

Vienna, 10 September 2020

ÖRAK Position Paper concerning the Roadmap on the digitalisation of justice in the EU

The Österreichischer Rechtsanwaltskammertag (ÖRAK, Austrian Bar) would like to thank the European Commission for the opportunity to comment on the roadmap on the digitalisation of justice in the EU. The Austrian Bar would like to convey only preliminary feedback at this stage and might contribute further comments in the future.

The ÖRAK (Austrian Bar) is the legally established representation of lawyers in Austria and, as such, appointed to safeguard the rights and matters of Austrian lawyers at national, European and international level. It is particularly responsible for the submission statements on draft laws as well as for reporting deficiencies in the administration of justice and administration to the competent authorities and for proposals for the improvement of the administration of justice and administration.

The Austrian Bar notes the intention of the European Commission to support the digitalisation of justice in the EU. At this stage it seems important to note that some member states are well advanced in the area of digitalisation of justice. **Features of national systems should be respected in any initiative and be left untouched.** A possible solution in this regard seems to ensure the **interoperability** of all systems in the Union. Such a system should be set up in a manner which ensures the **independence** of justice, including with regard to its daily operation.

Also, the ÖRAK would like to remind that the architecture of justice systems strongly contributes to aspects of **access to justice**. In this regard it seems of utmost importance to **involve all actors of the justice pillar, meaning at least judges, prosecutors and lawyers**. Any envisaged digitalisation has to provide a level playing field for all relevant actors. With regard to lawyers it is especially important to safeguard the rights of their clients, enshrined for example in their deontological obligations. It has to be possible at any time to verify whether or not digital solutions respect these rights, for example through transparent algorithms or mandatory independent evaluations.

Seamless access to justice and enabling efficient cross-border judicial cooperation which shall be achieved by the Commission's initiative according to the roadmap, should be pursued with determination. The EU can, within its competences, provide the framework within which the states, depending on their national needs, can take the path to digitalisation in the judicial system.



As stated in the roadmap, the Covid crisis helped identifying problems and deficits regarding legal protection. In the event of a crisis, the judicial system must be able to guarantee that individual citizens have access to legal protection and that commercial activities are not affected if courts are closed. Electronic document management systems and online file access therefore are to be particularly endorsed.

Of course, digitalisation also leads to **deficits regarding legal protection**. For example, as a matter of principal critical interrogations should be conducted directly (face to face) by the responsible judge (detailed rules apply on national level, according to national competences in procedural law). In addition, identity checks should be carried out wherever necessary when using technology. At least in Austria, the use of technology also raises the question how to ensure the constitutionally required public trial and other constitutional requirements.

The goal of any initiative should be to ensure secure electronic communication in judicial systems and to introduce and establish electronic document management processes at courts, to provide modern applications that optimally facilitate and improve workflows, and to ensure a high level of IT security so that those seeking justice also have confidence in the judicial system and its technology.

Lastly, the Austrian Bar would ask the Commission not to mix up the question of digitalisation of justice in the EU with the question of the use of AI tools in the justice sector. These questions have to be strictly separated. The Austrian Bar strongly **opposes the use of AI tools with regard to procedural aspects and demands a thorough discussion of any deployment of AI in the justice sector**, such as for administrative purposes (see position paper of the Austrian Bar on the White Paper on AI [here](#)).

Kontakt/ Contact: Britta Kynast, Leiterin ÖRAK-Vertretung Brüssel / Head of Brussels Office

