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Present and Future in the Digit(al)ization of Judicial Procedures in Romania in a European Context

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Abstract. In our study, we review some current trends in the digitalization of court activities, with an emphasis on Romania in a European Union context. We analyse the past and current state of the Romanian digitization and digitalization of courts, in the framework of major court activity types that may be digitized and digitalized. We also present the most recent attempts by the European Commission to facilitate the digital transition of court activities and the financing and normative aspects of this transition. Finally, we conclude by presenting proposed Romanian efforts to achieve the digital transition and some of their inadequacies.

Keywords: digitalization, digitization, digital transition, Romania, courts

1. Introductory Thoughts. What Constitutes 'New' Digit(al)ization?

The advances made in the digitization and digitalization of various systems, including public administration or public services, are widely considered as a marker of not just a technological progress but also of an institutional development. This is certainly the case of the justice system, where progress in the information and communication technology (ICT) sector is perpetually expected to herald revolutionary and yet unachieved results.

Digitization may be widely defined[1] as the digital representation of real-world objects or processes achieved by the use of computer systems. This is not to be confused[2] with *digitalization*, which is taken to mean the widescale deployment of ICT tools in order to affect transformation of the operation and to increase the

1 See Gonzalez-Diaz–Stelldinger–Latecki 2020.
2 Bloomberg 2018.

efficiency of pre-existing institutions and processes. Regardless of the definition, both could play an important role in increasing the efficiency of services, including public sector services, such as courts, and bodies of administrative jurisdiction (found in the field of taxation, public acquisitions, etc.). Our study will focus on the trends and the (as yet relatively meagre) results in this field.

We would like to point out here that – as has been stated in the literature[3] on digitization (a conclusion also valid for the wider notion of digitalization) – this is not merely the deployment of digital technology (ICT) but also a process by which the disruptive effects of this technology are fully embraced and put to use in order to generate interactive services instead of traditionally static ones and to achieve a 'co-creation' model for generating value.

Therefore, both digitization and digitalization must, by definition, yield disruptive results, as they must also produce added value. In consequence, simple applications for achieving some tasks in a digital environment that could be, and also were, achieved earlier in a similar way in a non-digital environment (such as service of procedure or confirmation of receipt in the field of judicial procedures) cannot be qualified as 'new' digitization or digitalization.

In our study, we shall review what truly qualifies as 'new' digitization and digitalization in the judicial sector and what progress Romania has made in this field in comparison with other states in the EU. We shall also examine Romanian, and to a lesser extent EU, efforts of court digitization and digitalization to determine if there is a mismatch between what is desired from these processes when implemented ideally and what may actually be achieved by them. We shall also examine whether digitization and digitalization are truly being achieved and whether poor governance and an underdeveloped legal framework have contributed to the obvious lack of progress in this field in Romania.

2. Digit(al)ization of Courts: Classifying the Solutions

According to Velicogna,[4] certain distinct categories of court digitization and digitalization employed in the EU may be identified, using a classification based on their utility to the judge and the court in general. The following part of our paper shows the conceptual framework developed by this author, which we consider the best way of viewing new technologies in courts in general. This classification is also compatible with and near identical to the one used[5] by the European Commission for the Efficiency of Justice (CEPEJ).

3 Schmidt–Zimmermann–Möhring–Nurcan–Keller–Bär 2016.

4 Velicogna 2007. 129–147.

5 European Commission for the Efficiency of Justice 2016 [henceforth cited as: CEPEJ 2016]. 15–41.

Basic technologies within the court according to the cited author are those off-the-shelf products (both hardware and software) which are utilized for the automation of basic 'office tasks' by the courts. These technologies (such as desktop and laptop computers, printers, scanners, local networks and Internet access, e-mail, word processors, web browsers, and other such applications) presuppose no customization of the ICT infrastructure to specifically suit court work and are considered useful mainly in constituting an 'installed base'.[6] Therefore, their implementation will result in increases of non-specific productivity and will also raise the level of technology-awareness in the workforce (including clerks and judges), resulting in the better uptake of future technologies. Finally, for these simple technologies to be usefully deployed, an infrastructure must be put in place, on which more customized solutions may be based in the future.

Technologies for the administrative component of court work include those that facilitate the action of the court registry, clerks, and other administrative personnel but also the case administration activity of the judges. These technologies include digital registration systems for recording case progress, administrative details, such as dates set for hearings and actions which took place regarding the case, but also means for digitizing documents, including scanners, specific optical character recognition (OCR) software, and data storage options. This set of ICT tools allows the court administration to aggregate case information in one place and to provide the necessary information to court personnel and to interested parties. This set of technologies also includes digital registration and case management software (CMS) by which the assignment of cases to certain judges, the record of the case details, and management tasks related to cases may be stored in a unitary fashion. Such technologies may be deployed in parallel with (as is most often the case) or in place of paper-based solutions for case management. CMS solutions are not only apt to ensure individual case management but may also be implemented at a court administration level to track caseloads on judges, the efficiency of courts, and other statistical information (case duration, types of cases, individual performance by judges, observance of time limits imposed on the judiciary, etc.). Such systems are also used for managing non-litigious case types, which do not presuppose judicial intervention in the proper sense.

Technologies for supporting judges are 'individual tools'[7] in support of judicial activity at a given court, as distinct entities from the organizational tools that are used at a court level. These are used to facilitate daily, specifically judicial activity by making possible the retrieval of case-specific information such as documents, applicable law and case law, information retrieval from previous trials, etc. Tools for sharing case-law-related inquiries among judges and among judicial bodies

6 Velicogna 2007. 131. The author references earlier work by others for this designation. See note 14 on the cited page.

7 Velicogna 2007. 136.

(such as online forums of judges) are also included in this category, as well as the individual electronic signatures attributed to judges, for compiling and signing electronic documents. Finally, application to support the drafting of judicial decisions (e.g. individual sentencing applications that propose a sentence based on several factors recorded in national databases, which are considered regarding the person of an offender), including artificial intelligence (AI) implementation, would also be considered inside this class of tools.

ICT facilitating communication exchange between courts, parties, and the general public as a category contains networked technologies that ensure court-related information transfer. These may be included in two subcategories. *Systems for electronic case and legal information provision* usually permit interested or even third parties to access case-related information such as trial dates and case progress. They are highly reliant on the standard information transfer infrastructure of the Internet and are constituted by court websites containing general interest and even case-related information. Legal databases, as well as informal communication platforms (for professional social networking, and information sharing such as online forums) are also included in this category. *Official electronic communication systems*, on the other hand, are highly secure, usually state-administered platforms accessible to court personnel, judges, parties and their representatives, or other professionals, which permit the online submission of documents to the court, send and receive other official communications, and make online proceedings possible (both in text-based and in audio-visual forms). Such official communication platforms are at the core of current e-justice programs throughout the EU. Small claims procedures are perhaps the most widely known of their implementations, as these procedures mainly aim for the digitalization of simplified (summary) procedures, and only more rarely for the digitalization of regular proceedings. Online platforms for (regular) judicial proceedings are also included within this category.

We would like to underline here an important distinction between websites, used in the general sense, which offer mainly one-way communication and information transfer from courts to interested or third parties, and portals. Portals which themselves are also accessible via the Internet, however, allow for information exchange and usually constitute the user interface of official electronic communication systems.

Finally, in addition to the classification by Velicogna, the European Commission for the Efficiency of Justice listed – in relation to the digitalization of court activities and the digitization of information related to these activities – the *legal framework* in which these processes take place, as a factor in the success (or failure) of such initiatives.

3. An Overview of the Digit(al)ization of Justice in Romania as Compared to Other EU Member States

The digitalization of justice in several EU jurisdictions has been of great interest not only to the EU, which in several initiatives aimed to stimulate such developments (one such initiative will be discussed in more detail below), but also to the European Commission for the Efficiency of Justice, which has published a special thematic report on this topic in the CEPEJ Studies series (no. 24), under the title *European Judicial Systems – Efficiency and Quality of Justice – Thematic Report: Use of Information Technology in European Courts*.

In the report, the CEPEJ aimed to develop a unitary frame of reference of indices and methods[8] in order to compare several judicial systems based on identical criteria, to determine the level to which ICT is deployed to serve the judiciary. The report scored participating countries' 'Global IT development level' based on the available equipment, the legal framework of ICT deployment in courts, and on the practices of governance applied to that deployment. Therefore, the 2016 CEPEJ report emphasized not only the technological (ICT) aspects of the digit(al)-ization of court activity but also the legal and governance framework developed for their implementation.

Romania[9] was one of the states that responded for data requests for compiling the report. It scored a total of two points for available equipment, two points for the legal framework, and a single point for governance, placing it in the mid-to-back of the ranked states and entities.[10]

The report remarked that in the relevant survey period Romania was the only country not yet to acquire ICT tools for collective court document storage, sharing and version management, and that it was one of only three EU Member States not to employ specialized personnel for this task.[11] It has been ascertained that Romania did deploy ICT tools to assist judges in drafting decisions in civil, administrative, and criminal cases, even though this technology was not equally available in all forms and for all case types (templates for decision writing, centralized case law databases, and intranet access being available, while advanced automation tools for drafting judicial decisions, voice dictation equipment, centralized legislative databases, a centralized record of all criminal cases, centralized databases for decision support and online training were found lacking).[12] A centralized electronic criminal records database does exist in Romania, but it only lists individuals' convictions, not criminal cases.[13]

8 CEPEJ 2016. 11–47.
9 For all data on which the report was based, displayed in a single-table format, see: CEPEJ 2016. 69.
10 CEPEJ 2016. 14.
11 CEPEJ 2016. 17, 70–72.
12 CEPEJ 2016. 70–72.
13 CEPEJ 2016. 19.

Romania was reported as having 100% of the necessary equipment rate for communication between courts and lawyers.[14] We would like to add here that the equipment rate does not equate to effective communication and only measures the hardware requirements for courts to undertake such communication. Also, the report notes that four EU Member States [Belgium, Greece, Romania, and the UK (Northern Ireland)] – although benefiting from high equipment rates – only employ this communication to one of the total of four stages of court proceeding, identified as being the commencement of proceedings, the pre-hearing phase of proceedings, referral management and hearing schedules, and, finally, the notification (service) of court decisions.[15] Although the report does not state this, we would like to indicate that Romania used ICT tools during the survey period only for the random referral of cases to judges by employing the ECRIS case management system (see below). It was also found that Romanian courts did have an electronic CMS system, statistical tools, the possibility to conduct videoconferencing, and the necessary material support but lacked direct electronic access to the land registries, the business registries, and other such systems, as well as effective workload monitoring.[16] In the case of videoconferencing, no special framework existed for conducting such communication even though videoconferencing was possible during the hearings.[17] We would like to add here that although videoconferencing is possible during a hearing, this, in the pre-COVID-19 circumstances of the survey, was limited to criminal cases, especially in the context of the hearing of detained persons, minors, other vulnerable persons, or witnesses with a protected location or identity according to the provisions of the relevant article of the Code of Criminal Procedure.

Romania was found not to have (fully) deployed technology for measuring the workload of individual judges, prosecutors, and court clerks [other EU members in this category at the survey date being Cyprus, Ireland, Slovakia, Sweden, and the United Kingdom (England and Wales)].[18]

The report noted that although technical prerequisites for communication between courts and lawyers existed in Romania, it is one of only four EU Member States participating in the survey (the other three being Latvia, Luxembourg, and Sweden) that had no legal framework governing this specific type of communication.[19] In fact, apart from data protection, Romania was found not to have any single structure in charge of the strategic governance of ICT applications in courts, no primary selected model for conducting ICT projects, no means of detecting any innovation from court initiatives, not any way to effectively measure

14 CEPEJ 2016. 35.
15 CEPEJ 2016. 36.
16 CEPEJ 2016. 73, 75.
17 CEPEJ 2016. 80.
18 CEPEJ 2016. 25, 70.
19 CEPEJ 2016. 43.

the benefits resulting from ICT deployment, and no global security policy to deal with potential threats to the ICT infrastructure and information.[20]

The report found that: there was a website gathering national information at both the local and the national level; electronic case submission and online monitoring of case progress were possible, as well as electronic communication between courts and lawyers; electronic signatures were implemented; online processing of specialized litigation was possible (although in reality this is not the case), as well as videoconferencing and the recording of court hearings and debates; granting legal aid and e-summoning (electronic court summons) were not possible; formalized electronic communication between the courts and enforcement agents, public notaries, judicial experts, and judicial police services did not exist, there being no possibility to broadcast video of judicial hearings and no legal framework for the publication of such materials.[21] Also, although communication between courts and lawyers was possible, it took the form of standard e-mail, no special system being used, and this communication was not governed by any special norms.[22]

The report also points out that Romania (along with only Italy from the surveyed EU Member States) requires that electronically submitted court applications also be submitted on paper, and, although having a procedure for electronically signing court documents, it still requires a paper hardcopy signed by hand (the only such country from among the surveyed EU Member States).[23]

Still, the report found that the clearance rate of cases (in civil and commercial litigation) is not strongly correlated with a high degree of ICT development, as Romania showed a case clearance rate of 107.8% on a yearly basis, being one of the highest scoring countries in the survey. The overall insufficient development of ICT in courts did constitute a factor preventing further improvement of the clearance rate.[24]

In summary, Romania was considered as being in the ongoing development stage (the second of three stages) in court digit(al)ization in the category of available equipment and necessary legislative framework but only in the early development stage (the first of three stages) in what concerns governance of the technological transition and deployment.[25]

The report painted a picture of disproportional, lopsided technological development, with sufficient equipment but no effective assistance to judges (even regional partners such as Poland, the Czech Republic, Slovakia, and Bulgaria achieving higher scores), no unified strategic approach, lack of

20 CEPEJ 2016. 81.
21 CEPEJ 2016. 76–78.
22 CEPEJ 2016. 79.
23 CEPEJ 2016. 48–49.
24 CEPEJ 2016. 55, 57, 59.
25 CEPEJ 2016. 46.

governance and of ICT implementation of court-to-party, court-to-lawyer, and court-to-frequent-user (enforcement agents, judicial police, etc.) official communications (Romania scoring below average in this category, along with France and Bulgaria). Also, an increased reliance on paper-based communications was ascertained, with no e-summons or e-submission procedures (outside of regular e-mail) being made available.

Summarizing the conclusions of the 2016 CEPEJ report, based on the classification of ICT technologies in courts developed by Velicogna, we may state that Romania was found to have implemented basic technologies within courts to a high degree. Technologies for the administrative component of the court (namely the ECRIS system) were also developed and put in place, with case assignment and wider case management being facilitated by this system. Technologies for supporting judges were found to be less developed, especially when it comes to aids in accessing legal information and in drafting decisions. Finally, ICT facilitating communication exchange between courts, parties, frequent users of court communications, and the general public was found to be insufficiently developed, some court information being accessible, however specific communication methods still being found lacking. On a related note, which is not part of the above classification but strongly related to it, the report found the regulatory and governance framework for new technologies in courts to be next to non-existent.

This state of affairs begs the question: is it possible to achieve transformative, 'disruptive' results by the implementation of new technologies in courts if this takes place asymmetrically? The answer to this question must be deferred; however, the problem posed must be kept in mind.

4. An Overview of the Particularities of Digital Transition of Romanian Courts and Its Perceived Problems

The CEPEJ report analysed above is able to offer a 'bird's eye view' of the ongoing digital transition in Romanian courts; however, some issues of this process can only be made known by an analysis of the particularities of this transition.

Primarily, we must note that the digital transition of Romanian courts has been on the agenda for some time now; however, it has not been considered a national priority or strongly advocated by civil society or interest groups within the judiciary before the COVID-19 pandemic. Therefore, this process presents a dual structure, visibly dividing pre-COVID-19 and post-COVID-19 efforts for digit(al)ization.

During the pre-COVID-19 period, efforts were largely concentrated on the development of a unified court CMS in order to increase court 'productivity', that is, in order to improve the courts' case clearance rates and also to affect the random allocation of cases to judges, thereby reducing the risk of corruption. A secondary purpose for the development of a CMS system was to provide statistical information about court activity and to serve as the source for publicly available case information (such as trial dates, excerpts of judicial decisions, etc.) to an online Portal of Romanian Courts (http://portal.just.ro) set up to increase the transparency of the judicial process.[26]

The implemented CMS, known as the ECRIS system, achieved a unitary platform for case number allocation, random case assignment, centralized storage of court documents (including scanned submissions to the courts and written evidence), with the possibility of aggregating court statistics, and, more importantly, case law, thereby indirectly informing case law databases. It also constituted a unified infrastructure for storing audio recordings of court hearings, and it also successfully provides the necessary data on ongoing cases to the online Portal of Romanian Courts.[27]

One of the major shortcomings of this CMS system is its being accessible only to court staff, and therefore it cannot serve as a shared platform for clients, lawyers, or other frequent court users, as the CEPEJ 2016 report has correctly ascertained. This CMS system, although containing the scanned contents of most court documents (including documentary evidence and judgements), does not itself permit outside access to them, leading to a patchwork of solutions to make scanned documentary evidence available online to the parties and to collect, collate, and anonymize judgements for publication. The ECRIS CMS system also does not permit direct document submission from outside sources.

To remedy these shortcomings, two notable platforms were developed for making scanned court documents available to the clients online and to facilitate online document submission. The older one is a platform called 'Info Dosar'[28] ('Casefile info') pioneered by the Cluj-Napoca Court of Appeal. It is in effect a database accessible by a fixed password communicated to the parties and permits online access to the scanned contents of the casefile. It also allows document submission based on fixed password authentication. This system, implemented at the initiative of several courts of appeal but covering all lower courts in their territorial jurisdiction, is now being superseded by another similar database, accessible via two-factor authentication (user account name and a one-time password communicated via SMS). This database, which also

26 This is a requirement of the Cooperation and Verification Mechanism implemented by the European Commission, to which Romania is still subject. European Commission 2021b. 16.

27 For details of the structure and functioning of the ECRIS system, see Ciolacu–Viorel 2017.

28 No detailed documentation for the internal functioning of this system is available to the public.

contains scanned documents from the casefile and allows for online document submission, was pioneered by the Arad Tribunal (and IT developer Dacian Stanciu) and is known as 'TDS'.[29]

The lack of leadership in these initiatives is clear: they originate neither from the Government nor from the Ministry of Justice nor from the Supreme Council of the Magistracy (the highest organ for the governance of the judiciary). No specific legal framework has been adopted to govern these systems, nor to unify them or operate them under central supervision.

Both the online casefile access and document submission initiatives are operated on ICT systems set up by the courts of appeal, or the Arad Tribunal as the case may be, as can be ascertained by queries[30] to the ROTLD registry of Romanian websites. The ECRIS CMS and the online Portal of Romanian Courts are operated from ICT systems under the control of the Special Telecommunications Service (as shown by ROTLD data), a militarized government agency for the supervision of vital state telecommunications. No publicly available regulation exists – with the notable exception of the ECRIS CMS – for even the user-level operation of any of these systems, and their technical documentations are not publicly available.

Clear procedural norms for the effects of documents submitted or served through such systems are also partly absent. For example, the Code of Civil Procedure (CCP) permits service of procedure and of other documents by the court via e-mail or any 'other means which ensure the transmission of the text of the document and the confirmation of its receipt' [Article 154(6), CCP], but it seems to permit receipt and registration by the court of only hardcopy (paper-based) documents or documents transmitted by e-mail or in the form of electronic documents – in the latter case without any reference to the mode of transmission [Article 199, CCP]. Thereby, the patchwork of casefile access and document submission systems occupy a grey area in the field of party–court and lawyer–court communication.

Another issue posed by this system is that it is not comprehensive: specifically, it does not ensure that the court has direct access to other databases (the land registry and other similar registries, including personal identification registers, and the company register). The personal identification registers according to the CCP, for example, should be directly accessible to the court itself [e.g. Article 154(6) of the CCP], while access to other registries would greatly enhance the court's ability to obtain information on its own motion or at the request of the parties.

After the outbreak of the COVID-19 pandemic, the legislator suddenly discovered the potential benefits of ICT deployed for court purposes, and in the contents of

29 For an example of the access interface, see: https://doc.curteadeapeloradea.ro/autentificare. No detailed documentation for the internal functioning of this system is available to the public.

30 See https://rotld.ro/whois/.

Law No. 55/2020 on Some Measure for the Prevention and Combatting of the Effects of the COVID-19 Pandemic provided for the possibility of online teleconferencing during certain procedures (mostly concerning persons placed under surveillance). These measures were later expanded by Law No. 114/2021 on Some Measures in the Domain of Justice in the Context of the COVID-19 Pandemic. This latter law in its articles 3(1) and 3(2) allowed that in civil cases, and with the agreement of all parties, teleconferencing could be used during the civil trial. Similar provisions were introduced for criminal procedures. The given court had full discretion on admitting or rejecting such requests. Electronic transmission of casefile contents, whenever possible between courts, was also allowed. Again, no central system or governance of the ICT solutions was implemented.

Thereby, the conclusions of the CEPEJ 2016 report remained largely valid for the pandemic period as well, with the notably higher degree of interest awarded to the issue of ICT deployed for court purposes on the side of the legislator. Notable failures of this approach include that the norms were mainly concerned with using ICT in general for resolving the issues posed by the pandemic, without reference to any dedicated solutions (e.g. for teleconferencing, with some courts using Google Meet or Zoom for these purposes). No initiatives for electronic adjudication or machine-assisted case processing surfaced. Any implementations of artificial intelligence were also notably absent. Finally, and perhaps most troublingly, no viable initiatives were as yet proposed for making dedicated court ICT platforms directly accessible for clients, legal professionals (mainly lawyers), or other frequent court users.

We may conclude here that although the COVID-19 pandemic served – and continues to serve – as a strong facilitator for the digital transition in the court system, its potentially beneficial effects are countered by the factors of inertia inherent in the activity of the legislator, as well as by the chronic lack of strategic thinking,[31] as documented in the CEPEJ 2016 report.

5. The EU 'Toolbox of Opportunities' for the Digitalization of the Judiciary

Recognizing the opportunities presented by the digit(al)ization of court activities, the European Commission drafted and in 2020 forwarded a communication[32] (in effect, an incipient proposal for legislative action) addressed to the European

31 The Forum of Romanian Judges proposed a series of digit(al)ization objectives during the pandemic period; however, this elicited no response from the central governing bodies of the judiciary. See: *FJR solicită Consiliului Superior al Magistraturii, Ministerului Justiției, Serviciului de Telecomunicații Speciale şi tuturor instanțelor judecătoreşti să pună în practică o digitalizare extinsă a instanțelor judecătoreşti*. 2020.

32 European Commission 2020a.

Parliament, the European Council, the European Economic and Social Committee, and the Committee of the Regions with the title *Digitalization of Justice in the European Union – A Toolbox of Opportunities*. This communication was accompanied by a Staff Working Document as an explanatory note to the methodology used.[33]

The communication by the European Commission – due to the survey period's overlap with the COVID-19 pandemic – was able to take into consideration this new situation from the perspective of digit(al)ization of the judiciary. It stated as a goal that:

> Every means available should be used to support the transition to digital justice, including the new cohesion policy instruments, the new 'justice' and 'digital Europe' programmes, as well as the Recovery and Resilience Facility. The Recovery and Resilience Facility aims in fact at supporting the national investments and reforms that are essential for a sustainable recovery. This is why, when setting out guidance to help Member States to prepare and present their recovery and resilience plans for the implementation of the Recovery and Resilience Facility, the Commission stressed that the digital transformation of the justice sector is one of the domains in which Member States are strongly encouraged to focus reforms and investments. National initiatives in this regard can be counted towards the 20% digital expenditure target under the Recovery and Resilience Facility, in order to realise a 'Europe fit for the digital age'.

5.1. EU Financing for 'Digital Transition' in Court Procedures in Member States

Therefore, significant financing is now earmarked for purposes of digit(al)-ization of court activities in the 2021–2027 budgetary period by means of a so-called Technical Support Instrument, proposed[34] to be set up by the European Commission, which in its articles 5(b) and 5(e) refers to supporting e-governance and to 'the digital and the green transitions'.

The 'toolbox of opportunities' in the field of court digit(al)ization as a policy instrument is meant to foster support for initiatives providing new, digital public services to citizens, to encourage inclusion of such services in the national Recovery and Resilience Plans of Member States, to facilitate funding requests through the Technical Support Instrument, to make financial support available under the 'justice' and the 'digital Europe' programmes, and, finally, to implement particular digit(al)ization projects in Members States.

33 European Commission 2020b.
34 See European Commission 2020c.

5.2. The European Commission's Legislative Programme on Encouraging the Digit(al)ization of Court Procedures

Along with increased financing, the 'toolbox' also contains proposed legislative action at the EU level for implementing some ICT solutions relevant to court activity, in line with the objective set forth in the Commission Work Programme 2021, having the title *A Union of Vitality in a World of Fragility*.[35] Specifically, the communication included the following principal measures:

> Require Member States by default to use digital channels for cross-border communication and data exchanges between competent national authorities;
> Require Member States to accept electronic communication for cross-border procedures involving citizens and businesses, without ruling out the use of paper;
> Guarantee that the solutions and principles set out in the eIDAS Regulation are referenced and used, in particular:
> – the principle that electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form;
> – electronic identification and signatures/seals should become acceptable for the digital transmission of judicial documents and their appropriate assurance levels agreed.
> Provide a basis for the processing of personal data, within the meaning of the General Data Protection Regulation and applicable Union rules on data protection and determine the responsibilities of different controllers and processors;
> Ensure that any electronic access points established for use by the general public cater for persons with disabilities;
> In order to ensure that national IT systems are interoperable and able to communicate with each other, lay down the broad architecture of the underlying IT system for digital communication.

The interconnection of various registers, improving video conferencing capabilities, setting up the e-CODEX (an e-Justice communication platform), and broadening the e-evidence digital exchange system (eEDES), as well as digit(al)-ization in the field of criminal justice, were also put on the agenda. In order to promote national coordination and monitoring, information and best practices in the implementation of the 'toolbox' of measures are also set to be shared with the European Commission and other Member States.

35 European Commission 2021a.

6. Romania's Proposed Measures to Further the Digit(al)ization of Courts under the National Recovery and Resilience Plan. Conclusions

Romania included in its Recovery and Resilience Plan[36] submitted to the European Commission the following measures for digit(al)ization of the justice system (under the subtitle *Investment 4. Digitalization of the Judiciary*):

> – the technical transition from local to shared central servers – it shall optimise the management and usage of technical resources (central servers, data centres, virtualization servers).
> – upgrade and finalization of the technical infrastructure for teleworking and digitalization of documents with the aim of increasing the resilience of the judicial system.
> – improvement of cybersecurity capabilities (by providing equipment and training) both at central and local level (in particular to courts, but also to prosecutors' offices).
> – implementation of a new system allowing secure videoconferencing for the participation of judges in online activities at the level of the High Court of Cassation and Justice.
> – support the finalization of ECRIS V system, which is the central element of the digital transformation of the judiciary in Romania. The development of the system, a part of procurement of related software and supporting hardware and the training of users is financed by the Operational Programme 'Administrative Capacity'. Under the recovery and resilience plan, complementary measures shall be financed (such as: procurement of a part of the supporting equipment as part of the virtualization project which shall facilitate the transition from ECRIS IV to ECRIS V, the setting up of the data centre for the judiciary which shall also host ECRIS V, procurement of PCs and other equipment for the end-users).
> This investment underpins the strategy for the development of the judiciary 2022–2025, which includes specific measures to ensure digital interaction of the litigant and any interested entity with the judiciary, electronic signature and electronic seal, availability of improved data communication for e-file (which is an option for litigants to electronically access the judicial files), elaboration of a cross-judicial sector strategy for the digitization of the physical archive. (milestone 421)

36 Government of Romania 2021.

These measures are to be contained in a law approving the strategy for the development of the judiciary 2022–2025. As of yet, no publicly available draft of this law could be found.

The descriptions of the objectives themselves show a high degree of unfamiliarity with the problems of court digit(al)ization by the Romanian government. The proposed measures are in fact partly a strengthening of existing initiatives (centred around the acquisition of new hardware resources and with a high degree of emphasis on developing new capabilities for the ECRIS CMS). The proposal does refer to the e-file, which is meant to offer party access to the ECRIS CMS, and to a new impetus for the use of electronic signatures (these being elaborated in the milestone list of the proposal); however, this does not extend to lawyers and other court users. Nor does the ECRIS CMS-proposed upgrade resolve the data access issue for the court with a view to online registries. Finally, no legislative action is proposed to remedy the lack of strategy in the digit(al)-ization endeavour.

The proposed measures treat court digit(al)ization as a matter for the judiciary and the central administration of the justice system, without regard to other categories of stakeholders, such as lawyers and other frequent court users, whereas these categories should be included in (or at the very least consulted regarding) any future measures. They also ignore any means by which court activity in the field of adjudication could be accelerated (e.g. an electronic procedure for small claims or orders for payment) or by which direct court-to-party, court-to-lawyer, party-to-court, or party-to-party communication could be facilitated.

Another negative aspect of the proposal is that it ignores the resources represented by lawyers – as qualified professionals who may competently cooperate with courts – when granting access to the ECRIS CMS system, as the proposal in this way fails to address one of the main causes of judicial delay: the difficult and inefficient service of procedure and documents. This is an issue we would propose correcting by making compulsory the use of the ECRIS CMS for the purposes of service of procedure to all clients represented by lawyers and to all clients acting without legal representation if the case value exceeds a certain amount and in all cases involving at least one professional party.

Finally, the proposed timeline of the actions (with some measures set to be implemented in the first quarter of 2022 and others by 2023) is obviously unrealistic.

All these factors make us question whether the Romanian proposal for court digit(al)ization is viable and will prove efficient in the future.

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