some size.** The first step is to ascertain precisely to what extent the IT policies and practices applied to the judiciary at large have been adopted in the justice system in question, rather than relying on impressions, one subject matter, technology or profession at a time. A better understanding of existing provision and a 360-degree view will make for a finer appreciation of the challenges involved and enable a proper strategy for change to be developed, by identifying all the existing connections between users and beneficiaries, both direct and indirect, and the likely impact on each one[55].

75. **The issue of security in the context of information systems needs to be handled pragmatically**. As has already been mentioned[56], with the use of IT comes the fear of a rise in the number of security breaches that would jeopardise the integrity of the judicial system and the data it handles. While cyber threats are a very real danger for justice systems as for any other administration or private organisation, there are, of course, ways of preventing them (e.g. by reducing the risk of an attack occurring) and/or mitigating their effects (e.g. by planning in advance the right course of action in the event of an attack). Less gravely, the shift to digital data has prompted concern that systems may be more vulnerable to theft and/or the editing or erasure of data as a result of unauthorised access by external hackers or malicious internal users. Although such risks are not, in themselves, unique to the digital age (in every country, there have been cases in the past where paper documents have been stolen or tampered with, or gone missing), the fear here is of a large-scale attack.

76. Fortunately, IT departments have ways of dealing with all these risks. What is required, however, is for justice systems to come up with pragmatic answers to the question of how secure information systems need to be. Firstly, digital systems, if only because of detection and warning tools designed to guard all the data and entry points in the network are in many cases more

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55. In this respect, point V. 2.1 of the Checklist mentions the need to develop "a policy on the use of information and communication technologies in courts (e-justice, video-conferencing, electronic data exchange, etc.)".
56. See the comments on this subject in Part One of the Guidelines, Sections 1.2.1 regarding the development of electronic communications and 1.4.1 on the vulnerability of fully electronic justice systems.

secure than old-fashioned paper systems, where losses, thefts and/or destruction of data can be commonplace. Secondly, between security that is so lax it endangers the digital system and security that is so tight it stifles any initiative, a middle way needs to be found and clearly articulated in a policy that seeks to manage risks, rather than simply avoid them[57].

77. **Comparison is a useful exercise of an IT project**. Comparisons can be made first within the organisation, to ensure technical compatibility with the other information systems already in use, or which might be used, by courts in the justice system[58], but also more widely: in other administrative authorities, or in other professional sectors. Something else that needs to be borne in mind is the possibility of judicial information sharing for inter-state co-operation, in criminal and civil matters, which, if it is to develop further, requires a minimum level of interoperability, through the creation of platforms enabling information systems to communicate with one another (see the European Union's E-Codex initiative, mentioned above). Comparing one judicial system with another may also prove helpful when developing a domestic IT tool, enabling one country to benefit from the experience and good practice of another within the European area. This is especially true at a time when open source solutions are becoming increasingly popular, greatly increasing the opportunities for such exchanges in the legal sphere and indeed for creating a community of developers working in the judicial sphere in different countries.

78. There are, of course, limits to the extent to which one country's experience can be compared with another's. In particular, a distinction needs to be made between countries with a highly centralist culture and federal countries or countries which are made up of several entities. Countries also differ in terms of the number and type of authorities involved in managing judicial resources, and even in terms of how the departments responsible for innovation and IT within those authorities are organised and governed. The institutional differences that exist between countries may thus have a direct impact on how IT projects are conducted and how change is man-

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57. See the following points of the Checklist, V.3.7 "Has the court management drafted a policy regarding physical and IT security of the court?"; V.4.4: "Is the security of information systems guaranteed?"; V.4.5 "Is the risk of loss and material damage covered?"

58. In accordance with point V.2.3 of the Checklist: "Are the developments of human resources information systems in line and in conformity with the (technical) specifications of the other operational court systems (i.e. case management information systems, financial information systems, etc.)?"

aged, which is not to say that developers cannot learn from other countries and pick up good practices, provided of course they are adapted to the new context before being applied to the justice system in question.

Start by setting clear objectives, free from all technical considerations

79. Any policy for improving the quality of justice through IT must be able to be formulated via clear, measurable and verifiable objectives, with technology being seen as a means rather than an end. Part and parcel of a strategy for modernising the justice system, it seeks to implement this strategy using a specific tool which should be treated as one of a number of options.

80. **It is often said that changes in the field of cyberjustice should be court-driven, not technology-driven.** This implies that organisations must be able to set modernisation objectives free from any concerns related to the information technology itself. This is an essential condition for the success of any project, without which there is a risk that it will fail to serve the interests either of those who use the courts or of those who work in them and will, if anything, ultimately undermine confidence in the judiciary as an institution. As pointed out by the rapporteur in the Council of Europe's Parliamentary Assembly Resolution on "access to justice and the Internet", mentioned above, "technology developers should strive to better understand the justice system and collaborate with judges and court staff to ensure that ICT architecture meets the needs of both the courts and the public"[59]. No doubt justice officials can play a significant part in ensuring that this dialogue takes place.

81. **The objectives assigned to the change must be able to be linked to promoting the judicial values**[60] commonly accepted and enshrined in law in the European area, so that the proposed technical solutions can be harnessed for the purposes of the justice system and to the task of improving its quality, at every stage of the project and in every detail of the information system being introduced. This prior statement of principles should serve as a guiding vision for the project decision makers, managers and beneficiaries in evaluating and driving change. As pointed out by the Consultative Council

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59. Resolution 2081 (2015), mentioned above. Report, doc. 13918, 10 November 2015, §69.
60. The field of cyberjustice thus fits in neatly with point I.2.1 of the Checklist: "Has the court management defined a mission/vision and a strategy (basic characteristics of the judiciary are to be incorporated in this, such as impartiality, independence, legal certainty and access)?"

of European Judges in the conclusions of its Opinion No. 14 (2011), mentioned above: "IT has to be adapted to the needs of judges and other users, it should never infringe guarantees and procedural rights such as that of a fair hearing before a judge"[61]. A justice system which takes promoting justice seriously as a red line in the design and communication of its project will be more likely to bring people together to drive change.

82. **Deploying an information system requires an audit of the procedures and processes at work in the judiciary**[62]**.** Cyberjustice is an opportunity to overhaul the old methods of organisation and procedural rules in keeping with the fundamental principles of procedural law and judicial organisation. In effect, IT systems in the justice sector upset the balance between procedure on the one hand, which is the full range of legal rules applicable to a given legal action, the rights enjoyed by the various actors involved in the proceedings as it were, and processes on the other, which are the choices we make about how procedural rules translate into a particular form of labour organisation, based on a series of tasks. While work processes within the court are framed by and flow from procedure, the latter is itself defined further up the line, based on possible practices within the court (the rules on traditional evidence having been conceived for exchanging written documents ever since the latter were readily transferable and seen as being reliable, until the move to electronic formats which marks a fundamental change). There is, then, a very close correlation between defining procedural standards and defining work processes. And it is owing to the computerisation of tasks following the advent of information technology in court proceedings that an audit of these tasks needs to be carried out: either because certain procedural rules which were relevant in the past are no longer so today (e.g. the requirement to keep paper copies of documents as proof, or a system of calculating timeframes that is ill-suited to the new temporality of electronic transfers of documents); or because new procedural rules are needed to rein in the computerisation of tasks, so that it complies with basic legal principles (creating access to documents which respects the rights of all the parties involved, in particular the principle of equality of arms, or temporal windows for communication which preserve the adversarial principle). Such an audit should afford an opportunity to update if not simplify the rules governing judicial activity where possible, through the adoption of new pro-

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61. CCJE Opinion No. 14 (2011), conclusion/recommendation No. 4.
62. As broadly recommended by the Checklist in point I.4.2: "Is the implementation of policies concerning changes in the structure of the court organisation regularly evaluated?"

cedural rules if necessary. In any event, care must be taken to ensure that information technology, through its processes, does not lead to a breach of the basic procedural principles recognised by national and European law, at the risk of creating legal uncertainty.

83. **While it is important to take advantage of the introduction of a new information system to carry out parallel reforms in the way the judiciary is organised, this needs to be done pragmatically.** Theoretical restructurings announced by memo or circular will not succeed unless they are underpinned by efforts to redesign existing practices, protocols and rituals around the new technology and the new procedures or arrangements that flow therefrom. Where new legal rules are needed in order to allow the new practices, these must come neither too early nor too late in the schedule for the design and deployment of the technology in question. Not so early that there is a danger the new rules will not fit the technology ultimately put in place, or that users will be left waiting for various rights and powers recognised on paper but not available in practice. Yet not so late that the actual implementation of the new technology risks being delayed.

84. **Financing the innovation requires that return-on-investment calculations be performed right from the project design stage.** Return-on-investment calculations are part of the process of setting clear objectives, timeframes and budgets, and represent an additional obligation on the part of the project developer vis-à-vis taxpayers and users. Provided they are based on transparent and reliable data, return-on-investment calculations can also make it easier to win over finance officials when it comes to securing resources for the project. During the project, the calculations will help to flag up any discrepancies between the projected cost and the actual cost and pave the way for more rigorous controls. Afterwards, too, the return-on-investment calculations will provide an objective measure of how successfully or unsuccessfully the project was managed. Having been revised, if necessary, at the end of the project to take account of the results and in particular the total cost, the calculations of the return on investment of the technology as finally delivered will provide an opportunity to continue engaging in a responsible manner with all the stakeholders involved in the change, by sharing with them long-term objectives that can be measured in the months and years after completion, when the project starts to pay for itself through frequent or intensive use of the technology in question.

85. **When calculating the return on investment, account must be taken of all the costs generated by the operation and any variations therein.**

Not only the capital outlay (CAPEX) for the design and implementation of the new technology (including any change management operations) but also the operating costs (OPEX), meaning the costs involved in running, maintaining and updating the information system throughout its lifetime (debugging, help desk, dealing with any changes and technical and/or legal improvements). All these items of expenditure need to be set against the savings made within the organisation, from operating the information system as part of a long-term vision of the judiciary[63].

Consider the basic criteria contributing to the smooth deployment of information technology

86. A thorough and comprehensive examination of the justice system's IT environment is a prerequisite for introducing any new technology. Several factors should be seen as accelerating the success or failure of an IT project:

87. **The nature and age of the existing technical platforms**. Any European country embarking on an IT project today has to contend with the issue of legacy infrastructure. Whether it chooses to keep or replace this infrastructure, the decision it makes will determine both the quality of the software solution to be adopted for the new tool should it opt to keep the existing infrastructure, and the additional cost of designing and deploying this tool should it choose to replace the said infrastructure. Obviously, various options are available, depending on the answers to the following questions: is the intention to migrate to a new platform? If so, is it to be a full migration, involving all the applications used in the sector? Or a partial migration, involving only the solution proposed? Are the platforms in question specific to the justice system or are they shared with other public services, possibly open-source platforms over which justice policy-makers have full or some influence? Or are they, on the contrary, proprietary platforms that have been made available by private-sector service providers, and over which the beneficiary has little or no influence?

88. **The cost of moving from one system to another and the cost of updates.** Has the cost of keeping the existing platform been weighed against the cost of replacing it, bearing in mind the specific ramifications of each

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63. To this may be added, as the rapporteur for Resolution 2081 (2015) writes in §67 in the aforementioned report: "the risk of short-run productivity declines after ICT is introduced highlights the importance of phasing in new technologies. Courts should be aware of the learning curve associated with the integration of new technologies, particularly given the fact that short-run declines in efficiency can limit future investments in ICT".

option in the short, medium and long term? Have we correctly measured the cost of data recovery and are we really able to meet the short deadlines without putting too much weight on future users? These questions, which need to be asked at the design stage of the new IT development policy, are crucial. For example, the overall cost of the technical upgrade, the third-party intervention for the recovery of data and its quality control and the cost of training the various staff members involved in building and maintaining the new platform needs to be set against the overall cost of the technical and operational limitations and of built-in obsolescence if it is decided to run the new technology on old platforms. The answer is by no means obvious and will depend to a large extent on the context and scope of the project.

89. **The level of interoperability between all the actors involved in a virtual communication chain.** While it is possible in theory and may be justified for reasons of confidentiality, designing a new IT tool as a closed user group system seems rather short-sighted given that the main reason for employing digital technology is to encourage the flow of data between various operators in an information chain (subject, of course, to any technical provisos and restrictions that may be necessary to ensure certain information is available only to specific categories of persons). The use and re-use of data for tracking proceedings and of metadata for the purpose of managing courts and overseeing justice policy in general only makes sense if the data in question can circulate easily within an information chain, and be used without reprocessing involving additional technical – or manual - procedures. Special attention should therefore be given to achieving interoperability between all those involved in the information chain both within and outside the judiciary (lawyers, police, experts) not only for the immediate needs identified, but also in order to allow any sharing or flow of information that may be required in future, particularly with other government systems. Thinking hypothetically about the possibilities for information flows and introducing the restrictions required at any given time via appropriate rules on security and confidentiality provides greater flexibility and is more cost-effective than having a closed system restricted to a single user group, with no possibility of allowing wider access, or at least not without further capital outlay and technical complications. An interoperability audit that ensures everyone is equally informed about the options for communicating with one another under the existing information systems, or with some modifications, would appear to be essential therefore.

90. **Similar levels of IT infrastructure.** In order to deploy the information technology in question, all or most of the stakeholders must have access to a certain level of infrastructure, otherwise the new initiative will not be totally effective. It is vital therefore to carry out a review of the computer equipment currently available to the user groups identified earlier and, when designing the project, to factor in the time and cost of any upgrades that may be needed later. At the same time, and even though the cost of the upgrades in this case will not have to be borne by the judiciary itself, the project developers will need to have a good idea of the level of hardware available to outside users, such as lawyers or members of the public (where the service is intended partially or wholly for them), so that they can make the right technical decisions, thereby ensuring effective use of the service put in place.

91. Another option is to consider developing a solution that could be deployed in "degraded mode", allowing it to be used with varying degrees of functionality, or via different interfaces according to the equipment in question. The aim here is not so much to ensure that everyone has the same hardware (as that would require a significant capital outlay, information technology being expensive and industrial cycles short), as to ensure that the right people have hardware sufficient for the purposes for which they will be using it, and only for those IT applications or functionalities that concern them.

92. **Judicial data management**. The storage, ownership and security[64] of the computer data generated or handled by the technology which it is planned to employ are key issues pertaining to the integrity of the justice system which is governed by European laws on data protection as well as domestic legislation. It is important not to underestimate the quantity of data that will be produced in the short, medium and long term by the IT application in question as this calculation will determine the amount of storage space required for the application and the justice system to function properly. Inevitably, there are costs involved here, whose future growth and market fluctuations will need to be planned for in advance.

93. Particular attention will be paid to the issue of access to judicial data, which must be secure from outside intrusions and, at the same time, rapidly

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64. To be included in a wider risk assessment, as recommended in point I.4.1 of the Checklist: "Is there a system for assessing the management of strategic risks?"

and easily accessible to authorised users[65]. As recommended by the CCJE in its aforementioned opinion: "Data and information, such as those contained in case registers, individual case files, preparatory notes and drafts, judicial decisions and statistical data on the evaluation of judicial processes and court management, need to be managed with appropriate levels of data security. Within the courts, access to information should be limited to those who need it in order to accomplish their work[66]". Where it exists, professional secrecy will need to be guaranteed to users, especially lawyers. Broadly speaking, information systems will be designed according to the national rules on personal data, and preferably in keeping with the most advanced standards in Europe[67] so as to maintain public confidence in the judiciary[68].

94. Another point which requires attention concerns the manner in which the data are to be stored in the long term[69]. While investing in publicly-owned server farms may well provide a better guarantee of data integrity, it is important to choose a solution that guards against any risk of the data becoming obsolescent over time, either because of the type of hardware on which they are stored or because of changing formats and languages. When considering these technical issues, it is important to be aware that what is at stake here is the "memory" of the justice system, and that the data in question could be crucial not only for cases that may have to be reopened years or decades later, but also for the history of our institutions.

95. **Conditions governing the use of external service providers.** Even organisations which prefer to expand their court IT departments through internal redeployments often have no choice but to use private-sector service

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65. See the Checklist, points V.2.6 and V.2.7: "Have rules been set out concerning the confidentiality of the treatment of information (for example: prohibition to enter data in the system from one's home)?"; "Is the security of the information contained in the system assured (against the risk of introducing hackers into the system)?"
66. Opinion No. 14 (2011), mentioned above, §16.
67. See for example the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe of 28 January 1981.
68. As noted by the rapporteur for Resolution 2081 (2015) of the Parliamentary Assembly of the Council of Europe (§70 of the aforementioned report): "A breach in security could result in forgery, or the disclosure of confidential information (…). Against this background, courts must consider mechanisms for enhancing data security and possibilities for creating paperless procedures with a level of safety equivalent to that of traditional paper-based procedures".
69. See the Checklist, point II.9.2: "Is there a specific policy concerning archiving of court files and court decisions?" and point II.9.3: "Does an (electronic) information system for archiving court cases and decisions exist?"

companies. The decision to do so, however, is not in itself, and in terms of the execution of the project, a guarantee of the project's success or failure. More important in some cases are the legal arrangements and how the public-private sector relationship is managed in practice. These conditions, which are first set out in a formal contract and then develop through interaction between public and private sector working methods, can make all the difference between a successful IT project and an unsuccessful one.

96. When using private-sector companies to design the IT solution, it is important to remember what was said earlier about judicial control over the service goals of the tool in question. As regards the actual execution and deployment of the IT project, again the private company's activities will need to be controlled by the judicial partner, and bring it into the closest possible contact with future users, who are the ones best placed to educate it about the subtleties of the job and the habits and needs of court staff. All this will make for greater precision when commissioning services and, later, for a more detailed, step-by-step evaluation of the services rendered by the private-sector partner.

97. It should also be borne in mind that the decision to use a private-sector provider to host judicial data can involve significant risks for public authorities. The utmost attention needs to be given to issues relating to the ownership of the data and the applicable law. These will be determined not only by the terms of the contract signed with the service provider but also by the physical and geographical reality of the server farms to which the latter will have recourse, something that is not necessarily stated in the contract. Cloud computing solutions may prove expensive and could well undermine individuals' rights unless some basic legal and technical controls are imposed by the authorities who produce them and so have a responsibility to members of the public who hand over or consent to the collection of such data. Finally, the public authority must ensure, if not to require from their service provider, to deliver the whole of the relevant documentation useful to the handling, the analysis, and the recovery of the information system. This is an essential condition for exercising its freedom vis-à-vis the provider as a beneficiary of the service.

Allocate appropriate resources commensurate with the projects' goals

98. When allocating resources to IT-based modernisation projects, due account must be taken of all the direct and indirect costs involved in introduc-

ing new technology and new professional practices[70]. That means the costs entailed in carrying out the project itself and implementing the technology, but also early-stage costs such as preliminary audits, and project costs incurred further down the line such as communication activities (which should be as extensive as possible, and whose targets should include officials responsible for the justice budget), providing information and training users (both professionals and members of the public). These are just some of the costs that need to be considered if the project is to run smoothly. Successful completion should be a goal in itself, but the ultimate objective of any project is to deliver the expected service through its deliverables, within budget.

99. **The budget should be sized according to the life cycle of the project.** While under-estimating the amount of money required has caused problems for many an IT project, calls for extra funding to rescue projects, where feasible, can also cause lasting damage to the project's credibility among its beneficiaries and those in charge of the justice budget. The reputational cost associated with a budget that is too tight, resulting in overruns either during the implementation phase or afterwards, but also, conversely, budgets that are grossly overinflated can pose a real threat to the smooth execution of the project and its outcomes, as well as casting doubt on the managerial abilities of the developer. Any risk assessment, therefore, should factor in the possibility of criticism from the public accounts auditors and/or the media regarding inaccurate forecasting and/or unjustified expenditure. Any changes or contemplated changes to the budget will thus need to be able to be explained with reference to the scenarios envisaged in the risk assessment, without fear of charges of mismanagement. It is worth noting that even if the project is completed, the reputational damage resulting from budgetary failures or missed deadlines will have a direct impact on the level of support for the project among its beneficiaries. The cost of conducting a preliminary risk assessment and providing high-quality information about decisions relating to the project budget thus need to be weighed against the extra cost, further down the line, of having to defend the project before the auditors and the public and trying to win back, through information campaigns and extra training, the support of future users.

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70. See CCJE Opinion No. 14 (2011), mentioned above in §15, according to which: "The use of IT improves access to justice, as well as increases its effectiveness and transparency. On the other hand, it requires major financial investments. The CCJE's recommendation that access to justice should be enhanced by using IT therefore, necessarily means that States must make adequate financial allocations to the judicial system for this purpose".

100. **As regards human resources, it is vital to have multidisciplinary teams dedicated specifically to the project** and led by a legal professional. Armed with sufficient experience and authority, this professional, who should be a fine example of the benefits of the technology for users, will be assisted by a technical director. Within the team, a range of skills should be available, covering the various judicial and IT aspects of the project, it being understood that areas such as ergonomics, communication about the project and its deliverables and user training are specialist skills that require assistance from experts, either within or working alongside the project team. It is obviously essential that the staff be fully available to pursue the objectives set, within the timetable agreed, hence the need for a cross-sectoral team that has real managerial and operational freedom.

101. **Managing the project also requires a degree of flexibility when it comes to directing and deploying resources,** with the support of specialist staff, and without conflicts of interest with any service companies that may be responsible for building or maintaining the technical solutions adopted or conflicts of authority with other parts of the judiciary. The reporting lines must be clear and widely understood, and lead exclusively to the project management team. The question of how much funding to allocate to the project should be addressed alongside the question of how these budgetary resources are to be managed, in terms of legal and accounting arrangements. The flexibility that comes from having a predefined framework will ensure that the project managers have sufficient leeway to accommodate any unknown factors that may arise over the life of the IT project.

102. For all these reasons and especially in the case of lengthy or complex projects, it is advisable to break the project down into a series of small, specific objectives, which can be achieved within short, manageable timeframes, with any progress made being visible to the beneficiaries as well. In order to avoid what is known as the "tunnel effect" or "big bang effect", organisations might prefer to implement a few, small but cohesive projects, simultaneously or one after the other, as a series of innovations, rather than a single, large, complex project which goes unnoticed for too long and requires sudden, radical change.

Closely involve future users in the development of the tools throughout the life of the project

103. Involving users who are experienced legal professionals is about more than simply allowing them to state their needs at the start of the project,

although that is essential too, of course[71]. They should also have a say when it comes to designing the technical solutions proposed and identifying the business-related and legal challenges involved in developing the technologies[72], as well as at every stage of the process of trialling and vetting these solutions throughout the life of the project[73].

104. **Close, on-going involvement by future users will help to minimise any discrepancies between the needs stated on paper and how the IT specialists address them in practice**, and enable the proposed technical solutions to be reoriented, where feasible and without affecting the project schedule or cost. This is preferable to having to rethink a finished project, with all that entails in terms of costs and lead-times. In the case of the most expensive IT solutions, stress testing in a laboratory setting prior to any real-life application, using scenarios developed in consultation with legal professionals, will help to better anticipate and prevent any problems that might arise when the technology is rolled out on a large scale. Such tests are strongly recommended therefore.

105. **Pilot sites can be used to provide feedback during the project.** Now common practice, trials at pilot sites provide an opportunity to learn from a series of initial users before approving the next stage of the project or rolling it out on a bigger scale. This, incidentally, is in keeping with the kind of "bottom-up" approach recommended by the CEPEJ in the context of judicial reform. It is also important to be aware that pilot projects are carried out in particular conditions and cannot therefore simply be extended to the more general context. What they can do, however, is provide a few lessons worth pondering before deploying a technology or new organisational structure more widely. The model in question will need to cover as many possible scenarios as there are key factors for success or failure in the deployment of the technology or organisational structure, as revealed by the pilot project.

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71. See the Checklist, point I.2.5: "Does the court management take the expectations of the legitimate needs and wishes of the internal and external stakeholders into account when drafting a court policy?"
72. See the recommendation made by the CCJE in its Opinion No. 14 (2011) in §8: "Judges need to be involved in assessing the impact of IT, especially when it may be required or decided that documentary matters and/or proceedings may be conducted by electronic means".
73. See the Check-list, point I.2.7: "Does the court management ensure a culture that is aimed at stimulating and inspiring improvements in the overall organisation?"

Develop a deployment policy involving all the stakeholders

106. Delivering an IT system on time, on budget and in line with the needs expressed by users throughout the life of the project is not enough to ensure success on the ground. Special attention also needs to be paid to how the tool is deployed and to supporting change at the right level of the judicial system in question.

107. **The change management process needs to be conducted at all levels** at the same time**.** In other words, it needs to be conducted across all the job categories whose practices will be affected by the new system, and at every hierarchical level within those job categories, whether they are directly affected by the developments or not, so that everyone is sufficiently informed how the new technology or organisational structure will impact themselves and/or those they work with. Having peer reviewers at every level, i.e. individuals who are particularly knowledgeable about the project and have received training in change support, will be a major asset when it comes to deploying the system across the user community. Far from being just another step in the implementation process, this kind of two-way communication will have been embedded in the project methodology and will contribute to evaluating the results of the project by providing detailed feedback from the ground about how the changes are received and perceived. In the case of technologies designed to accompany or drive change in the way work is organised, it will be up to senior managers to plan at departmental level for those changes which cannot be delegated to IT specialists.

108. **The training in the new technology should be geared to individuals and should be available to everyone working in the judicial environment.** The trainers have a different role from that of the peer reviewers, and it is important that the work they do with users be tailored to the target group concerned. When assessing training needs, consideration must be given not only to the user profile but also to the person's natural abilities and any special aptitudes or difficulties they may have in getting to grips with the new system. The training will be that much more effective if it is tailored to the needs of each individual, both in terms of time and in terms of the teaching methods employed. Although it costs more in the short term, experience has shown that such an approach to training is ultimately more cost-effective than one which involves having to correct mistakes and re-motivate staff a few months down the line, after the initial operating period.

109. It is also important that the training come at the right time, neither too early, nor too late, and that it be available long enough to ensure everyone has actually got to grips with the new system. Theoretical training before the system has even been deployed is pointless, just as practical training which comes too late after the system has been introduced is fraught with risks and liable to encourage bad habits. The emphasis should be on personalised support, with, for example, information packs about the system being handed out prior to deployment, group starter training sessions at the time of deployment, and regular skills assessments once the system is up and running to ensure staff are using it properly.

110. As well as possessing technical skills, the trainers should have judicial (or job-specific) training tailored to the functionalities of the system in question and to the people to be trained, so that they can understand users' problems and communicate with them in a constructive manner (ideally, the trainers should be staff members working in the different jobs, who have been temporarily assigned to this training mission after themselves receiving training in the relevant technologies and teaching methods).

111. Due account must also be taken of the need to train users outside the judicial system. Members of the public, for example, will require support in the form of appropriate online tools or individual support (telephone helplines or online chat rooms). Even in cases where the project developer is not directly responsible for it, training for external users will need to be encouraged. In the case of bar associations looking to provide training for their members, for example, the project developer cannot only provide information, but also assist the associations in designing course content.

112. **Communicating right.** It is important to maintain a constant dialogue with future users and anyone who might be affected by the new technology, from the initial needs assessments, through to design, development, implementation, and evaluation of the benefits provided. The idea is to inform future users about the anticipated benefits of the new system, any actions required on their part, what is supposed to happen and when.

113. It is important when communicating with future users not to paint too bleak a picture of the current situation, or too rosy a picture of life under the new system. The bigger the promises, the harder it will be to keep them. Most importantly, however, sweeping comments about the current arrangements are liable to be perceived by users as a direct criticism of their work and their ability to innovate and could ultimately be demotivating.

114. Change support materials and services (newsletters, information packs, handbooks, video tutorials, online training, hotlines, discussion forums) are all opportunities to connect and to rally a community around the goal of modernisation, as clearly and precisely defined at the very start of the process. This goal will be all the more likely to bring people together if it is framed in terms of promoting judicial principles to which all users (professionals and members of the public alike) can subscribe.

115. Careful, effective communication also means the ability to explain openly and in plain language the difficulties encountered in the project, and what has actually been done to resolve them, rather than seeking to conceal problems (only to have them pop up again in the media, necessitating hasty excuses).

116. The communication policy pursued throughout the project will need to be continued after the latter has officially ended, in order to report on the improvements actually achieved in the short, medium and long term. This will help create a climate of trust for other IT projects in the future and facilitate the task of those responsible for developing new IT tools.

From a project management culture to a truly hands-on approach to innovation

117. Those seeking to modernise the justice system through information technology need to develop a vision of the judiciary that goes beyond a narrow, project-based approach. That may mean that they too have to be supported, at their particular level, in the drive for change through what can be described as a truly hands-on approach to innovation.

118. **The adoption of a single, simple, clearly defined system of governance that makes it possible to separate the management of the project from the rest of the administration is essential** if the new tool is to be delivered on time and to specification. Creating "temporary" structures in the form of a project team that incorporates both "business" and "IT" functions in a single unit is a practical way of ensuring better control over deadlines and spending and, at the same time, an effective and speedy response. It is vital that the project team have some flexibility in the running of the project, so that, throughout the development process, they can have fast and easy recourse to ad hoc solutions and operations which, if not introduced straightaway because of delays in obtaining approval from higher up or outside the organisation, could have knock-on effects on the project cost and schedule.

Such an arrangement will be of great assistance in managing and ensuring the success of the project. The project team, therefore, will report only on the objectives of the project.

119. **Effective management by the same entity throughout the life of the system should allow on-going monitoring of the specific resources expended and make it easier to obtain feedback**. There is a risk that too radical a separation between the entity in charge of developing and implementing the information system and the one using it might lead to a situation where the design and delivery of the system is judged to be satisfactory (on time and on budget, and to specification) yet once up and running, it fails to deliver (overly complex design, excessively high running costs, technical failures) without any possibility of fixing the problems or making adjustments. The actual operational improvements provided by the new tools must be able to be measured on a regular basis and updated throughout the life of the technology in order to gauge the long-term effects of the innovation, and to report back on these, not least to the users. This means that performance indicators of the benefits of the information system will need to have been devised in advance, as part of a wider evaluation system. Co-operation between the entity which will be using the IT system and the one creating it is essential, therefore, as it enables performance measurement tools to be built directly into the information system so as to ensure automatic data collection, a less expensive solution than retrospective measurement.

120. **Develop opportunities for project management support at every stage of an innovation project.** Independent experts or researchers from a wide range of disciplines can provide an extra pair of eyes, and help to ensure successful change management. Allowing oneself to be guided by them, from the needs assessment to the design and measurement of the performance of the new system and evaluation of its impact, is a valuable experience in that it i) allows organisations to access, as and when necessary, expertise that is not normally available to them in-house (sociology, management, social psychology, econometrics, anthropology, etc.); ii) and helps to ensure impartiality in the collection and analysis of data vis-à-vis users and the public. External scrutiny brings with it fresh ideas and information about the strategy and development of information systems in a particular professional environment. The preliminary studies, scenarios and/or feedback can all benefit from fresh insights thanks to the methods and activities of social scientists, and so help to spread innovation more effectively

and provide decision makers and practitioners with information about the effects, both intended and unintended, of the IT solutions being promoted as ground-breaking developments for justice systems. This is particularly important when it comes to examining and learning about implementation problems, disappointments and/or failures in IT projects, making it possible to target future modernisation policies more effectively, according to flexible, open co-operation arrangements.

121. **Exploit opportunities to divert resources saved in one area of the justice system to another, where possible**. Although information technology is commonly associated with "creative destruction", the kind of innovation referred to here, in the context of the justice system, is not about, or not solely about, saving resources or generating efficiency savings. It can also be about allowing greater or easier access to justice, improving equality of arms or increasing the clarity of decisions or transparency in the justice system. Where efficiency is nevertheless central to the innovation in question, the project management process should lead the developers to place a high priority on redirecting the resources saved to other areas. Such measures should help to generate more support among stakeholders in the justice system and to widen the base of the reforms in question. Rather than eliminating human intervention, computerisation should have the effect of lightening the load on people, by freeing them from the drudgery of, say, highly repetitive tasks or tasks that provide little intellectual stimulus. Cyberjustice can be an opportunity to unlock the potential of the individuals concerned, whether they beare judges, prosecutors, registrars, lawyers or auxiliary staff, by reassigning them to tasks which cannot or should not be performed by machines. Tasks which call for the kind of human intelligence and sensitivity that even today are the essence of the justice system.

APPENDIX 1

Checklist for "driving change towards cyberjustice"

1. Checklist for the organisation responsible for managing an IT project

Project planning
- Have the needs been thoroughly assessed, in a way that is immune from both demand- and supply-side pressures?
- Has a comprehensive review of the information systems currently being used by all the stakeholders and partners of the justice system been conducted?
- Can the information system which you are considering introducing be deployed easily on your existing platforms, and for a sufficient length of time?
- Are there any precedents in your immediate environment (judicial, extra-judicial, international) that you have taken the trouble to study before considering introducing and developing a particular information system?
- Have lessons been learned from past experience (both successes and failures) with information systems?

Project objectives
- Have clear (measurable and verifiable) objectives for improving the functioning of the justice system been assigned to the IT-based modernisation project?
- Can these objectives be linked to promoting justice and framed in terms of basic judicial principles?
- Have you carried out an audit of the procedures and processes that are liable to be affected, directly or indirectly, by the introduction of the information system?
- Will there be interoperability with the new technology?
- Have you checked to see whether it is necessary to reform the court system either before the information system is introduced, or at the same time?

- What kind of approach in terms of risk management and security have you developed as regards the information system in question?
- Do you have a specific policy for protecting individual rights and professional secrecy with regard to the data produced and generated by the information system in question?

Resources allocated to the project

- Has the project being correctly budgeted for, given the various costs that need to be considered and the life expectancy of the information system?
- In particular, have you taken into consideration the specific cost of moving from one system to another and the cost of possible updates?
- Has a return-on-investment plan been drawn up?
- Have you set key performance indicators for the new system? Has performance measurement been incorporated in the system design?
- Can resources freed up in one area, thanks to the new information system, be redirected to other areas of the justice system which need them?

Organisational arrangements

- Do you have all the expertise you need within your project team?
- Have you thought about the kind of assistance you might seek in your capacity as contracting authority at the different stages of the project?
- Has the project governance been clearly mapped out? Have you considered the benefits to be gained from having a single management structure, separate from the rest of the administration?
- Do the project managers have some operational flexibility, in particular when it comes to deciding how the resources allocated to the project are to be used?
- Have you thought about using pilot sites or pilot initiatives before deploying your new system on a large scale?
- Is it planned to gather feedback during the project so that adjustments can be made to the methods used?
- Will a specific monitoring mechanism continue to operate once the information system has been delivered, so that data relating to usage can feed into the assessment to determine whether the system has achieved the goals set?

– Have you considered all the risks and taken all the necessary precautions as regards involving external service providers in the design and delivery of your information system?

Change management
– Are the different hierarchical levels involved in actively driving change?
– Have the people who will be using the system been closely involved in its development, and will that continue to be the case throughout the life of the project? Have bodies been set up to allow consultation between the project manager and users?
– Under the proposed arrangements, can training in the new system be tailored to the needs of individual users?
– Are you confident of your ability to communicate in an appropriate manner, so as to inform and reassure your target group about the objectives and management of the project?

2. Checklist for users of the information system

Users' perception of the existing information system
– Overall, do you feel the IT system takes sufficient account of your business needs?
– Has the IT system made it easier to perform your everyday tasks? Has it reduced the time taken to perform redundant or repetitive tasks? Has it provided additional expertise (calculating periods of notice, links to case law, etc.)?
– In your view, is the ergonomic design geared to the tasks which have to be performed?
– Has the content of the IT system kept pace with legislative and/or regulatory developments?

Training
– How is training in the IT system organised? (mandatory/optional, organised by the court or an administrative department / provided by a colleague)
– Do you feel you have been properly trained in how to use the IT system?

— Whenever there is an upgrade in the IT system, what training are you given in how to use the new features?

Court administration

— Does the IT system produce scoreboards (statistics, counts) that are of use in managing the court?

— In your view, are the scoreboards produced reliable? Do you have to carry out recounts using other methods?

— Are the CEPEJ tools used in the scoreboards?

— Do you send these statistics to other judicial departments or are the data retrieved directly from the system by the departments concerned?

Needs and wishes regarding changes to the existing IT system

— Does the team managing the IT system listen to your comments and/ or requests for changes? Do you feel that your requests are dealt with in a satisfactory manner?

— Which functionalities would you like to see improved in the existing IT system?

— In your opinion, which functionalities are vital and should be left unchanged?

APPENDIX 2

Brief bibliography

Cyberjustice in Council of Europe instruments

"European judicial systems, efficiency and quality of justice: Use of information technology in courts in Europe", CEPEJ Studies No. XX, 2016 edition (2014 data)

Consultative Council of European Judges (CCJE), Opinion No. 14(2011), "Justice and information technologies".

Parliamentary Assembly of the Council of Europe, Resolution 2054 (2015), "Access to justice and the Internet: potential and challenges", Report: Doc. 13918 of 10 November 2015.

European Committee on Legal Co-operation of the Council of Europe entitled "The use of electronic evidence in civil and administrative law proceedings and its effects on the rules of evidence and modes of proof", CDCJ(2015), due out end of 2016.

"Dematerialisation and use of IT in courts", Report CEPEJ-COOP(2009)4, by Ronald Beau, Elsa Garcia Maltras De Blas, Georg Stawa.

"Use of information and communication technologies (TIC) in European judicial systems", CEPEJ Studies No. 7 (2006), by Marco Velicogna.

CEPEJ Newsletter No. 14, December 2015. See in particular the following general contributions: "The impact of technological tools on the effectiveness and quality of the justice system", by Jean-Paul Jean; "Managing the shift towards cyber-justice", by Yannick Meneceur; "The use of new technologies in courts: an essential tool for better case management", by Fabio Bartolomeo. And the on-line thematic file "How to direct the change towards Cyberjustice?" based on a study session organised by the CEPEJ on 10 December 2015, at its 26th plenary meeting.

ENG

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