

1. ISSUE FRAMING

The amount of digital data stored by Online Service Providers (often based in foreign jurisdictions) has been growing fast, leading to an **increasing demand for cross-border access to electronic evidence** (e-evidence) in criminal investigations¹. International cooperation between competent authorities is of significant importance in preserving and obtaining access to this type of evidence, which is reflected in a consistently rising number of requests for Mutual Legal Assistance (MLA)².

While the use of digital technologies has changed the type of evidence often needed in criminal investigations³, **digitalisation of judicial cooperation procedures** has been lagging behind the trend. The transmission process of MLA requests that is currently in place is still heavily paper-based and reliant on slow or non-secure channels of communication, such as mail, courier, fax or email. Likewise, data collected through the MLA procedures is generally copied onto storage devices (e.g. CD-ROMs or portable external hard drives) by judicial authorities and sent to the requesting authorities via traditional means of exchange. In this context, formal **MLA procedures have been widely criticised as being too slow and ill-adapted to the reality**, in particular the nature of e-evidence which is not only more volatile but also easier to manipulate than traditional types of evidence⁴.

Against this background, several stakeholders have called for **improvements of “digital justice” infrastructure for cooperation across borders**⁵. Accordingly, various initiatives on digital platforms for **cross-border transmission of judicial cooperation measures and electronic exchange of case-related data** in criminal investigations have been promoted in recent years at the EU level

(**e-Evidence Digital Exchange System - eEDES**) and globally (e-MLA Initiative). Despite their operational and institutional framework differences (e.g. eEDES is used only for EU Member States), all these initiatives emphasise the importance of advancing international cooperation and securing cross-border e-evidence in a timely but secure and admissible manner⁶.

On 1 December 2021, the Commission adopted the proposal on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, where it proposed the implementation of a software to be built upon the eEDES⁷.

2. OBJECTIVE

The existing eEDES and e-MLA initiatives do not in themselves introduce new instruments of judicial cooperation, nor does linking IT systems with MLA processing intend to replace the legal work of judicial authorities in preparing and executing the MLA requests. The digitalisation of the judicial cooperation channels does, however, aim to **facilitate** (i.e. standardize) and **strengthen** (i.e. make more secure and allow for the establishment of authenticity and integrity of transmitted documents) the existing **judicial cooperation mechanisms** in criminal matters⁸.

¹ Commission Staff Working Document, [Impact assessment accompanying the e-evidence package proposals](#), 17 April 2018.

² Informal Expert Group Meeting on International Cooperation in Criminal Matters, [Summary of the Chair](#), 9-11 April 2019.

³ Interpol, [Resolution No. 4 GA-2018-87-RES-04](#).

⁴ Internet & Jurisdiction Policy Network, Cross-border Access to Electronic Evidence (2021), p. 4; and Commission, [Recommendation](#) for a Council Decision authorising the opening of negotiations between the EU and the U.S. on cross-border access to electronic evidence, COM(2019) 70 final.

⁵ EVIDENCE2e-CODEX, [Evidence2e-codex Follows Closely the e-MLA Initiative](#); and Biasiotti, M. A. et al. (Eds.) (2018). *Handling and Exchanging Electronic Evidence Across Europe*, p. 118.

⁶ Interpol, [Resolution No. 4 GA-2018-87-RES-04](#).

⁷ https://ec.europa.eu/info/files/proposal-regulation-digitalisation-eu-cross-border-judicial-cooperation_en

⁸ Commission, [Proposal for a Regulation](#) on European Production and Preservation Orders for electronic evidence in criminal matters, COM(2018) 225 final; Interpol, [INTERPOL presents e-MLA initiative at UNODC conference](#), 24 October 2018; Commission, [Proposal for a Regulation](#) on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system), COM(2020) 712 final (e-CODEX Regulation Proposal); Biasiotti, M. A. et al. (Eds.) (2018). *Handling and Exchanging Electronic Evidence Across Europe*, p. 112; and Interpol, [INTERPOL presents e-MLA initiative at UNODC conference](#), 24 October 2018.





This document analyses the e-Evidence Digital Exchange System (eEDES).

The following documents, available on the SIRIUS platform, present other initiatives on digital exchange platforms in the context of cross-border criminal investigation:

- The Electronic Mutual Legal Assistance: Interpol's e-MLA Initiative;
- The UNODC's Secure Communication Platform.

These documents capture the platforms as currently envisaged, which might change in the future.

3. BACKGROUND

At the EU level, there is currently no applicable legal framework specifically on cross-border exchange of e-evidence, so the standard framework and mechanisms are used. The EU Institutions have been, however, in the last years (in the context of the digitalisation of justice in the EU) calling for improvements of the mechanisms of exchange of e-evidence between judicial authorities of Member States.

In particular, the **Council of the EU** kicked off the discussion on creating a platform, such as eEDES, in its [Conclusions](#) of 9 June 2016. Recognising that the MLA procedures related to electronic data should be accelerated and streamlined, the Council asked the **European Commission** to develop "a secure online portal for electronic requests and responses concerning e-evidence and the corresponding procedures".

On the basis of the above Council's request, the Commission, together with the experts from participating Member States built an **IT platform** for judicial cooperation in criminal matters – the eEDES. The system was agreed to be set up in a **decentralised** and **interoperable** way with a secure communication channel connecting secure portal installations in each Member State (front-end Reference Implementation Portal). **E-CODEX** (e-Justice Communication via Online Data Exchange), which started as a project managed by a consortium of Member States and organisations⁹,

⁹ [e-CODEX Regulation Proposal](#). e-CODEX was developed by 21 MS with the participation of other third countries/territories and organisations between 2010 and 2016. Currently it is managed by a consortium of Member States and other organisations financed by an EU grant.

¹⁰ Commission Staff Working Document, Accompanying the [Communication](#) from the Commission on Digitalisation of justice in the European Union: A toolbox of opportunities, COM(2020) 710 final, 2 December 2020.

was selected as the preferred communication infrastructure supporting this platform¹⁰.

Since inception, the Commission has provided comprehensive support (financial, technical, training) for the implementation of eEDES at national level and for its subsequent operation (to continue until 2024)¹¹, expecting the Member States to connect by 2021¹². In December 2019, the demonstrative version of eEDES was opened to the Member States with a production ready version of the Reference Implementation available as of April 2020¹³.

4. SCOPE OF THE PLATFORM

The objective of the eEDES is to allow competent Member State judicial authorities to communicate with each other with respect to electronic exchanges in the context of procedures currently integrated in the system.

INSTRUMENTS AND DATA COVERED

The procedures currently integrated into the eEDES are the **European Investigation Order (EIO) and MLAs in the criminal law field**. The competent authorities will be able to use eEDES to transmit EIO orders, MLA requests and **associated evidence in digital format**.

USERS – ACCESS

For the time being, only **judicial authorities of EU Member States** can be provided with access to the eEDES, as well as National Desks at Eurojust.

SPECIAL FEATURES

eEDES is designed to be **interoperable** with national case management systems. To ensure high level of security the portal uses a **2-factor authentication** and **end-to-end encryption** for transmission of requests and data. The **tracking** is ensured with timestamps and delivery status of the exchanged messages; status of actions taken in the particular case is also indicated in the system.

The interface and forms are available in all **EU official languages** offering a multilingual environment to its users. As an additional support to the users, they can choose the competent

¹¹ Council of the EU, [Note](#), Digital Justice: e-evidence c) e-Evidence Digital Exchange System: state of play, 4 March 2020.

¹² [e-CODEX Regulation Proposal](#).

¹³ Futurium, Action Dashboard, [Action 21: IT platform for exchange of electronic evidence between judicial authorities](#).

executing EU authority and, in reverse, verify the competence of the requesting authority with the help of a drop-down menu based on **EJN's Atlas tool** (see ANNEX for a visual representation of the eEDES).

5. STATE OF PLAY

Several Member States should have already completed their implementation at the national level and connected to the eEDES in the course of 2020 and 2021¹⁴. The exact number of Member States currently connected to eEDES and the implementation stage of others are however unknown as developments are ongoing¹⁵. In any event, all EU Member States continue to be strongly encouraged to connect to eEDES¹⁶.

6. THE WAY FORWARD

A number of important eEDES developments are foreseen in the near future, including the new types of judicial cooperation instruments to be integrated in the platform and the additional users authorized to access it.

INSTRUMENTS AND DATA COVERED

As regards the procedures supported by eEDES, currently limited to EIO and MLA between EU Member States, the platform is expected to be extended to **additional judicial cooperation instruments** in criminal matters (e.g. European Arrest Warrant)¹⁷ and any kind of **information exchanges between judicial authorities in the Member States and the EU Agencies** in the framework of criminal justice cooperation procedures¹⁸.

USERS – ACCESS

As regards the question of access to the platform, which is currently limited to judicial authorities of EU Member States and Eurojust National Desks, the platform is looking to be extended to two new groups of users in the future.

- **Service Providers**

Currently, only individual EU Member States (e.g. Austria, France, and Spain) have in place

official platforms for transmitting data requests to private companies *within their jurisdictions* and, in response, for transferring electronic information held by the companies back to the national authorities¹⁹.

- **EU Agencies and Bodies**

In order to effectively support the relevant Member States' authorities in the fight against cross-border crime, the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF) and other relevant Agencies might in the future be provided with access to a trusted communication channel and applications for the exchange of evidence between national authorities and between those authorities and the EU agencies and bodies, as it is already the case for the EU Agency for Criminal Justice Cooperation (Eurojust)²⁰. The second venue of expansion of access to eEDES is thus foreseen by interconnecting Member States' authorities with relevant EU Justice and Home affairs Agencies²¹.

SPECIAL FEATURES

Given the relevance of e-CODEX (communication infrastructure) for the eEDES set-up, the future of this IT system is of particular relevance for the platform's development as well. On 2 December 2020, the Commission put forward an **e-CODEX Regulation proposal**, which provides a legal basis at the EU level for the e-CODEX system and ensures its sustainability beyond the project terms. In line with the idea of e-CODEX becoming the gold standard (although not the exclusive channel) for secure digital communication in cross-border (criminal) judicial proceedings in all Member States, the Regulation proposal entrusts the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) with the management, further development, and maintenance of the e-CODEX system as of 1 July 2023. One of the foreseen additions to the eEDES is also the possibility to use an **automated (machine) translation** of the EIO²².

¹⁴ Council of the EU, [Note](#), 4 March 2020.

¹⁵ [COM\(2020\) 710 final](#).

¹⁶ *Ibid.*; and Commission, [Communication](#) on the EU Strategy to tackle Organised Crime 2021-2025 COM(2021) 170 final, 14 April 2021.

¹⁷ Council of the EU, [Note](#), Council Conclusions "Access to Justice – Seizing the Opportunities of Digitalisation", 8 October 2020.

¹⁸ The future scope of eEDES is expected to be laid down in the EU Commission's legislative proposal on the digitalisation of cross-border judicial cooperation procedure – upcoming by the end of 2021.

¹⁹ CEPS and QMUL Task Force, Report on Cross-border data access in criminal proceedings and the future of digital justice, October 2020, p. 17.

²⁰ [COM\(2020\) 710 final](#).

²¹ *Ibid.* See, also, [e-CODEX Regulation Proposal](#), Recital (15) and Article 5(4); and Deloitte and DG Just, Cross-border digital criminal justice: Final report, June 2020.

²² TREIO, [Dear Practitioner, meet the e-Evidence Digital Exchange System!](#), 22 May 2020.

ANNEX – ARCHITECTURE OF THE E-EVIDENCE DIGITAL EXCHANGE SYSTEM (E-EDS)

