

## Re: The future of e-CODEX and involvement of the CCBE

To whom it may concern,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE has been actively involved in the EU's policy discussions around the digitalisation of justice systems (hereinafter referred to as "e-justice") from its initial inception. The first CCBE milestone in this field dates back to 2008, when the CCBE responded to the [European Commission's first e-Justice Strategy](#) which, for the very first time in the history of Europe, aimed at placing technologies at the service of judicial systems to improve their functioning and efficiency.

Throughout the years, the CCBE has constructively contributed to the work of the EU institutions in this area and provided numerous recommendations, helping to shape European policies on e-justice. **Furthermore, since 2010 the CCBE has been structurally involved in the development of e-justice through its role in the consortium managing the [e-CODEX](#) initiative.**

E-CODEX is unique in the sense that it offers a European digital infrastructure for secure cross-border communications in the field of justice. Although at this moment e-CODEX only supports a limited number of use-cases in civil and criminal proceedings<sup>1</sup>, it is intended to become a general platform providing access to cross-border justice for all European citizens, businesses and legal professionals.

Since the CCBE is the representative organisation of the main potential user group of e-CODEX – i.e. more than 1 million lawyers – its continued involvement in the future management of e-CODEX is essential. In particular, the CCBE has relevant input to provide both at policy and implementation level regarding, for example, the need to ensure that e-CODEX supports an equal playing field and accessibility for all parties, the requirements and obligations lawyers have in terms of deontology, data protection, professional liability, rules of evidence, etc. For these reasons, it is very important that lawyers, through the CCBE, are fully involved in the future development of e-CODEX.

Along with the previous considerations, the CCBE respectfully calls upon the parties involved to maintain the independence of the judiciary and the right to a fair trial in the development of the European e-justice infrastructure. While the CCBE has generally welcomed EU initiatives on the digitalisation of justice as a way to foster interoperability of different national systems, it has also stressed that any perceived need to increase efficiency through the use of technology should not sacrifice the consistent delivery of justice. For this reason, we have persistently called for a proper assessment as to whether the system used to interconnect national e-justice systems is capable of adhering to the principles of a fair trial and due process.

The aforementioned safeguards apply, in particular, in case of a handover of e-CODEX to the European Agency for the operational management of large-scale IT systems in the area of freedom, security and

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<sup>1</sup> European Order for Payment - based on [Council Regulation 1896/2006](#); European Small Claims - based on Council Regulation 861/2007; Mutual Recognition of Financial Penalties - based on [Framework Decision 2005/214/JHA](#); Mutual Legal Assistance in Criminal Matters/European Investigation Order - based on the [European Convention on Mutual Assistance in Criminal Matters](#) and based on [Directive 2014/41/EU](#).

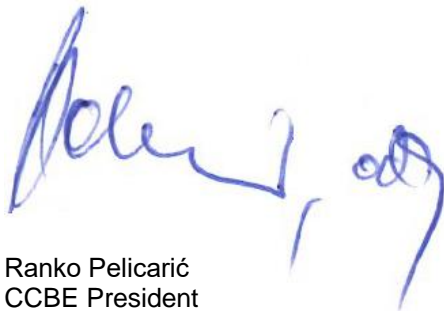
justice (eu-LISA). In this regard, we would like to bring to your attention the existing concerns raised by various stakeholders and Member States about whether the principle of independence of the judiciary will be sufficiently ensured in the permanent operation and further development of e-CODEX by eu-LISA. The independence of the judiciary is a cornerstone of the principle of the separation of powers and one of the essential principles of the rule of law. As such, it needs to be respected at all levels of the operation of the justice system. The governance model of eu-LISA will therefore have to be adapted to meet the constitutional requirements of the Member States.

Any doubts about the extent to which the independence of the judiciary is guaranteed in the future management of e-CODEX may have a negative impact on the willingness of European citizens, businesses and legal professionals to use the system, thus undermining cross-border access to justice.

The CCBE therefore welcomes the [Council conclusions](#) adopted on 13 October 2020 which among others invite the Commission “to present a legislative proposal ensuring the sustainability of e-CODEX with an adequate governance and management structure compatible with eu-LISA that not only respects the independence of the judiciary and the constitutional requirements of the Member States but also ensures adequate representation of the EU and Member States judiciary, as well as the key stakeholders”.

**In view of the above, we would like to ask for your support that the CCBE as one of the key stakeholders remains fully and structurally involved at policy and implementation level in the future management of e-CODEX, allowing legal professionals to play the active advisory role that they have undertaken until this moment.**

**Finally, we would like to stress the need to take adequate safeguards to ensure that the independence of the judiciary is fully guaranteed at operational level in the future management of e-CODEX by eu-LISA.**

A handwritten signature in blue ink, appearing to read 'Ranko Pelicarić', is written over a light blue horizontal line.

Ranko Pelicarić  
CCBE President