



Law

## Feedback from: GMVV & Co. GmbH Think Tank

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### User type

Academic/research Institution

### Organisation

GMVV & Co. GmbH Think Tank

### Organisation size

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### Country of origin

Germany

### Initiative

[Civil and criminal judicial cooperation – e-CODEX data exchange system \(technical and administrative aspects\) \(/info/law/better-regulation/have-your-say/initiatives/13522-Civil-and-criminal-judicial-cooperation-e-CODEX-data-exchange-system-technical-and-administrative-aspects- en\)](#)

EU-Consultation GMVV & Co. GmbH Think Tank: Judicial cooperation in civil and criminal matters e-CODEX system for data exchange (technical and administrative aspects) The currently presented draft of the Implementation Decision on the service level requirements for the activities to be carried out by eu-LISA concerning the e-CODEX system refers to Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), amending Regulation (EU) 2018/1726. Recital (3) of Regulation (EU) 2022/850 refers to the need for a more efficient digital cooperation between judicial systems within the EU and for the simplification and acceleration of electronic cross-border exchange of case-related data. In addition, the Regulation states that citizens and companies should be enabled to provide and exchange documents and evidence in digital form to the judicial authorities or other authorities. Recital (4) of Regulation (EU) 2022/850 claims that the digitization of proceedings in civil and criminal matters is intended to strengthen the rule of law and fundamental rights guarantees. Yet, this goal is de facto largely disregarded in the present draft of the Commission Implementation Decision. Only 3.1.7. and 3.1.10 of the Annex to the Commission Implementing Decision refers to the compliance with the fundamental rights guarantees granted in Regulation (EU) 2022/850 recital (12) sentence 2, which, however, only has a declaratory character. The legal implementation of the e-CODEX system thus leaves completely open how compliance with rule-of-law guarantees is to be monitored and ensured. Digitization and the cross-border exchange of data, especially in criminal law, pose considerable risks to the preservation of the rights of the accused and, in principle, to compliance with fundamental rights. The recent controversial judicial cooperation between French investigative authorities, Europol and other law enforcement agencies of EU member states regarding EncroChat, SkyECC and Anom (Anom involved US authorities, including the FBI), which is currently being discussed throughout the EU, has significantly weakened confidence in the compliance of investigative authorities with constitutional principles. French authorities obtained data, which they transferred to other European countries via Europol without disclosing how they had obtained the data or disclosing the raw data that therefore could not be examined for reliability, as the French authorities classified the data and data acquisition as military secrets. On October 11, 2022, the French Court of Cassation ruled that data from the French Center for Combating Digital Crime (C3N), classified as military secrets by French investigative authorities, must be disclosed to the courts and defense lawyers to ensure a fair trial under the rule of law. Since 2020, in this pan-European police operation, thousands of unauthorized wiretaps have been conducted without court orders and reviews, and numerous arrests have been made. These measures de facto constituted a breach of the EU Charter of Fundamental Rights, including the right to a fair trial, the right to privacy, and the right to data protection, on the grounds of being able to fight crime more efficiently. Currently, the entire case has been referred to the European Court of Justice for a decision, among others by the Berlin Regional Court. Against this background, the present draft of the Implementation Decision on the service level requirements for the activities to be carried out by eu-LISA concerning the e-CODEX system together with the Annex must define and enshrine the guarantees of fundamental rights in a much more far-reaching and precise manner.

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