

Interoperability solutions under Digital Single Market: European e-Justice rethought under e-Government paradigm

Alessandra Silveira¹ and Joana Covelo de Abreu²:

Cite as, Silveria A, de Abreu JC, “Interoperability solutions under Digital Single Market: European e-Justice rethought under e-Government paradigm” in European Journal of Law and Technology, Vol 9, Issue 1, 2018

Abstract

The EU is in a post-crisis period and is trying to improve its economic performance. Digital Single Market (DSM) is a European policy to create digital solutions to promote the Union’s competitiveness in a globalised world. With regard to DSM strategy, e-Government and e-Justice are two closely connected areas. Since the EU is implementing administrative interoperability solutions, this can be used as a reference point for the path electronic justice is taking. European e-Justice must follow e-Government methods (based on interoperability solutions) so that effective judicial protection can be enhanced. Both concepts were aimed so Internal Market and protection of fundamental freedoms could be closely promoted. However, these can only be achieved when individuals and companies, facing litigation, have the proper means to be able to take part in proceedings, without extraordinary expenses or procedural insecurity. The European e-Justice Portal is the critical avenue to accomplish those goals but its impact on litigation on a day-to-day basis (before the CJEU and national courts) must be re-thought so digital solutions can efficiently bring people closer to justice. This paper offers a new perspective on administrative interoperability in order to understand if judicial interoperability is the way to deepen e-Justice goals.

KEYWORDS: Digital Single Market (DSM); Interoperability; e-Government; e-Justice; Effective judicial protection

1. Developments concerning the DSM in the European Union

The political strategy concerning the implementation of a DSM was adopted on the 6th May 2015³ and it appears as one of the main political objectives⁴ that must be pursued, being ‘the new reality on a political level’⁵. Until January 2017, the Commission was responsible for delivering specific initiatives and now legislative measures are being discussed by the European Parliament and the Council, following the ordinary legislative procedure.

The European Union is developing the DSM under its shared competences, specifically under Article 4 (2) (a) TFEU, since it appears as a matter to be deepened under the ‘umbrella’ of the Internal Market. As it relates to shared competences, the European Union for a long time relied on the diligence of Member States to establish a true competitive space for the digital era. However, it became clear it would be better if this matter started to be dealt in a transnational level to soften gaps that were appearing between national legislations and actions.

As set in its strategy, ‘[DSM] is one in which the free movement [...] is ensured and where citizens, individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection [...]’⁶. As the European Commission have foreseen it, DSM brings strong economic engagement since it is able to ensure Europe to keep its position as a world leader on digital economy by being capable of helping European companies to globally grow, paying particular attention to small and medium-sized enterprises, so they can meet productivity gains by resorting ICT mechanisms, promoting growth along the way. The European Commission also stresses that it is important to enhance citizens’ access to information and cultural goods, by promoting an open government and settling equality and non-discrimination, engaging citizens in more active democratic participation. It can even promote improvement of public services, information exchange and national and cross-border cooperation.

This comes from the notion digital technology and ICT components have fundamentally altered the way the world works – impacting not only the economy but also the everyday lives of individuals. Digital means became a general reality affecting all economic and social sectors since they are not limited by borders. And it has a tail end that cannot be forgotten: ‘[t]his digital economy has the potential to create growth and employment by providing opportunities for investment and innovation, which leads to expanding markets and more choice in goods and services at lower prices’.⁷ However, the European Commission had to understand where the European Union was in terms of – its developments, its worldwide impact and its economical, social and cultural expectations – when it came to ICT implementation. Taking into consideration the time lapse between 2001 and 2011, the European Commission understood that ICT accounted for 30% of GDP growth in the Union but, establishing a fully functioning DSM and meeting all the efforts set in the Digital Agenda for Europe, there would be an additional increment of 3.1% of its GDP.^{8 9} Furthermore, a complete fulfilment of the DSM’s objectives would help consolidate the European Union’s leading role as a cultural goods and services’ producer and enabler.

In the same context, the European Commission also realized ‘[o]nline platforms come in various shapes and sizes’ and their development cannot be compared to any others ever seen.¹⁰ In fact, online platforms are characterised as i) having the ability to shape and create new markets; ii) operating in ‘multisided markets’; iii) benefiting from the so-called ‘network effect’ (the value of the service is increased by the number of users); iv) relying and trusting ICT to contact their users in an effortless way; and v) inputting an added value to digital creation which demands new approaches and solutions that cannot be limited to a specific area and / or space. These features brought particular benefits to society and the economy, engaging efficiency gains, improving

competitiveness but also enabling and widening ‘citizens’ participation in society and democracy, as they facilitate access to information, in particular to young generations and across borders’¹¹. However, the European Commission has stressed that the Union only has a marginal impact on worldwide technological and online development since, despite ‘[a] number of globally competitive platforms originated in Europe’, nowadays ‘EU [...] represents only 4% of the total market capitalisation of the largest online platforms’.¹²

For all that have been said, the DSM was established primarily in the public interest to be pursued in the European Union. In order to implement the DSM and execute its priorities, the European Union established a wide range of objectives which will be pursued as secondary public interests: the DSM ‘aims to open up digital opportunities for people and business and enhance Europe’s position as a world leader in the digital economy’¹³. In this context, secondary public interests must be executed and observed by the European Administration. This signifies that when a National Public Administration is applying EU law, it is also working as a European functional Public Administration and, for that matter, can be engaged in fulfilling those digital public interests set on a European level. Therefore, ‘both national Public Administrations (when they apply EU law) and European institutions’ must embrace these goals ‘and, especially National Public Administrations must feel engaged to promote this objective, otherwise if those are the ones to firstly resist innovation, the Internal Market’s adaptation to new framework standards will suffer and economic prosperity in Europe might be undermined’.¹⁴

In fact, the European Union is trying ‘to rejuvenate itself into a digital Europe, where digital technologies, media and content are embraced and exploited by the whole population’ since ‘ICT has the potential to quickly realise a virtuous cycle that transforms efficiency into growth’.¹⁵ The European Commission promoted a Stakeholder’s Forum subjected to the acronym Digital4EU. It took place in Brussels (on 25th February 2016) and it was ‘centred around the progress made in creating a [...] DSM in Europe’¹⁶. In this Forum’s first session, it was discussed how to deliver the DSM, mainly relying on the Digital Economy and Society Index (DESI) results and on how to put these results in action. The DESI is ‘a composite index that summarises relevant indicators on Europe’s digital performance and tracks the evolution of EU Member States in digital competitiveness’.¹⁷ This index seeks to measure how Member States progress on creating and maintaining a digital economy and society and, ‘[a]s such, it bring together a set of relevant indicators on Europe’s current digital policy mix’¹⁸. DESI is composed of five primal policy dimensions: 1) connectivity; 2) digital skills; 3) use of internet; 4) integration of digital technology; and 5) digital public services¹⁹, which are all intertwined since ‘developments in the digital economy cannot be achieved through isolated improvements in particular areas but through concerted improvement in all areas’.²⁰ Therefore, stakeholders and policy makers believe ‘DESI could be used to help Member States in their digital policies’²¹ since DSM brings innovative approaches both at EU level and at Member States’ level and it was developed with the belief that improvements achieved by a Member State will impact positively and will be beneficial to other Member States and the DSM – this is an example of what we call organic interdependence. However, they also perceived another level of interdependence: since one of DESI dimensions is more rudimentary, others will suffer even if they attained excellent results.

Concerning the need to fulfil the DSM goals on how public services implement ICT solutions, at the Digital4EU Stakeholders Forum it was underlined that major issues concern i) the fact that citizens and companies do not know if and which public services have online platforms; ii) those public online platforms and services are difficult to find; iii) there is still doubts concerning ‘the level of their quality and transparency’²² and iv) the need to fully observe the once-only principle. From this Forum came the conclusion that, concerning public services, ‘digital should be first for all public services’ and that ‘Member States should implement the once-only principle obligation’, which means ‘re-use of data, making the best use of key enablers [...] and thinking of cross-border services from inception’.²³ Public authorities are obliged to re-use data already presented by citizens and companies, which demands national authorities to communicate so information previously given (even if it was presented to different administrative structures located in other Member States) can be accessed and re-used. To fulfil this venture, the European Union is betting on administrative interoperability solutions and mechanisms which demand Member States to create internal digital structures and databases where they are able to find that data and, therefore, re-use it. Furthermore, it will also allow them to interconnect those facilities so they can re-use data provided in other Member States and, also, to connect their national systems to a centralised one where European Institutions can also find that information. This will attenuate geographical barriers and frontiers and it will foster National Public Authorities to see themselves as European functional authorities when they are applying EU law. So, ‘[t]he European Interoperability Framework promotes and supports the delivery of European public services by fostering cross-border and cross-sectoral interoperability’.²⁴

However, the DSM and Digital Agenda for Europe also bet on promoting access to justice, which can be easier if one relies on digital components and electronic solutions. For that matter, it was a definitive goal to enable digital services to better answer justice demands. Under this strategy, a European e-Justice Portal was created to act ‘as a future electronic one-stop-shop in the area of justice’.²⁵ In fact, the complete development of access to justice in a European level relies on digital and electronic solutions. It is, therefore, important to understand how administrative interoperability is being implemented so far and, then, to address how access to justice has been promoted to understand if judicial interoperability would be the best approach to surpass difficulties that were felt, and expectations that are being envisaged, in these key matters to the DSM. We will try to unravel if it would have been better, from a practical point of view, to firstly deepen judicial interoperability, as an e-Justice method, and only then apply its results to other public authorities, i.e., deliver administrative interoperability.

2. European e-Government and administrative interoperability – analysis and reflections

As highlighted earlier, the DSM aims to establish electronic solutions and technological approaches concerning public services’ relations with individuals and companies. For that matter, following this political mission, interoperability was set in motion, especially in relation to the public sector. In fact, as stakeholders stated at the Digital4EU 2016 Forum, ICT solutions should also be thought of, so that they could have a full impact on public services (‘digital should be first for all public services’²⁶).

More recently, Tallinn's Ministerial Declaration on e-Government also interconnects e-Government and e-Justice and underlines a set of juridical principles explaining ICT solutions in those paradigms²⁷ based on interoperable solutions. For this reason, and deepening interoperability solutions, the European Union implemented the ISA² Programme through Decision (EU) No. 2015/2044.²⁸ Under Article 2 (1) of Decision (EU) No. 2015/2044, interoperability means: 'the ability of disparate and diverse organizations to interact towards mutually beneficial and agreed common goals, involving the sharing of information and knowledge between organizations, through the business processes they support, by means of the exchange of data between their respective ICT systems'. Therefore, it demands the creation and reconversion, in all Member States, of digital platforms and databases so these are subsequently interconnected and linked to a central ICT infrastructure. This ensures that all national and European authorities can benefit from common networks relating to different fields of action. This is the adopted method in order to facilitate access to data and services in a protected environment, characterized as being interoperable, promoting fair competition and data protection across the European Union. However, interoperability relates to the use of several technical proceedings that can and will become obsolete over time. In fact, "[i]nformation systems and networking infrastructures [...] need to [...] become scalable so they can adjust to emerging or changing needs, which might be of technical nature, or, organizational and social, or both".²⁹ Technicians must be aware of the need to implement those structures that will demand fewer changes in the future or that should ask for less onerous updates to maintain a functioning interoperable system. However, in the second recital of the ISA² Programme, it is recalled that the digital agenda can be effective for so long as interoperability is ensured.

The definition of interoperability adopted under the Decision aims to accommodate three different dimensions that doctrine was able to devise:

1) 'Technical Interoperability': to illustrate '[t]echnological characteristics and elements that link information systems, such as interconnection services, data integration services, and communication protocols';³⁰

2) 'Semantic Interoperability': to explain that different organizations are able to understand the meaning of the exchanged information – '[i]t is usually associated with classification systems, ontologies, and data formats';³¹ and

3) 'Organizational Interoperability': to stress the need to settle and ascertain common goals between integrated services.³²

Under ISA² Programme, the European Union seeks to implement interoperability solutions and common frameworks for European Public Administrations in their relations with citizens and businesses by promoting the modernization of the public sector. Interoperability implementation and maintenance will be coordinated at the European level since European Institutions foresee that 'a common understanding of interoperability in the Union and a holistic approach to interoperability solutions should be promoted'.³³ This Decision – applicable since 1 January 2016 – brings '[c]ommon frameworks and solutions established or operated under the ISA² Programme [which] should, as far as possible, form an interoperability landscape to facilitate interaction

between European Public Administrations, businesses and citizens, and to enable cross-border and cross-sector interoperability'.³⁴

But that wide definition of interoperability also leaves room for other goals to be pursued under administrative interoperability. E-Government relies on interconnected systems since interoperability also bears characteristics 'of intra- and inter-governmental integration'.³⁵ This interoperability expression was previously stressed by the Council which understood, in 2013, as a political purpose, that '[...] modernisation of public administrations should continue through the swift implementation of services such as e-government [...]'.³⁶ Under the ISA⁵ Programme, it is acknowledged that '[i]nteroperability and, consequently, the solutions established and operated [...] are instrumental to exploiting the potential of e-government [...] to the full, by enabling the implementation of 'one-stop shops' and the provision of end-to-end and transparent public services leading to fewer administrative burdens and lower costs'.³⁷ However, e-Government will also have two manifestations: 1) it presupposes an internal interoperability – the one that links Public Administrations and allows the creation of digital tools and databases where all European public services can find re-usable data; and 2) an external interoperability – the one visible to end-users (both citizens and businesses) based on 'interoperable front-office services resulting from better integration of processes and exchange of data through the back offices of European Public Administrations'.³⁸

Furthermore, European institutions perceive interoperability as the future, especially when it comes to adapting European Public Administration to new eras and challenges. In fact, they understand that, through interoperability 'European Public Administrations will remain open and flexible enough to evolve and be capable of incorporating new challenges and new areas', enhancing 'global competitiveness of the Union'.³⁹

The European Union underlined a strategy for e-Government by an Action Plan for the period of 2016-2020⁴⁰. In fact, as the perceptible and interactive aspect of interoperability, e-Government appears as supporting 'administrative processes', improving 'the quality of the services' and increasing 'internal public sector efficiency'⁴¹ since it is a phenomenon that relies on digital mechanisms and electronic tools so that the 'administrative burden on businesses and citizens' can be reduced since their interactions with public services are 'faster', 'efficient, more convenient', 'transparent, and less costly' – it is 'a key element to the success of the Single Market'.⁴² Under this Action Plan, the Council understands that, by 2020, European Public Administrations and institutions 'should be open, efficient and inclusive, providing borderless, personalized, user-friendly, end-to-end digital public services to all citizens and businesses'.⁴³

New principles are appearing under the need to fully deepen the principles of mutual recognition and reciprocal trust between Public Administrations of different Member States, promoting even further horizontal administrative effect. As the Council mentioned, there is a set of general principles that will be applicable to e-Government realities. Some of them – such as openness, transparency, trustworthiness, security – are already commonly applicable under administrative proceedings and characterize public action. However, there are some principles that relate to the digital component characterizing e-Government:

1) the principle of ‘digital by default’: it means that digital services should be offered as the primary option to citizens and companies, despite other means of engaging contacts with public power;

2) the principle of ‘cross-border by default’: e-Government solutions aim at being applied and observed in the same sense and in the same level of fulfilment in all Member States, truly deepening mutual recognition and reciprocal trust amongst Member States’ Public Administrations since the DSM is betting on taking the Internal Market to the next level. Therefore, the Council understands ‘Public Administrations should make relevant digital public services available across borders and prevent further fragmentation’ from arising, ‘thereby facilitating mobility within the Single Market’;⁴⁴

3) ‘once-only’ principle: this principle implies that Public Administrations must assure citizens and companies that they will supply their data and information just once in the latter’s relationship with the competent Public Administration. Afterwards, the necessary components will be settled so the re-use of data can happen, fully complying with data protection demands. The once-only principle ‘strives to enable users to inform the public sector of different changes in their lives once only’.⁴⁵ It implies, taking interoperability into consideration, wide expectations, and fields of action will demand public administrations not to ask citizens and companies, more than once, not only for essential data (such as the domicile, a copy of the identification document, etc.), but also for further information already presented by them in other occasions, even if that data was not supplied to the public entity that is now dealing with the new request.

Considering the principles which are being developed under e-Government, it is possible to appreciate that this phenomenon relates to citizens and companies’ meaningful expectations of digitally accessible public services. However, the European Union is still struggling on how to engage national administrations on fulfilling these aims and, despite 2017 being the year where administrative interoperability mechanisms should be launched in full there are still some issues Member States are struggling with, which must be addressed. In fact, if national interoperability is difficult to set, cross-border interoperability is even more difficult. Taking into consideration the Portuguese experience, we can derive two cases where it was already declared ‘Portuguese infringement’. These are mainly stressed and used in order to understand the difficulties and empirical resistance Portuguese Public Administration presented when facing interoperable solutions. However, they do not undermine the method – the interoperability; they only show relevant resistance that must be taken into account in order to understand if this method should have been applied to other relevant matters such as e-Justice referral.

In *Commission v. Portugal*⁴⁶, infringement was found since Portugal was not able to set a national electronic database of road transports’ operators allowing electronic interconnection between national databases. This omission prevented setting, in the estimated deadline, these interoperable solutions and undermined administrative cooperation, simplification and, furthermore, prevented the once-only principle from applying. In fact, Portugal did not comply with Article 16 (1) and (5) of Regulation (CE) No. 1071/2009⁴⁷ which demanded a single electronic registry to be created nationally in order to interconnect it to the other Member States’ registries and a

centralized European one. Under the pre-litigation phase, Portugal always stated that all necessary actions were being held in order to fulfil its obligations. However, during the proceedings in the CJEU, it turned out that this did not happen. When the reasoned opinion was issued that it did not comply with EU law, the State did not refute it. In fact, it advanced ‘several constraints of an internal and external nature to explain delay existence on fulfilling those obligations’⁴⁸. Portugal also acknowledged that the three national authorities that had to intervene on setting up a national electronic registry had not come to an understanding and there continued to be several independent registries related to each one of those entities. Furthermore, these difficulties Portugal presented related to the fact it was just emerging from an economic crisis could not be used as an eligible excuse for not fulfilling its European obligations (Recital 24). Therefore, the CJEU declared that ‘by not creating a national electronic registry of road transport operators’ and ‘not interconnecting it with national electronic registries of other Member States’, the Portuguese Republic did not comply with its obligations stemming from Article 16 (1) (5) of Regulation No. 1071/2009.

But there were other Member States to be declared non-compliant with the aforementioned Regulation. Luxembourg did not also comply with Articles 16 (1) and (5) because it failed to establish ‘a national electronic register of road transport undertakings’.⁴⁹ The same reasoning was also the basis for the finding against Poland since it also did not comply with Article 16 (1) and (5) obligations stemming from Regulation No. 1071/2009.⁵⁰ More recently, in *Commission v. Portugal* (22nd March 2017)⁵¹, the CJEU once more found a case of Portuguese infringement. In this case, the Commission brought a case of infringement before the CJEU concerning Portugal’s lack of connection to the European Union’s network of driving licences (RESPER). Therefore, Portugal did not fulfil its obligations established under Directive No. 2006/126/CE.⁵²

The European Union created RESPER as a ‘telematic network to be established across the EU’.⁵³ It is envisaged under e-Government services to be provided on a cross-border basis and ‘[i]t shall act as a hub for the exchange of information between national authorities responsible for issuing driving licences’, especially to regulate certain rights and obligations, such as: 1) ‘to guarantee recognition of documents and acquired rights originating in other Member States’; 2) to ‘combat document fraud’; and 3) to ‘avoid the issuance of multiple licences’.⁵⁴

One of the major objectives of Directive No. 2006/126/CE was to give Member States the power to refuse issuing driving licences when the applicant was already holding one. Article 7 (5) (d) of Directive No. 2006/126/CE created an instrumental obligation to Member States to understand they could refuse issuing a driving licence by resorting to RESPER network ‘once it is operational’. A transposition obligation concerning making Article 7 (5) (d) operational emanated from Article 16, which demanded Member States to adopt and publish, not later than 19th January 2011, all necessary measures to comply with, namely, Article 7 (5) (a) and that they should apply those provisions as from 19th January 2013.

In the pre-litigation phase, Portugal, firstly, submitted that its national services of driving licences’ issuing would be connected to RESPER on March 2015. However, after the Commission had issued its reasoned opinion, Portugal replied by stating it

would make the necessary connection not later than March 2016, unfortunately forgetting the reasoned opinion which was issued on 27th February 2015, giving this Member State a two months' deadline to comply. In the litigation phase, Portugal acknowledged that the connection was not yet made, blaming economic difficulties associated to a restructuring on its public administration's configuration as a reason for the delay. The CJEU based its decision by understanding that Portugal, in April 2016 (i.e., after the deadline determined in the reasoned opinion) had not yet made the required connection 'thereby preventing not only it [Portugal] but also other Member States from ensuring that a person requesting the issue of a driving license did not already hold such a license in another Member State'.⁵⁵ Furthermore, Portugal advanced reasons predicted on economic distress and an internal Public Administration reorganization as a means of justifying its infringement. The CJEU was peremptory in its view this reasoning was not a substantial cause for its delay, since the Court's settled jurisprudence refuses internal reasons to be put forward as a means of justifying a Member States' non compliance with EU law (Recital 15). Therefore, Portugal did not fulfil its obligations stemming from Article 7 (5) (d) (and Article 16, concerning transposition's obligations) since it did not make the connection to RESPER (Recital 17).

In relation to the interoperability measures under the Directive, despite Portuguese infringement being the only one declared by the CJEU until now, the Commission also brought an infringement procedure against Finland to seek a declaration on its infringement. As argued by the European Commission, '[i]n accordance with Article 7 (5) (d) of the Directive 2006/126/EC, the Member States are to use the EU driving licence network once the network is brought into operation'. Therefore, '[t]he EU driving licence network (RESPER) has been set up and it became operational on 19 January 2013' and '[s]ince Finland has not yet joined the EU driving licence network (RESPER), it is not possible to ascertain in the network whether the conditions for issuing a driving licence are satisfied'.⁵⁶

Taking these decisions as a mere reference, it is feasible to understand interoperability mechanisms, especially when they aim to employ e-Government solutions (as engaging national public administrations), are difficult to achieve since they demand an internal articulation – usually complex to implement – and, afterwards, an external interconnection. From these cases, we can understand that National Public Administrations and entities must feel more engaged in pursuing the DSM goals than they are currently – in fact, from all the cases we can understand an underlying resistance from National Public Administrations (but also from legislative bodies) to implement databases and registries that are able to deliver cross-border results. Therefore, despite '[n]owadays e-government is more and more perceived as a governance instrument enhancing transparency, participation, service delivery and law making and enforcement'⁵⁷, it seems there is the need to truly show its results and, specifically, its gains to National Administrations. The key is to make them understand that they are European Public Administrations when they are applying EU law and that the decisions they make will be observed and respected across the borders. It is mandatory to show public agents that they will be empowered – and not weakened – in their ability to attain these goals; as doing so, it will enhance their profile as European agents with a cross-border impact.⁵⁸

Member States ‘have long aspired to being open, flexible and collaborative in their relations with citizens and businesses’⁵⁹ – and interoperability solutions are the key. However, it is important to understand if this path could have also been followed firstly on justice matters, namely by a formal proclamation of judicial interoperability and, given lesser resistance in this field, enlarging it to e-Government reality.

3. The e-Justice paradigm – can it be the visible feature of judicial interoperability?

The European Commission understood, when it set the Digital Agenda for Europe, that ‘several steps towards reducing the barriers standing in the way of the Digital Single Market [were] unfolding’, drawing ‘[c]itizens do not appear to be aware of the benefits that [...] projects in the fields of e-Justice [...] can bring’.⁶⁰ The Commission also said that, ‘[t]o underpin the digital transition in public services and to ensure they are available to all Europeans regardless of their place of residence’. Thus, it is important to make ‘digital services in key areas of public interest’⁶¹ available, by promoting ICT solutions in sensitive areas such as Justice.

In this context, e-Justice was, once more, presented as a key priority when it comes to developing a European digital approach, i.e., in the Commission’s Action Plan concerning e-Government. Focusing on enabling cross-border mobility with interoperable digital public services, it was noted that the Single Market cannot be fully active without digital public services that operate in a cross border way to promote easier access to markets and to ‘increase confidence in and stimulate competition’⁶². Therefore, one of the actions the Commission presents under the e-Government Plan is to ‘make the European e-Justice Portal a one-stop shop for information on European Justice and access to judicial procedures in the Member States’.⁶³

In the same sense, the Multiannual European e-Justice Action Plan undertakes several objectives related to the settlement and improvement of electronic justice in the European Union. The Action Plan is a strategy which ‘defines the general principles and objectives of European e-Justice’.⁶⁴ In fact, ‘there has been substantial consensus among Member States regarding further development of e-Justice as one of the cornerstones of the efficient functioning of justice in the Member States and at European level’.⁶⁵ In order to promote efficiency enhancement on e-Justice areas, the e-Justice Portal is seen as a primal resource since it allows access to information in the fields of justice. It must provide general information to citizens, businesses, legal practitioners and the administration of justice about the European Union and Member States’ legislation and case law⁶⁶ but it also must be ‘a mean[s] of offering access to specific information in the field of justice at national, European and international level’.⁶⁷ Furthermore, in an interoperable approach, it can provide an ‘interconnection with systems developed as part of initiatives undertaken by members of legal professions, such as lawyers, notaries and judicial officers’.⁶⁸

The e-Justice Portal acts as an interoperable platform since it ‘also provide[s] a single access point via interconnections to the information in national registers with relevance in the area of justice’, such as the interconnected insolvency registers⁶⁹ search, now available in the e-Justice Portal.⁷⁰ The e-Justice Action Plan also determines the need to focus attention ‘on the interconnection of registers which are of interest to citizens,

businesses, legal practitioners and the judiciary'.⁷¹ The Action Plan, therefore, opens up the possibility of the e-Justice Portal as an online platform suiting judicial operators and citizens' needs. For that matter, it is a well-known fact that the judiciary has, for a long time, been demanding an interconnected system so they are allowed to maintain faster procedural communications with other Member States' courts, with European organic courts and with litigators.⁷²

In fact, recent changes⁷³ were made in two simplified proceedings concerning the European Order for Payment Procedure⁷⁴ and the Small Claims Procedure⁷⁵ and a new European Account Preservation Order⁷⁶ is now applicable.⁷⁷ These are mechanisms that were thought to be necessary to promote the Internal Market's functioning and to enhance cross-border free circulation of citizens and companies. Therefore, cross-border litigations must also be made easier and therefore the European Union realised that those mechanisms should be settled at the European level. However, the changes that were undertaken will only fulfil their purpose if they are accompanied, in the short run, by the establishment of a distance communication platform where proceedings of this nature can electronically run and where both the parties and judicial operators can have a login to intervene in the proceedings.⁷⁸

In the European Union, there is already an online interconnection platform between the parties and the so-called European organic courts (those that appear composing the Court of Justice of the European Union). This platform is known as e-Curia. In fact, 'e-Curia is an information technology application which allows procedural documents to be lodged and served electronically'.⁷⁹ It also facilitates online consultation. It is free of charge but, in order to access the platform, the interested party has to submit an application that is provided to the registered email when an account is created. 'Agents and lawyers authorised to practice before a court of a Member State [...] may apply to an account to be opened giving them access to all the functionalities of e-Curia'.⁸⁰ To complete the registration procedure, '[t]he application form for the opening account [...] must be completed, printed, dated and signed, and then sent by post to the Registry of one of the [...] courts'⁸¹, accompanied by 1) a copy of the identification card / passport and 2) a copy of a 'legitimizing document'.⁸² Upon registration, the interested party can fully access e-Curia and use all its functionalities: they can lodge procedural documents (without confirmation by post); they can be electronically served with procedural documents; and he can access procedural documents.⁸³

Taking into consideration e-Curia's registration procedure, it must be said that it is quite impressive that an electronic registration still relies on demanding the physical presentation of documents, personally or by post. It seems, however, that even with this flaw, this system could be mirrored to give to both parties and judicial agents an electronic vehicle that could potentiate their procedural communication in those proceedings dealing with EU Law that have to be decided by national courts. Since the e-Justice Portal is one of the major aspects of e-Justice accomplishments, an online platform such as e-Curia could be hosted on this Portal, especially because it is already a well-known website where citizens, companies and judicial operators search for cross border information.

In fact, as derived from the e-Justice Action Plan, there is a true concern on how to promote a better access to courts in cross-border situations – and the key may be found

in making available ‘communication by electronic means between courts and parties’⁸⁴ – therefore, adopting an interoperable system. To do this, the European Union sees the engagement of both the judiciary and legal practitioners as fundamental. They get together in an annual meeting to allow a regular exchange of views with these target groups of professionals and, to fulfil this purpose European Judicial Networks have an important role in the development of e-Justice.⁸⁵

In this matter, and aiming to set up interoperability across Europe in justice matters, we can also find e-CODEX efforts – which have reached greater recognition. In fact, it developed ‘technical solutions’ through which ‘Member States [were] jointly developing interoperable building blocks and implementing them in real life settings through piloting work’.⁸⁶ It was able to deliver particular and efficient efforts in order to underline best practices and ICT usage between Member States’ courts. An e-CODEX pilot between Poland and Germany was set up in order to process electronically European Payment Order Procedure between those two Member States.⁸⁷ As stated, ‘the recovery of outstanding debts in cross-border cases between Poland and Germany is getting much easier. Polish citizens and businesses can submit a claim to the German Court effortlessly by electronic means’ since ‘[t]he e-CODEX project provides a safe and reliable solution for handling a European Order for Payment procedure electronically’.⁸⁸ Therefore, all communications – since the claims’ submission to the courts’ decisions – are electronically performed and this solution is also running in Austria, Estonia, Greece and Italy.⁸⁹ As it appears to have been a successful project, e-CODEX is now being addressed by the European institutions as a means to deepen e-Justice and further integration on justice fields. Therefore, the Council of the European Union has set up an Experts’ group on e-CODEX in order to assess its usefulness on e-Justice and e-Law realities.⁹⁰ This working group aims to evaluate how to provide European and national information in the field of justice through the e-Justice portal. Therefore, the e-Justice formation deals with e-Justice portal and underlines strategies in order to maintain its status of a one-stop shop. It is possible e-CODEX can be a means to enhance e-Justice portal effectiveness as a one-stop shop since it creates proper ‘bridges’ between national systems and it can be set in the e-Justice portal through which legal operators, citizens and businesses are able to access e-CODEX potentials on cross-border justice.

Furthermore, e-CODEX does not replace itself with national digital platforms and registries – it is a true interoperable system to ‘enable the seamless electronic communication between national systems’⁹¹ – and, for the same reason, does not provide, yet, a true platform, such as e-Curia, in order to run the proceedings. Therefore, it is able support a technical and organizational interoperability but it falls short if we are trying to devise a true European platform to run European proceedings. In the future, we believe it will also adopt this platform but it is important, firstly, to ensure interoperability between national systems without creating great financial hurdles to Member States.

The e-Justice Agenda also addresses the adoption of the necessary means for judicial authorities to communicate among them, and particularly to take evidence in cross border litigations. In addition, an electronic tool to facilitate their communications has to be adopted and videoconference has a significant role in this. Still under e-CODEX efforts, the Commission published an Inception Impact Assessment concerning

the topic ‘Cross-border e-Justice in Europe (e-CODEX)’, in order to be implemented in the first quarter of 2018. As noted, ‘[t]he judicial sector has been lagging behind in terms of digitalising cross border cooperation and judicial procedures’ and it seems important to understand if deepening e-CODEX should be, in the future, pursued by the European Institutions – ‘eu-LISA (or another EU Agency) for the maintenance and further development of the system (latest conclusions in the JHA Council in December 2016)’.⁹² Data protection issues is also a concern as the Commission accurately stated ‘[the chosen entity] would not operate e-CODEX or receive, store or manipulate any of the information exchanged through the system – only the e-CODEX participants, i.e. essentially the Member States and in certain cases the Commission via the e-Justice Portal – would do this’.⁹³ Therefore, e-CODEX would create ‘a common mechanism’ – run under European institutions’ intervention and supervision and closely promoted through e-Justice portal – ‘for standardised secure exchange of cross-border information in judicial proceedings between Member States’ aiding ‘online communication between judicial authorities’.⁹⁴ Taking into consideration this effort, it appears to us that e-CODEX will continue to provide and to deepen further electronic communication between Member States’ courts and judicial operators in order to strengthen effective judicial protection as expressed under Article 47 of the CFREU.

But we also mentioned the importance of videoconferencing on the matter. Taking into consideration the e-Justice Multiannual Action Plan’ objectives, the Council adopted some recommendations⁹⁵ concerning the importance of videoconference to fulfil e-Justice goals. This institution acknowledged that ‘[v]ideoconferencing is a useful tool which has great potential not only at national level but also in particular in cross border situations involving different Member States’ since, especially in transnational proceedings, ‘smooth communication between the judicial authorities of the Member States is crucial’⁹⁶ and ‘[v]ideoconferencing technology can be used in all types of judicial proceedings [...] and it provides courts [...] with greater flexibility to take testimony [...], to hear experts’ opinions and to take suspects’ and defendants’ statements’.⁹⁷ Nowadays, the e-Justice Portal provides information – to judicial operators and citizens – on how to use videoconference and, particularly, ‘information on national facilities’⁹⁸ so that Member States’ courts are able to understand which available technological facilities are provided by each Member State. By doing so, many connection problems ceased to exist but there is still a need to implement, in equal shares, these interaction mechanisms in all Member States. Furthermore, not all Member States have useful information available about them and this section of the e-Justice Portal was last updated on 20th October 2015 when one of the future aims the Council expressed, concerning the e-Justice portal, was to consolidate ‘information on all courts with videoconferencing facilities in the Member States’.⁹⁹ However, so far, such consolidation has not yet happened.

Therefore, we must recall Council’s wording when it stated that ‘future work in this area should be expanded to further facilitate the organising and running of cross-border videoconferences in all Member States by promoting the use of IT tools to support and organise videoconferencing and by enhancing interoperability for videoconferencing’.¹⁰⁰ On technical aspects, the Council concluded it would be important to ‘[i]mprove interoperability between Member States by carrying out systematic practical tests between pairs of Member States to document working parameters’¹⁰¹ or, at least, as a minimum, to establish ‘some technical standards in order

to improve the quality of videoconferencing sessions'.¹⁰² It is our belief that to achieve a true electronic justice system, interoperable mechanisms must be set relying on a well-known judicial platform of European configuration. In that platform, besides including e-CODEX links and facilities and, in the future, creating a setting as e-Curia to deal with cases where EU law also dictates how the proceedings are to run, it would also be associated with a videoconference programme so that long distance electronic communications can be accommodated without worrying about technical diversity between nationally installed systems.

4. Final remarks – judicial interoperability as the way forward on promoting effective judicial protection

Under the DSM guidelines, interoperability started to come to light as a method merely designed to serve an administrative approach, as the paradigm to provide answers on how to pursue the political calling of making the European Union a user-friendly environment, especially when it comes to individuals and companies' relations with public authorities. For that matter, e-Government can be perceived as the outer shell of administrative interoperability since, both at national and European level it is the case that digital components can potentiate the way governments relate to people. There is also a call to input greater transparency to governmental activity and it is believed to be the way to achieve this goal.

However, it is our argument that whilst interoperability is the method to adopt it would have been more feasible to firstly adopt it in other fields such as e-Justice since we infer, from the case law analysed (focused on Portuguese infringements which were also perceived in other Member States), National Public Administrations still struggle with understanding themselves as European functional Administrations. However, judicial operators and especially national judges and other judicial operators already understand how digital technologies could enhance their work when facing cross border litigations. The path would have been better treaded if judicial interoperability had come first.

There are also concerns about creating access to justice that is also propitiated by ICT solutions in the European Union. In this field, an equal labelling was created: the idea of the European e-Justice which nowadays refers to the use of electronic technologies in the field of justice. Here, the main focus was on creating an online one-stop shop – the e-Justice Portal – where individuals, companies and judicial operators can find useful information relating to those proceedings that must run before national courts but where EU law has a primal and indispensable role. In relation to EU procedural mechanisms, the European Union has been implementing further changes by creating European procedures that, despite running before national courts, have a cross-border nature and rely, almost entirely, on European procedural solutions. European legislators, seeing that national solutions were diverse (with different deadlines, disparate competent authorities and various material requirements), set a legislative pack which created new European procedures that, from their initial written application to the final decision, run under European legislation. The three most effective examples are the European Order for Payment Procedure, Small Claims Procedure and, most recently, the Account Preservation Order. These mechanisms are characterised for their simplicity but, especially, by their need to deliver prompt and non expensive results –

otherwise, applicants' expectations on recovering their credits would be undermined, making them resort to national solutions. Under e-CODEX efforts, both European Order for Payment Procedure and Small Claims Procedure are able to run from beginning to end, by electronic means before several Member States engaged on e-CODEX pilots. Furthermore, the European institutions already perceive its potential tail end as a means to establish true interoperable relations among justice matters, especially those with cross-border impact. In addition, there are other aspects that need further functionality because they also have cross-border impact, i.e., instruments relating to the taking of evidence¹⁰³, to the service of judicial and extrajudicial documents¹⁰⁴ and to the competence and enforcement of judgments.¹⁰⁵ Major alterations are being considered in order to revise the first two instruments in a way proper digital path can be reached also on instrumental mechanisms.¹⁰⁶ However, without electronic integration, they will continue to have a marginal effect. Furthermore, in this context, information provided in the e-Justice Portal is not enough. While information is made available sometimes it is not updated for a long time and often some Member States do not provide full information or do not provide any information at all.

Regarding the other aspects underlined by the e-Justice Action Plan – the creation of proper means to provide electronic contact between judicial operators in cross-border scenarios and videoconferencing – there is a common understanding of its importance on cross-border litigation and solutions are being pondered. One is focusing on e-CODEX being managed by European institutions (or organs) since it delivered interoperable solutions that can be enforced and applied to all Member States without undermining their digital efforts, as e-CODEX has the ability to interconnect existing platforms (national ones) in a consistent scheme with cross-border configuration. On videoconferencing matters, there are still several limitations concerning compatibility issues between Member States' hardware and software that even e-Justice Portal's information are not able to overcome, demanding greater expenses on cross-border litigations. However, upon the revision of Regulations on taking of evidence and documents' service, we are able to perceive further sensibility to grant greater effectiveness to videoconference and especially to boost electronic services.

In this context, it is our belief that the e-Justice Portal should be developed and equipped with further technological features to include e-CODEX link to make this project's efforts more visible and to draw other Member States' attention to its potential. In addition, even if in the future, a platform resembling e-Curia should be allocated in the e-Justice portal, where judicial operators and citizens / companies could register and login to interact with European courts (especially national courts when they are applying EU law), to be served with procedural documents and where they could upload initial application forms / pleadings / documents to their proceedings. As we already stressed, e-CODEX efforts should be enhanced to other Member States in order to test its full usefulness, especially on credits claims' procedures since in these areas the European Union already has gone far by setting, through European Regulations, how procedures would run from beginning to end. e-CODEX has already established some functioning pilots where interoperable interactions were possible from one State to the other.

Furthermore, in the same e-Justice Portal, a videoconference digital facility, that could overcome technical differences between national videoconferencing and other

difficulties that may occur, should also be created. However, an inclination to enhance the effectiveness of videoconferencing is evident in the recent efforts to revise the Regulation.

Taking this as our pragmatic referral, we can scientifically understand why the DSM also presupposes deepening European e-Justice. Bearing in mind that administrative interoperability is at the service of e-Government's settlement, we understand it would be useful to talk about judicial interoperability as a means to deepen and develop the e-Justice arena. There are already some aspects well understood as interoperability inputs to e-Justice, especially those demanding Member States to adopt interoperable solutions on videoconferencing to have compatible ICT services. However, the interoperability concept accommodates three dogmatic dimensions: technical, semantic and organizational dimensions. Therefore, of those interoperable solutions presented under e-Justice demands, it is already possible to understand, under e-CODEX, a technical dimension is being openly pursued. Also videoconferencing has the power to deepen this reality.

Still, there are other, even if timid, manifestations of semantic interoperability being pursued, despite not being underlined as such: semantic interoperability demands that common legal (and, as such, judicial) expressions can be understood in the same manner by all the affected parties. Concerning justice fields, those affected parties can be judicial operators (judges, judicial prosecutors, court officials, lawyers) but also the parties in litigation. For that matter, the European Union is already committed, in the field of law, to promote semantic interoperability in, for instance, debt recovery, insolvency proceedings, family matters, criminal proceedings, data protection, some fiscal areas, public procurement, environmental fields, contract law, etc., since these areas openly rely on forms' usage. It would be easier to address those linguistic approaches as part of creating a judicial interoperable atmosphere across the European Union. It would be easier to highlight the DSM goals since people would understand that all those changes were made also meeting that political calling. Hence, they would feel more engaged to pursue it.

Judicial organizational interoperability should also be addressed in a way that would not compromise the innovative judicial arrangement that characterizes the European Union. Recent approaches on e-CODEX future perspectives allow us to understand some organizational interoperability that can and will be accommodated. However, it is still in an embryonic stage and it must be developed as soon as possible. The Court of Justice of the European Union accommodates all courts that can be perceived as European organic courts, but also national courts are European courts when they apply EU law (=European functional courts) since the European judicial organization integrates both of them. Therefore, this interoperability feature cannot aim to transform that judicial setting, which still meets some difficulties, especially when national courts struggle with the preliminary ruling process. Organisational interoperability would only facilitate these judicial relations by settling ICT mechanisms that could expedite judicial dialogue between courts.

If this reality is already being discussed under e-Justice delivered cross-borders, there are still some drawbacks regarding preliminary references since they are still being sent by the national courts to the Court of Justice by post despite the fact that a

dematerialization is being implemented. In fact, there is the possibility to send by email or fax a copy of the reference's decision when there is a request for an urgent preliminary ruling procedure to allow hastier proceedings. However, the original documents must be sent immediately, by post and registered mail, to the Court of Justice's Registry. In fact, despite preliminary rulings are now being dealt in a quicker way¹⁰⁷, it is a fact that they are still taking a long time. By setting an interoperable mechanism of submitting preliminary references, for instance, it would import greater time gains and allow the Court of Justice to more rapidly communicate with national courts, promoting a widening of effective judicial protection. Therefore, alongside with efforts to put national courts communicating between them by electronic tools, it would also be important to address preliminary references issue since it also deals with interoperable interactions between courts and surpassing Member States' borders.

For all that has been said, it is easy to understand that e-Justice demands an interoperability background where its matters can be substantiated. In fact, as administrative interoperability is a means to an end – the full proclamation of an e-Government paradigm – also a judicial interoperability would set the scientific and empirical approach to an e-Justice framework. Without bearing this scientific densification, both stakeholders and policy makers feel less engaged on judicial improvement since they are not able to devise the path that leads to the front yard of e-Justice. To avoid persistently building a house from the roof, it is our belief judicial interoperability should be expressively referred to as the premise that leads to e-Justice improvements and further judicial integration under the DSM.

REFERENCES:

- Andrew Tarrant and Luca Di Mauro, 'Increasing the benefits from the Digital Single Market', *European networks Law and Regulation Quarterly (ENRL)*, No. 2 (2016), 98-109;
- Carlos E. Jiménez-Gómez and Mila Gascó-Hernández, *Achieving open justice through citizen participation and transparency* (New York: Hershey, 2017);
- Council, *Council's Conclusions on the modernisation of public administrations (24 and 25 October 2013)*, Brussels, 25 October 2013, EUCO 169/13, 4, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf [access: 4 August 2017];
- Council, *Council Recommendations 'Promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level'*, Brussels, 31 July 2015, 2015/C 250/01, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:250:FULL&from=PT> [access: 7 August 2017];
- Council, *Multiannual European e-Justice Action Plan 2014-2018*, Brussels, 14 June 2014, 2014/C 182/02;
- Court of Justice of the European Union, *E-Curia: Conditions of use applicable to parties' representatives*, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2011-10/en08602.pdf> [access: 7 August 2017];
- e-CODEX, *e-CODEX, Facts & figures*, https://www.e-codex.eu/sites/default/files/marketingMaterials/e-codex_general_digital.pdf [access: 2 January 2018];

- e-CODEX, *New e-CODEX pilot is live! Simplified recovery of outstanding debts between Poland and Germany*, Press Release, 1 October 2015, https://www.e-codex.eu/sites/default/files/articlesAndPublications/15101_epo_pl-ger.pdf [access: 27 February 2018];
- Ernst Steigenga, Marco Velicogna, ‘Envisioning the next step in e-Justice: in search of the key to provide easy access to cross-border justice for all users’, https://www.e-codex.eu/sites/default/files/articlesAndPublications/Envisioning_the_Next_Step_in_e-Justice.pdf [access: 25 March 2018];
- European Commission – Directorate-General for Communications Networks, Content and Technology, *DESI 2017– Digital Economy and Society Index ‘Methodological note’*, Brussels, 2 March 2017;
- European Commission, *Commission staff working document ‘A digital single market strategy for Europe – analysis and evidence’*, Brussels, 6 May 2015, SWD(2015) 100 final;
- European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government’*, Brussels, 19th April 2016 COM(2016) 179 final;
- European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe’*, Brussels, 25 May 2016, COM(2016) 288 final;
- European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘The Digital Agenda for Europe – Driving European growth digitally’*, Brussels, 18 December 2012, COM(2012) 784 final;
- European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘The Digital Agenda for Europe – Driving European growth digitally’*, Brussels, 18 December 2012, SWD(2012) 446 final;
- European Commission, *Digital4EU Stakeholder forum 2016 Report*, Brussels, 25 February 2016, <https://ec.europa.eu/digital-single-market/en/digital4eu> [access: 3 August 2017];
- European Commission, *Inception Impact Assessment Cross-border e-Justice in Europe (e-CODEX)*, Ares (2017)3600084, 17th July 2017;
- George Pangalous, Ioannis Salmatzidis and Ionis Pagkalos, ‘Electronic cross-border access to legal means and procedures in Europe – the Greek eCodex pilot’, *European, Mediterranean & Middle Eastern Conference on Information Systems 2015*, June 1st – 2nd, Athens, Greece (2015), https://www.e-codex.eu/sites/default/files/articlesAndPublications/emcis_2015_international_conference.pdf [access: 30 March 2018];
- Joana Covelo de Abreu, ‘Digital Single Market under EU political and constitutional calling: European electronic agenda’s impact on interoperability solutions’, *UNIO – EU Law Journal*, Vol. 3, No. 1 (2017), 123-140, [http://www.unio.cedu.direito.uminho.pt/Uploads/UNIO%203/UNIO%203%20EN/Joana%20Covelo%20de%20Abreu%20\(1\).pdf](http://www.unio.cedu.direito.uminho.pt/Uploads/UNIO%203/UNIO%203%20EN/Joana%20Covelo%20de%20Abreu%20(1).pdf);

- Mitja Dečman, 'The role of government portals: an evaluation of the new Slovenian government portal', in *ECEG 2016 – Proceedings of the 16th European Conference on e-Government*, ed. Mitja Dečman et al. (Reading: Academic Conferences and Publishing International Limited, 2016), 45-53;

- *Tallinn Declaration on eGovernment at the ministerial meeting during Estonian Presidency of the Council*, 6 October 2017, EU2017.EE, https://www.eu2017.ee/sites/default/files/2017-10/Tallinn_eGov_declaration.pdf [access: 10.2.2018].

- Yannis Charalabidis, *Interoperability in Digital Public Services and Administration: Bringing E-Government and E-Business* (New York: Hershey, 2011).

¹ Professor at the Law School of the University of Minho; Jean Monnet Chair; Academic Coordinator of the Jean Monnet Project "EU Digital Single Market as a constitutional calling: interoperability as the way forward".

² Professor at the Law School of the University of Minho; Expert at the DG Justice and Consumers (European Commission) on judicial cooperation in civil and commercial matters (namely, the recast of Regulations 1206/2001 and 1393/2007); Scientific Coordinator of the Research Component of the Jean Monnet Project "EU Digital Single Market as a constitutional calling: interoperability as the way forward".

³ For further developments, 'European Commission's webpage concerning «Digital Single Market»', last modified 10 July 2017, <https://ec.europa.eu/digital-single-market/en/digital-single-market>. [access: 2 August 2017].

⁴ See European Commission, *Commission staff working document 'A digital single market strategy for Europe – analysis and evidence'*, Brussels, 6 May 2015, SWD(2015) 100 final, 3. In fact, not only the European Commission, but also the European Parliament and the Council have highlighted DSM as one of their main political priorities.

⁵ See Joana Covelo de Abreu, 'Digital Single Market under EU political and constitutional calling: European electronic agenda's impact on interoperability solutions', *UNIO – EU Law Journal*, Vol. 3, No. 1 (2017), 124, [http://www.unio.cedu.direito.uminho.pt/Uploads/UNIO%203/UNIO%203%20EN/Joana%20Covelo%20de%20Abreu%20\(1\).pdf](http://www.unio.cedu.direito.uminho.pt/Uploads/UNIO%203/UNIO%203%20EN/Joana%20Covelo%20de%20Abreu%20(1).pdf) [access: 2 August 2017].

⁶ See European Commission, *'A digital single market strategy for Europe – analysis and evidence'*, 3.

⁷ See European Commission, *'A digital single market strategy for Europe – analysis and evidence'*, 4.

⁸ See, for further developments, European Commission, *'A digital single market strategy for Europe – analysis and evidence'*, 4-5.

⁹ There are authors that understand DSM's success could be enhanced if Regulatory Framework concerning electronic communications was renewed. See, for further development, Andrew Tarrant and Luca Di Mauro, 'Increasing the benefits from the Digital Single Market', *European networks Law and Regulation Quarterly (ENRL)*, No. 2 (2016), 98-109.

¹⁰ See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe'*, Brussels, 25 May 2016, COM(2016) 288 final, 2.

¹¹ See European Commission, *'Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe'*, 2-3.

¹² See European Commission, *'Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe'*, 3.

¹³ For further developments, 'European Commission – Digital Single Market', <https://ec.europa.eu/digital-single-market/> [access: 3 August 2017].

¹⁴ See Joana Covelo de Abreu, 'Digital Single Market', 125.

¹⁵ See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Digital Agenda for Europe – Driving European growth digitally'*, Brussels, 18 December 2012, COM(2012) 784 final, 13.

¹⁶ For further developments, ‘European Commission – Digital Single Market: Event Reports’, last modified 31 March 2016, <https://ec.europa.eu/digital-single-market/en/news/digital4eu-2016-report>. [access: 3 August 2017].

¹⁷ See, on the matter, ‘European Commission – Digital Single Market: Reports and Studies’, last modified 3 March 2017, <https://ec.europa.eu/digital-single-market/en/news/digital-economy-and-society-index-desi-2017> [access: 3 August 2017].

¹⁸ See European Commission – Directorate-General for Communications Networks, Content and Technology, *DESI 2017– Digital Economy and Society Index ‘Methodological note’*, Brussels, 2 March 2017, 5.

¹⁹ See European Commission – Directorate-General for Communications Networks, Content and Technology, 6.

²⁰ See European Commission – Directorate-General for Communications Networks, Content and Technology, 7.

²¹ See European Commission, *Digital4EU Stakeholder forum 2016 Report*, Brussels, 25 February 2016, 11, <https://ec.europa.eu/digital-single-market/en/digital4eu> [access: 3 August 2017].

²² See European Commission, *Digital4EU Stakeholder forum 2016 Report*, 12.

²³ See European Commission, *Digital4EU Stakeholder forum 2016 Report*, 14.

²⁴ See European Commission, ‘*A digital single market strategy for Europe – analysis and evidence*’, 77.

²⁵ For further developments, ‘European e-Justice Portal’, <https://e-justice.europa.eu/home.do?action=home> [access: 3 August 2017].

²⁶ See European Commission, *Digital4EU Stakeholder forum 2016 Report*, 14.

²⁷ See, for further development, *Tallinn Declaration on eGovernment at the ministerial meeting during Estonian Presidency of the Council*, 6 October 2017, EU2017.EE, https://www.eu2017.ee/sites/default/files/2017-10/Tallinn_eGov_declaration.pdf [access: 10.2.2018].

²⁸ See Decision (EU) 2015/2240, of the European Parliament and of the Council, 25th November 2015, establishing a programme on interoperability solutions and common frameworks for European public administrations, businesses and citizens (ISA³ programme) as a means for modernizing the public sector.

²⁹ See Yannis Charalabidis, *Interoperability in Digital Public Services and Administration: Bringing E-Government and E-Business* (New York: Hershey, 2011), xxii.

³⁰ See Carlos E. Jiménez-Gómez and Mila Gascó-Hernández, *Achieving open justice through citizen participation and transparency* (New York: Hershey, 2017), 160.

³¹ See Carlos E. Jiménez-Gómez and Mila Gascó-Hernández, 160.

³² See Carlos E. Jiménez-Gómez and Mila Gascó-Hernández, 160.

³³ See Decision (EU) No. 2015/2240, Recital 18.

³⁴ See Decision (EU) No. 2015/2240, Recital 27.

³⁵ See Yannis Charalabidis, xxii.

³⁶ See Council, *Council’s Conclusions on the modernisation of public administrations (24 and 25 October 2013)*, Brussels, 25 October 2013, EUCO 169/13, 4, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/139197.pdf [access: 4 August 2017].

³⁷ See Decision (EU) No. 2015/2240, Recital 30.

³⁸ See Decision (EU) No. 2015/2240, Recital 31.

³⁹ See Decision (EU) No. 2015/2240, Recital 36.

⁴⁰ See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government’*, Brussels, 19th April 2016 COM(2016) 179 final.

⁴¹ See European Commission, ‘*EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government*’, 1.

⁴² See European Commission, ‘*EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government*’, 1.

⁴³ See European Commission, ‘*EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government*’, 2.

⁴⁴ See Council, *Council’s Conclusions on the modernisation of public administrations*, 3.

⁴⁵ See Mitja Dečman, ‘The role of government portals: an evaluation of the new Slovenian government portal’, in *ECEG 2016 – Proceedings of the 16th European Conference on e-Government*, ed. Mitja Dečman et al. (Reading: Academic Conferences and Publishing International Limited, 2016), 46.

⁴⁶ See ECJ’s judgment *Commission v. Portugal*, 5 October 2016, case C-583/15, ECLI:EU:C:2016:741.

⁴⁷ See Regulation (EC) No. 1071/2009, of the European Parliament and of the Council, of 21 October 2009, establishing common rules concerning the conditions to be complied with the pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.

⁴⁸ See ECJ's judgment *Commission v. Portugal*, 5 October 2016, Recital 16.

⁴⁹ See ECJ's judgment *Commission v. Grand Duchy of Luxembourg*, 1 December 2016, case C-152/16, ECLI:EU:C:2016:919, Recital 22.

⁵⁰ See ECJ's judgment *European Commission v. Republic of Poland*, 5 October 2016, case C-23/16, ECLI:EU:C:2016:742.

⁵¹ See ECJ's judgment *Commission v. Portugal*, 22 March 2017, case C-665/15, ECLI:EU:C:2017:231.

⁵² See Directive (EC) No. 2006/126/EC, of the European Parliament and of the Council, of 20 December 2006, on driving licences (Recast).

⁵³ See 'RESPER - Réseau permis de conduire under IDABC programme', <http://ec.europa.eu/idabc/en/document/3989/5926.html> [access: 7 August 2017].

⁵⁴ See 'RESPER - Réseau permis de conduire under IDABC programme', <http://ec.europa.eu/idabc/en/document/3989/5926.html> [access: 7 August 2017].

⁵⁵ See ECJ's judgement *Commission v. Portugal*, 22 March 2017, Recital 14 (free translation).

⁵⁶ See ECJ's (Action brought) *European Commission v. Republic of Finland*, 26 January 2016, case C-42/16,

<http://curia.europa.eu/juris/document/document.jsf?text=2006%252F126%252FCE&docid=175442&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=323142> [access 7 August 2017].

⁵⁷ See Yannis Charalabidis, 26.

⁵⁸ See, concerning Global Administrative Law approach on the matter, Joana Covelo de Abreu, 'Digital Single Market. In fact, in this publication, it is possible to understand both Administrative and Constitutional approach on e-Government matters and, particularly, the articulation between primary and second public interests.

⁵⁹ See European Commission, 'EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government', 2.

⁶⁰ See European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Digital Agenda for Europe – Driving European growth digitally'*, Brussels, 18 December 2012, SWD(2012) 446 final, 12.

⁶¹ See European Commission, 'The Digital Agenda for Europe – Driving European growth digitally', 7.

⁶² See European Commission, 'EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government', 7.

⁶³ See European Commission, 'EU e-Government Action Plan 2016-2020 – Accelerating the digital transformation of government', 8.

⁶⁴ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, Brussels, 14 June 2014, 2014/C 182/02, Recital 1.

⁶⁵ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, recital 4.

⁶⁶ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, recital 15.

⁶⁷ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, recital 16.

⁶⁸ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, recital 18.

⁶⁹ See, for further development, Michael Bogdan, 'The new EU rules on electronic insolvency registers', Masaryk University Journal of Law and Technology, Vol. 11 (2017), 175-182.

⁷⁰ For further information, 'European e-Justice Portal – insolvency registers', last modified 30 November 2016, https://e-justice.europa.eu/content_insolvency_registers-110-en.do [access: 7 August 2017].

⁷¹ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, recital 21.

⁷² See, on the matter, George Pangalos, Ioannis Salmatzidis and Ionis Pagkalos, 'Electronic cross-border access to legal means and procedures in Europe – the Greek eCodex pilot', *European, Mediterranean & Middle Eastern Conference on Information Systems 2015*, June 1st – 2nd, Athens, Greece (2015), https://www.e-codex.eu/sites/default/files/articlesAndPublications/emcis_2015_international_conference.pdf [access: 30 March 2018].

In this work, the authors stress the importance of interoperable mechanisms in order to 'cross-border collaboration of courts and authorities [can be] easier and more efficient'.

⁷³ See Regulation (EU) No. 2015/2421, of the European Parliament and of the Council, of 16 December 2015, amending Regulation (EC) No. 861/2007, establishing a European Small Claims Procedure and Regulation (EC) No. 1896/2006, creating a European order for payment procedure.

⁷⁴ See Regulation (EC) No. 1896/2006, of the European Parliament and of the Council, of 12 December 2006, creating a European order for payment procedure.

⁷⁵ See Regulation (EC) No. 861/2007, of the European Parliament and of the Council, of 11 July 2007, establishing a European small claims procedure.

⁷⁶ See Regulation (EU) No. 655/2014, of the European Parliament and of the Council, of 15 May 2014, establishing a European account preservation order procedure to facilitate cross-border debt recovery in civil and commercial matters.

⁷⁷ See, for further development, Joana Covelo de Abreu, 'O Regulamento n.º 655/2014 que estabelece um procedimento de decisão europeia de arresto de contas: direitos à ação e de defesa em tensão reflexiva no contexto de uma integração judiciária em matéria civil – uma precoce antevisão', in *UNIO – e-book, Vol. I, Workshops CEDU 2016* [online], Coord. Alessandra Silveira (Braga: Centro de Estudos em Direito da União Europeia, 2017), 253-276, <http://www.unio.cedu.direito.uminho.pt/Uploads/E-book%20-%20Vol.%20I%20-%202016.pdf> [access: 19 June 2017].

⁷⁸ See Joana Covelo de Abreu, 'O impacto do Regulamento n.º 2015/2421 no funcionamento das ações de pequeno montante – compreensões quanto à justiça eletrónica europeia', in *Estudos em Homenagem ao Professor Doutor António Cândido de Oliveira*, Com. Org. Isabel Fonseca et. al. (Coimbra: Almedina, 2017), pp. 511-531.

⁷⁹ See Court of Justice of the European Union, *E-Curia: Conditions of use applicable to parties' representatives*, Recital 1, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2011-10/en08602.pdf> [access: 7 August 2017].

⁸⁰ See Court of Justice of the European Union, *E-Curia: Conditions of use*, Recital 6.

⁸¹ See Court of Justice of the European Union, *E-Curia: Conditions of use*, Recital 7.

⁸² As mentioned in e-Curia registration menu, the registration form must be accompanied by a 'copy of a document establishing [the] professional status (proof that [the person is] entitled to represent an institution or a Member State or that [the person is] entitled to plead before a court of a Member State or of a State which is party to the agreement on the European Economic Area'. For further knowledge, 'E-Curia – Request for an account giving access to e-Curia', <https://curia.europa.eu/e-Curia/access-request-step1.faces> [access: 7 August 2017].

⁸³ See Court of Justice of the European Union, *E-Curia: Conditions of use*, Recitals 11-29.

⁸⁴ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, Recital 26.

⁸⁵ See Council, *Multiannual European e-Justice Action Plan 2014-2018*, recitals 28 and 30.

⁸⁶ See e-CODEX, *e-CODEX, Facts & figures*, https://www.e-codex.eu/sites/default/files/marketingMaterials/e-codex_general_digital.pdf [access: 2 January 2018].

⁸⁷ See e-CODEX, *New e-CODEX pilot is live! Simplified recovery of outstanding debts between Poland and Germany*, Press Release, 1 October 2015, https://www.e-codex.eu/sites/default/files/articlesAndPublications/15101_epo_pl-ger.pdf [access: 27 February 2018].

⁸⁸ See e-CODEX, *New e-CODEX pilot*, 1.

⁸⁹ It also deals, in some pilot countries, with Small Claims Procedures. See, on the matter and for further development, Commission, *Inception Impact Assessment Cross-border e-Justice in Europe (e-CODEX)*, Ares (2017)3600084, 17th July 2017, 1.

⁹⁰ See Council of the European Union, *Communication*, Brussels, 25 January 2018, CM 1222/1/18 rev 1, <http://data.consilium.europa.eu/doc/document/CM-1222-2018-REV-1/en/pdf> [access: 20 March 2018].

⁹¹ See e-CODEX, *New e-CODEX pilot*, 1.

⁹² Commission, *Inception Impact Assessment*, 1.

⁹³ Commission, *Inception Impact Assessment*, 2.

⁹⁴ Commission, *Inception Impact Assessment*, 2.

⁹⁵ See Council, *Council Recommendations 'Promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level'*, Brussels, 31 July 2015, 2015/C 250/01, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:250:FULL&from=PT> [access: 7 August 2017].

⁹⁶ See Council, *Council Recommendations*, Recital 6.

⁹⁷ See Council, *Council Recommendations*, Recital 7.

⁹⁸ For further research, 'E-Justice Portal – Information on national facilities', https://e-justice.europa.eu/content/information_on_national_facilities-319-en.do [access: 7 August 2017].

⁹⁹ See Council, *Council Recommendations*, Recital 17.

¹⁰⁰ See Council, *Council Recommendations*, Recital 13.

¹⁰¹ See Council, *Council Recommendations*, Recital 22 (b) (f).

¹⁰² See Council, *Council Recommendations*, Recital 22 (b) (g).

¹⁰³ See Regulation (EC) No. 1206/2001, of the Council, on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters.

¹⁰⁴ See Regulation (EC) No. 1393/2007, of the European Parliament and of the Council, of 13 November 2007, on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000.

¹⁰⁵ See Regulation (EU) No. 1215/2012, of the European Parliament and of the Council, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

¹⁰⁶ See Commission, *Expert Group on Modernisation of judicial cooperation in Civil and Commercial Matters (Revision of Regulation (EC) 1393/2007 on service of documents and Regulation (EC) 1206/2001 on taking of evidence)*, Brussels, 18 December 2017, <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=8910> [access: 30.3.2018].

¹⁰⁷ See Court of Justice of the European Union, *2016 Annual Report – ‘The year in review’*, 15, 27 and 28, https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-04/ragp-2016_final_en_web.pdf [access: 15 May 2017].