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Guidelines and Toolkit on Cyberjustice

CEPEJ WORKING GROUP ON QUALITY OF JUSTICE – GT-QUAL

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CEPEJ – Cyberjustice (2016)

Guidelines on how to drive change towards Cyberjustice

- **Cyberjustice** is the incorporation of technology into the justice system, either through offering court services electronically or through the use of electronics within courtrooms or for other dispute resolution processes.
- **Cyberjustice** is therefore broadly understood as grouping together all the situations in which the application of ICTs forms part of a dispute resolution process, whether in or out of court.

- Key goals for Cyberjustice:
- increasing access to justice through
  - reducing the costs associated with administering justice
  - as well as reducing the burden on the judges and the court system as a whole.
- The development of justice information systems should not call into question the basic principles that support judicial activities.
  - The right to a fair trial safeguarded by the ECHR
  - as well the instruments for promoting the quality of justice drawn up by the CEPEJ.

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- Guidelines - dual objective.

1. Firstly, they take stock of existing solutions at the European level, considering the aims they pursue and their ability to improve the quality and effectiveness of judicial systems.
2. Secondly, they are intended to help policymakers master the change process towards cyberjustice in connection with the development and the implementation of European digital justice policies.

- These Guidelines have been drawn up on the basis of the detailed data and information gathered by the CEPEJ - evaluation of European judicial systems (CEPEJ-GT-EVAL).
- Particularly 2016 assessment cycle (data from 2014) and specific IT report, published in September 2016 .
- These data have been supplemented by original information on specific IT projects such as Network of Pilot Courts.
- Lastly, critical areas for reflection have been outlined and discussed by the CEPEJ Working Group on Quality of Justice (CEPEJ-GT-QUAL) on the basis of the experience of each group member.
- Two checklists

Part One: Cyberjustice tools already deployed in European judicial systems

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According to their intended aim, applications of cyberjustice have been grouped into four main categories :

1. **access to justice,**
2. **communication between courts and professionals,**
3. **court administration and**
4. **direct assistance for the work of the judge and the registrar.**

For each category the guidelines provide details in light of:

- the benefits expected by introducing the tool,
- the possible long-term developments that will result from its use,
- the aspects essential for the success of the planned innovation, and
- the potential risks associated with its use.

Access to justice

Increasing the information and services to provide better access to court services

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1. accessing the law (online information on one's rights, publication of case law) and
2. access to dispute settlement procedures (online granting of legal aid, referral to a court or mediation service

Access to justice

Improvements aimed at users and the quality of the public justice service

1. information websites provide citizens with a basic level of information (e-Justice Portal)
2. online information services assist the citizen through the provision of practical information concerning the procedures to be followed
3. Open data policy - in the form of freely downloadable databases (HUDOC)
4. active institutional communication policies on the Internet by exploiting the power of multimedia and the social networks
5. Paperless communication with court users
6. improves physical reception of the public within courts
7. Use of videoconferencing
8. Websites designed for the online settlement of disputes (ODR)

Access to justice

Improvements aimed at users and the quality of the public justice service

CCJE Opinion No. (2011)14 on "Justice and information technologies (IT)"the introduction of IT in courts in Europe should not compromise the human and symbolic faces of justice. If justice is perceived by the users as purely technical, without its real and fundamental function, it risks being dehumanised. Justice is and should remain humane as it primarily deals with people and their disputes"

Benefits identified

- Provision of information to litigants at all levels made easier (information on physical access to the court, on the way the court is organised and how to bring proceedings, on existing alternatives and on the online monitoring of proceedings; access to the decision as soon as it is delivered)
- Reduction in waiting times at "physical" court reception desks or some journeys rendered unnecessary
- Online settlement of some disputes before bringing proceedings in order to relieve the courts of simple cases

Points to note

- Maintenance and durability of data, especially archives
- Significant reinvestment in human resources through recruitment or training plans for the new services proposed
- Account to be taken of the growing number of online dispute resolution (ODR) services provided by the private sector complementing or competing with the public sector

Possible developments

- Integration of access–to- justice tools into the general information system of the judicial services
- Rethinking the judicial map and investment in buildings in the light of the migration of some uses of the building to the court's online space

Potential risks

- Online court referrals: care must be taken to ensure that accessing justice is not trivialised
- Threatens the future of officers of the court, who are no longer obligatory intermediaries between the court and the litigant
- Perception of parties to proceedings: will they feel listened to and treated fairly if the alternative dispute resolution or judicial process takes place online? Might the potential character of the proceedings be affected?
- Retrieval by private companies of open judicial data

- citizens' perception of fully electronic systems has to be measured and evaluated in order to establish whether the degree of confidence in online processing is the same as in the case of face-to-face interaction

- "Not all individuals have access to IT. At present, more traditional means of access to information should not be abolished."

Communication between courts and with professionals

Tools to improve the flow and security of communications between professionals

In some countries, lawyers are now able to communicate, entirely electronically with the courts for the transmission of their procedural documents, submissions or other case-file documents;

Some countries have extended the possibilities for communication with the courts by establishing specialised portals open to other officers of the court, (E-CODEX)

In some countries, the hearing preparatory phase is totally paperless: judges and lawyers now send their written submissions solely electronically;

The only limit to dematerialisation concerns the judgement hearing, for which the physical presence of the parties (or their representatives) still seems to be required.

Communication between courts and with professionals

Tools to improve the flow and security of communications between professionals

IT have enabled the arrangements for co-operation between the courts and the judicial professions to be redefined;

This new type of communication requires major changes to all the organisations' structural elements (legislation has had to be adapted so that electronic communications can have the desired legal effects and limits of the volume of attachements),

An argument frequently heard regarding the development of electronic communication between professionals concerns the level of security, the both systems are vulnerable paper and electronic

Benefits identified

- Cost reductions, speed of processing
- Organisational simplification

Points to note

- Technical compatibility and reliability of the system between different entitles
- Change management policy to be rigorously determined
- Effects of blocking the communication chain in case of failure

Possible developments

- Definition of common communication patterns (starting from court services and continuing to all the services involved in the operation of the judicial system

Potential risks

- Considerable loss of time in the event of an uncontrolled technical failure

Assistance for the judge, prosecutor and registrar

Assistance for staff, the primary area of IT use within courts as a means of advancing legal certainty

Replacing typewriters for the drafting of decisions, as well as by automating a number of repetitive tasks.
Access to extensive knowledge bases has helped to make judges better equipped for their work

The possibility of remote access to electronic court records amplifies cooperation arrangements within courts
The use of IT tools for procedural measures outside the courtroom increases the judge's powers and effectiveness when travelling

Judges' use of judgement templates and guides is proving to be a factor for ensuring the consistency of judicial practices

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Assistance for the judge, prosecutor and registrar

Assistance for staff, the primary area of IT use within courts as a means of advancing legal certainty

IT has gradually developed as a means of facilitating decision-making, enabling easier access to a mass of information or making a complex case more easily understood

Respect for the principle of independence requires that all judges must ultimately reach a personal decision after a reasoning process for which they must be able to assume personal responsibility, without regard for the IT tool used.

A guarantee of the adversarial principle and equality of arms must also be provided in the same way as in proceedings without IT in the light of the technological tools made available or which may be used by all the parties at their own discretion.

The use of big data as an aid for judges heralds the emergence of predictive justice.

Possible developments

- Lever to improve the dissemination of case law
- Harmonisation of practices with regard to the drafting and reasoning of judgements

Potential risks

- The decision should not be influenced by the constraints of a computer system
- The system should not undermine the independence of judges or cause a breach of the equality of arms between the parties
- When designing databases, need to ensure the neutrality of consultation criteria and that users understand them
- Risk of depriving the judge of his/herdecision-making capacity or of confining his/her power to judge within too formal a framework (as a result of an excess workload leading to automation of the tasks performed or reliance on standard judgements)

Benefits identified

- Improvement in the formal quality of decisions
- Access to large legal data bases
- Time saved by the electronic administration of evidence
- System facilitates remote working or the fairer distribution of cases among judges
- In criminal cases, guarantee of acquiring a good knowledge of the past history of the accused to increase the number of individually tailored decisions

Points to note

- For pre-established templates, ensure their quality (working group) and regular updates
- Design tools in such a way that the judge retains the possibility of taking back control over the system at all times

Court administration

A driver of change for the managerial efficiency of courts

Case management was the first area to be computerised and this happened faster and more extensively than in any other area (Albania ICMIS, Azerbaijan e-court Slovenia, EVIP – Centralised case management system)

Facilitated the dissemination of the principles of New Public Management within courts (Judicial Data Warehouse and Performance Dashboards – Tool for the real-time monitoring and management of the activities of the Supreme Court Slovenia)

The development of complete information systems makes the method of electronic administration a key source of vulnerability for judicial activities.

- "it is particularly important to ensure that difficulties in the functioning of IT do not prevent the court system, even for short periods, from taking decisions and ordering appropriate procedural steps. Appropriate alternatives should always be available whenever the IT system is under maintenance, or when technical incidents occur, in order to avoid any adverse impact on court activity"

Court administration

A driver of change for the managerial efficiency of courts

The transition from paper files to fully electronic court files is, however, far from being completed in the Council of Europe member States

The managing and handling of paper documents and any remaining physical media can be facilitated by employing a tagging system, such as use of labels that can be scanned for incorporation into databases or, even better, a system where files, documents and seals are marked with RFID chips

One fast-developing field is that of making audio and video recordings of hearings on a digital medium for the use of the court and the parties

Benefits identified

- Improvements in the efficiency of the courts
- Increases in or redeployment of staff (full time equivalent) by reducing duplication of effort
- Reduction in court operating costs
- Improvements in judicial activity statistics

Points to note

- Equipment's technical reliability to be ensured and maintained
- Change management policy to be strictly defined
- Quality of data input to be supervised to avoid statistical distortions
- Thin line between the performance of the court as a whole and that of each individual (especially the judges) and consequences for assessing judges' work

Possible developments

- Driving force for the reorganisation of a court's operation
- Definition of management objectives and real-time monitoring of court's performance
- Integration of CMS applications into a more extensive information system (especially with electronic communication)

Potential risks

- Considerable loss of time in the event of a breakdown
- Considerable financial losses if the deployment fails
- Concentration on the court's quantitative performance to the detriment of its qualitative performance

Part Two: From a hardware approach to a strategic approach: developing information systems capable of improving the quality of the service provided by courts

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2.1 Development of information technology in the judiciary

- It is important to gauge the relative influence of the IT industry and social demand in the technology race before embarking on any IT project.
- It is also important to maintain a certain detachment from everyday technological applications, rather than seeking to blindly replicate them in the judicial sphere
- Information technology should be a means of improving the way the justice system operates. It should not be an end in itself.

- Any failure in this area needs to be viewed in the context of the resources allocated and how the projects were designed.
- It is vital to conduct a comprehensive review of existing technologies before embarking on projects of some size.
- The issue of security in the context of information systems needs to be handled pragmatically.
- Comparison is a useful exercise of an IT project

2.2 Start by setting clear objectives, free from all technical considerations

- Changes in the field of cyberjustice should be court-driven, not technology-driven
- The objectives assigned to the change must be able to be linked to promoting the judicial values
- Deploying an information system requires an audit of the procedures and processes at work in the judiciary
- Changes need to be communicated by efforts to redesign existing practices, protocols and rituals around the new technology and the new procedures
- Financing the innovation requires that return-on-investment calculations be performed right from the project design stage.
- When calculating the return on investment, account must be taken of all the costs generated by the operation and any variations therein.

2.3 Consider the basic criteria contributing to the smooth deployment of information technology

- The nature and age of the existing technical platforms;
- The cost of moving from one system to another and the cost of updates;
- The level of interoperability between all the actors involved in a virtual communication chain;
- Similar levels of IT infrastructure;
- Judicial data management;
- Conditions governing the use of external service providers

2.4 Allocate appropriate resources commensurate with the projects' goals

- due account must be taken of all the direct and indirect costs involved in introducing new technology and new professional practices;
- The budget should be sized according to the life cycle of the project;
- As regards human resources, it is vital to have multidisciplinary teams dedicated specifically to the projectand led by a legal professional;
- Managing the project also requires a degree of flexibility when it comes to directing and deploying resources

2.5 Closely involve future users in the development of the tools throughout the life of the project

- They should also have a say in designing the technical solutions proposed and identifying the business-related and legal challenges involved in developing the technologies[
- On-going involvement by future users will help to minimise any discrepancies between the needs stated on paper and how the IT specialists address them in practice.
- Piloting can be used to provide feedback during the project.

2.6 Develop a deployment policy involving all the stakeholders

- The change management process needs to be conducted at all levels at the same time;
- The training in the new technology should be geared to individuals and should be available to everyone working in the judicial environment;
- It is also important that the training come at the right time, neither too early, nor too late, and that it be available long enough to ensure everyone has actually got to grips with the new system;
- As well as possessing technical skills, the trainers should have judicial skills;
- Training tailored to the functionalities of the system in question and to the people to be trained;
- Need to train users outside the judicial system. (telephone helplines or online chat rooms).

2.7 From a project management culture to a truly hands-on approach to innovation

- The adoption of a single, simple, clearly defined system of governance that makes it possible to separate the management of the project from the rest of the administration;
- Effective management by the same entity throughout the life of the project;
- Develop opportunities for project management support at every stage of an innovation project;
- Exploit opportunities to divert resources saved in one area of the justice system to another

CEPEJ – Cyberjustice (2019)

Toolkit for supporting the implementation of the Guidelines on how to drive change towards Cyberjustice

Toolkit

for supporting the implementation of the Guidelines on how to drive change towards Cyberjustice

- An executive summary of the key guidelines and principles on how to drive change towards Cyberjustice.
- A roadmap to support the design and the management of an IT strategy in a justice system.
- An executive outline to support the building of a Case Management System (CMS) with a user perspective.
- A checklist on the different steps and actions to be taken while designing, developing and implementing an IT project within a justice system.
- And a grid for evaluating the different dimensions of an IT project.

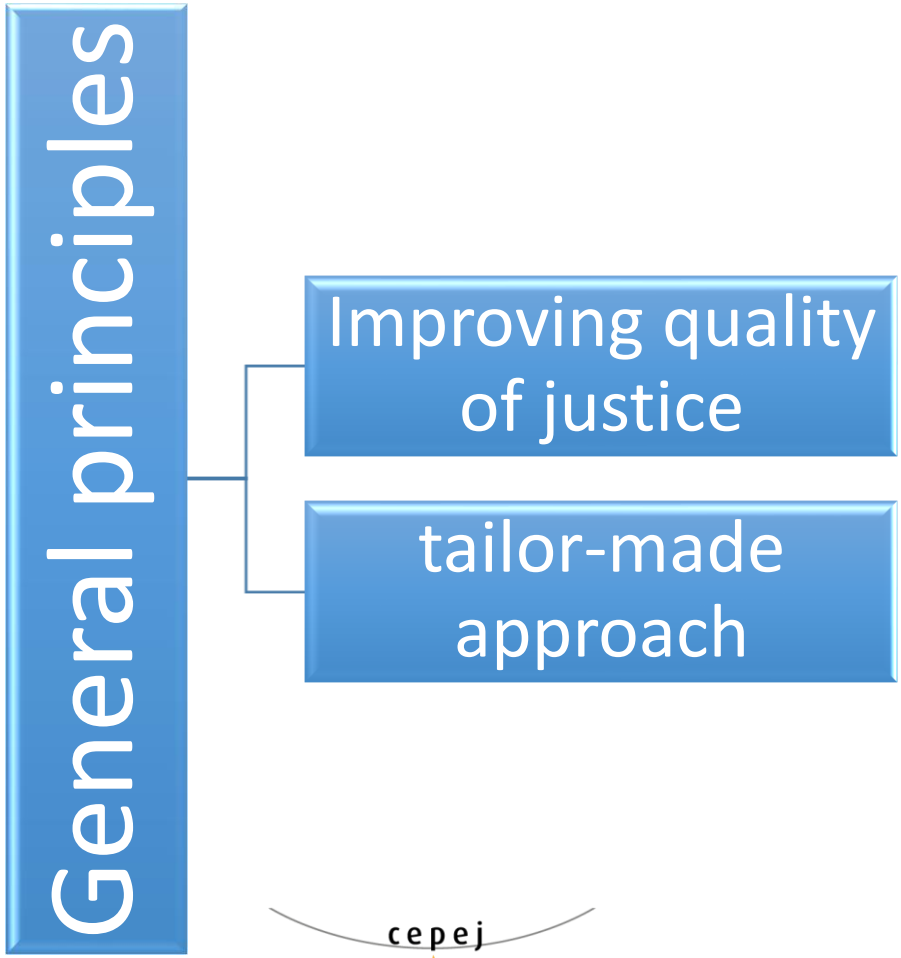
Tool #1

KEY GUIDELINES AND PRINCIPLES ON HOW TO DRIVE CHANGE TOWARDS CYBERJUSTICE

Driving change has proven to be a key factor in both the success and failure of policies when it comes to developing and delivering information systems

This tool offers seven directions to follow driving change towards Cyberjustice

- General principles
- Start by setting clear objectives, free from all technical considerations
- Consider the basic criteria contributing to the smooth deployment of IT
- Allocate appropriate resources commensurate to the project's goals
- Closely involve future users in the development of the tools throughout the life of the project
- Develop a deployment policy involving all the stakeholders
- From a project management culture to a truly hands-on approach to innovation



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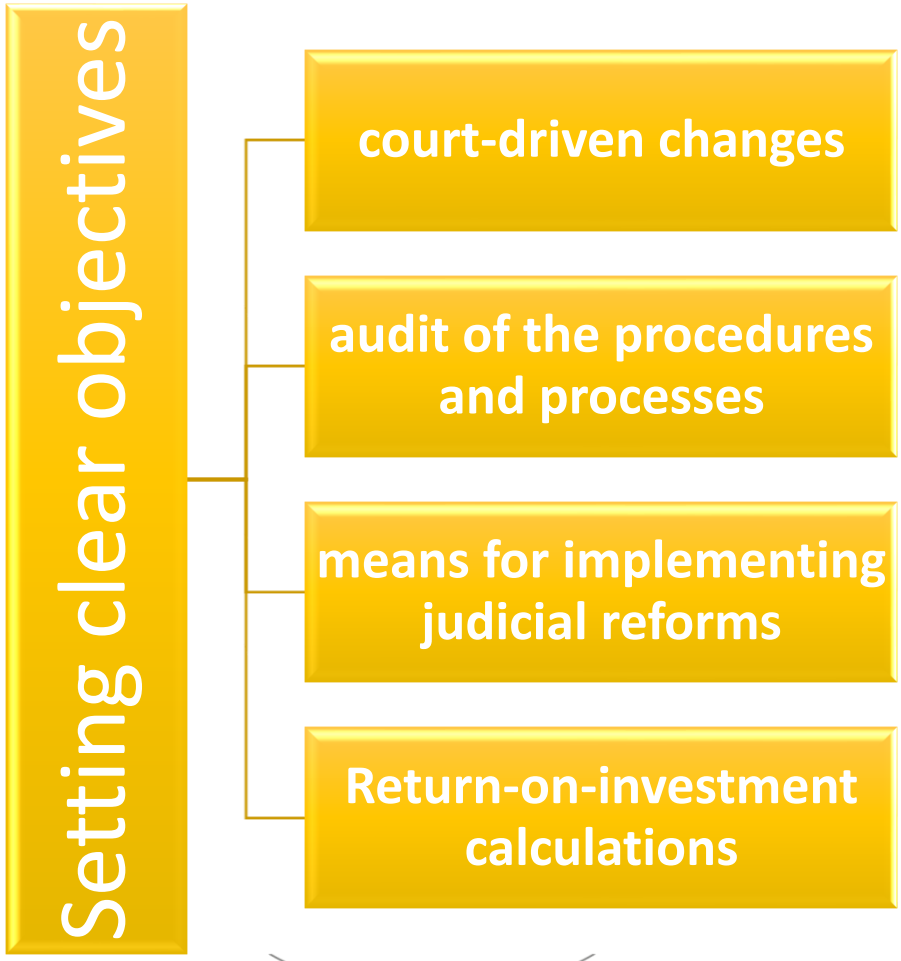
Setting clear objectives
court-driven changes
audit of the procedures and processes
means for implementing judicial reforms
Return-on-investment calculations
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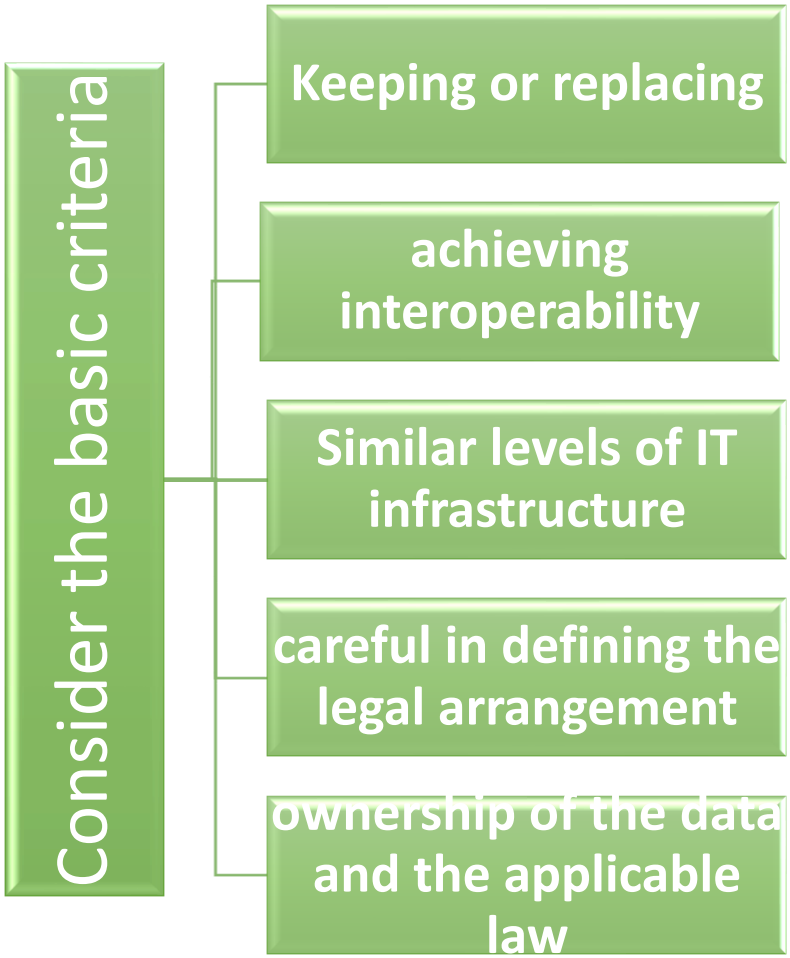
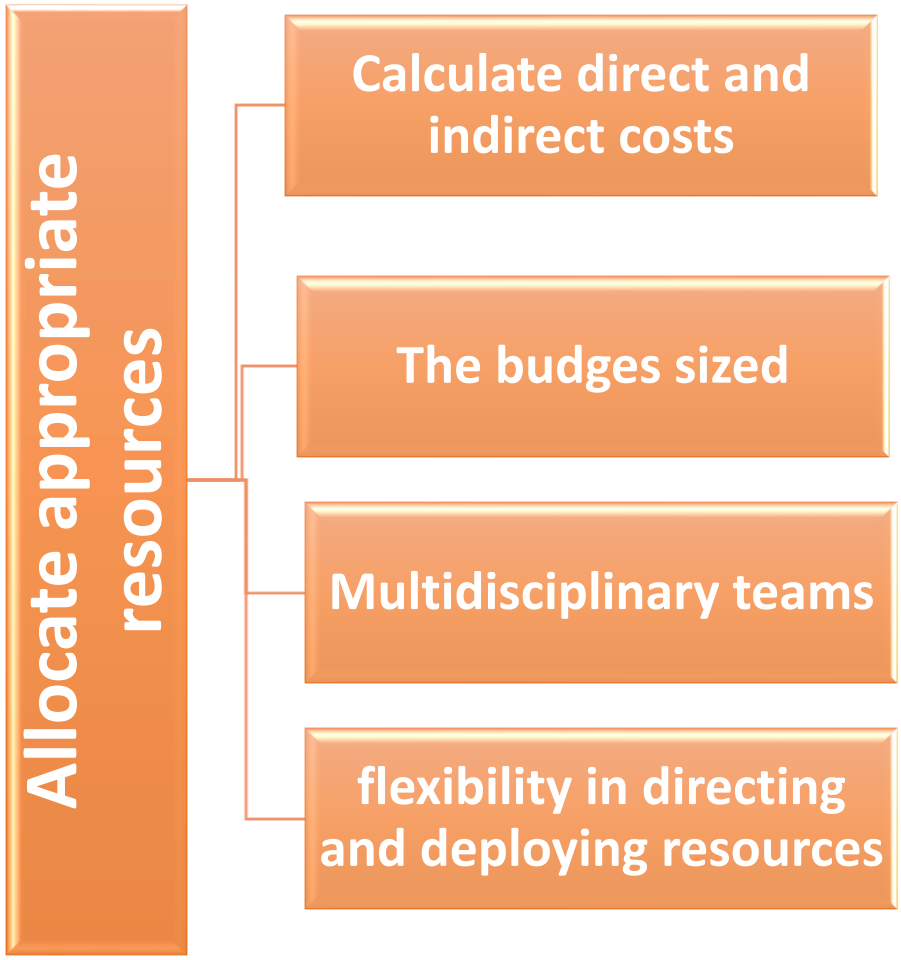
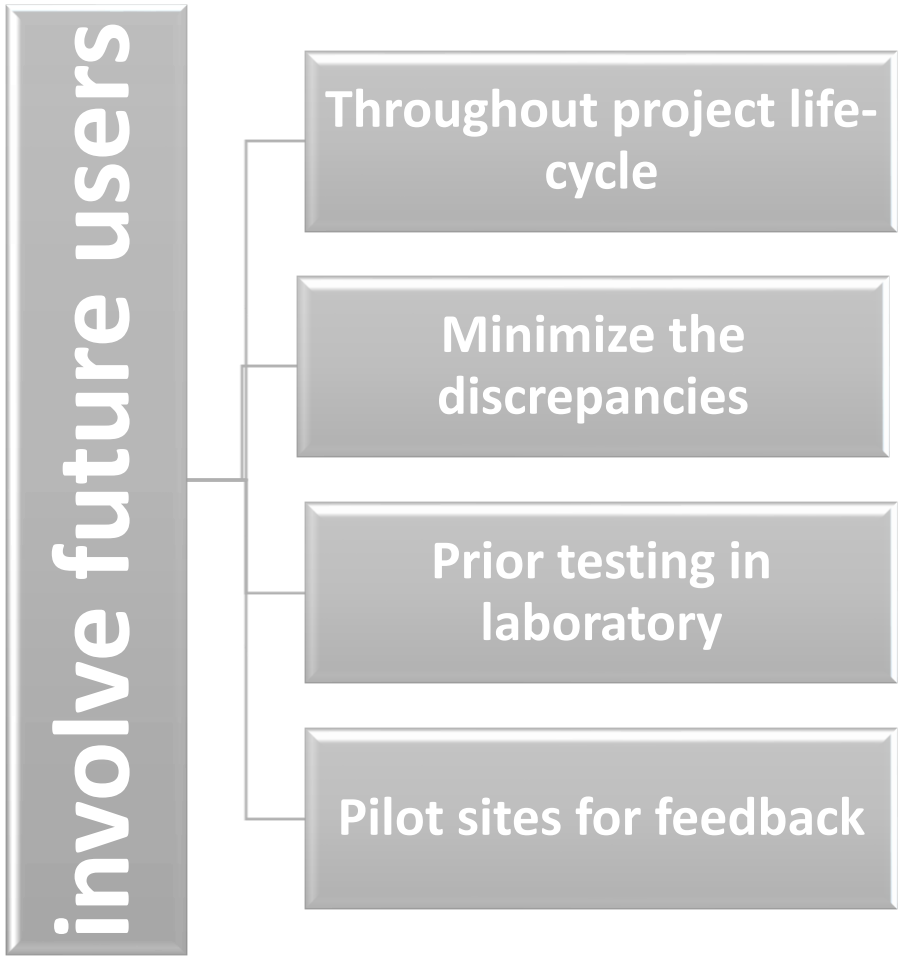

Consider the basic criteria
Keeping or replacing
achieving interoperability
Similar levels of IT infrastructure
careful in defining the legal arrangement
ownership of the data and the applicable law


Allocate appropriate resources
Calculate direct and indirect costs
The budges sized
Multidisciplinary teams
flexibility in directing and deploying resources



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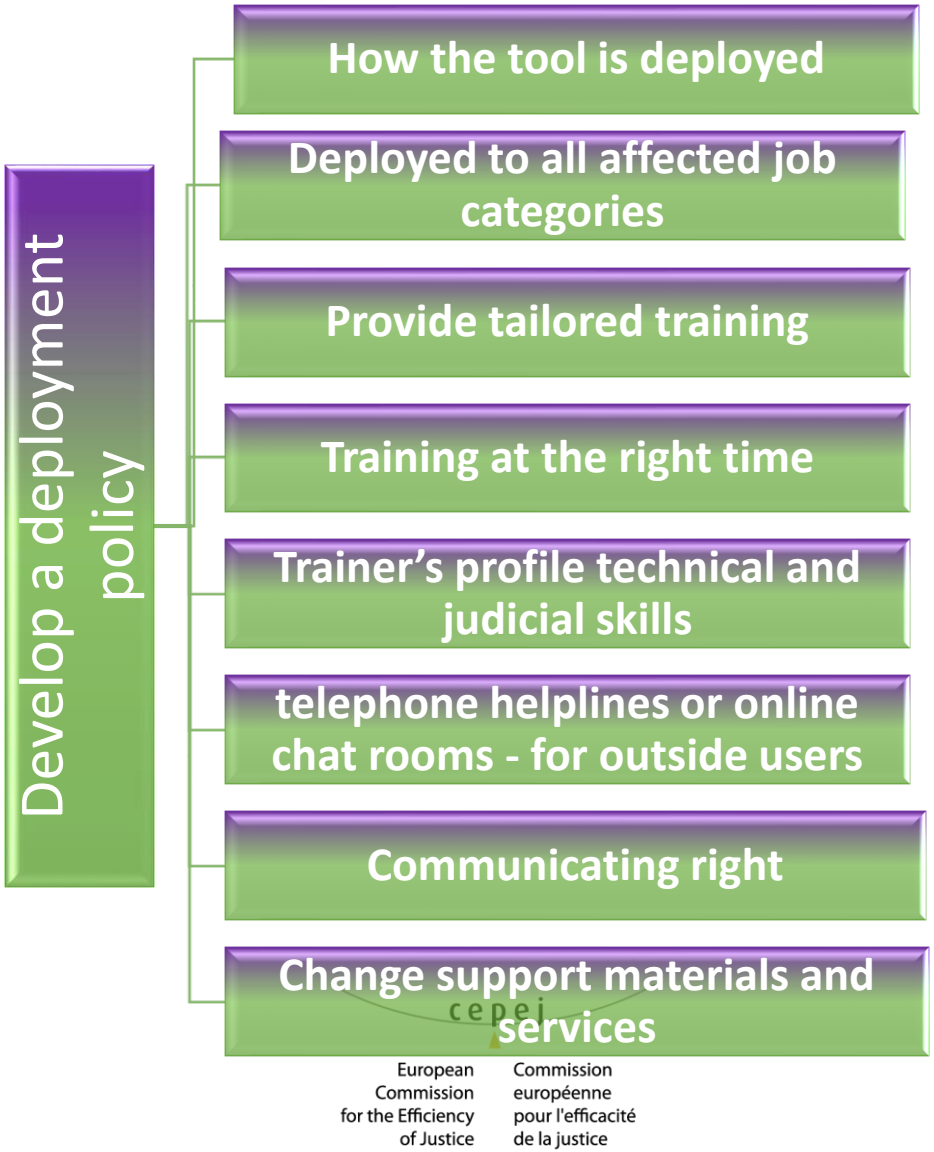
Develop a deployment policy
How the tool is deployed
Deployed to all affected job categories
Provide tailored training
Training at the right time
Trainer's profile technical and judicial skills
telephone helplines or online chat rooms - for outside users
Communicating right
Change support materials and services
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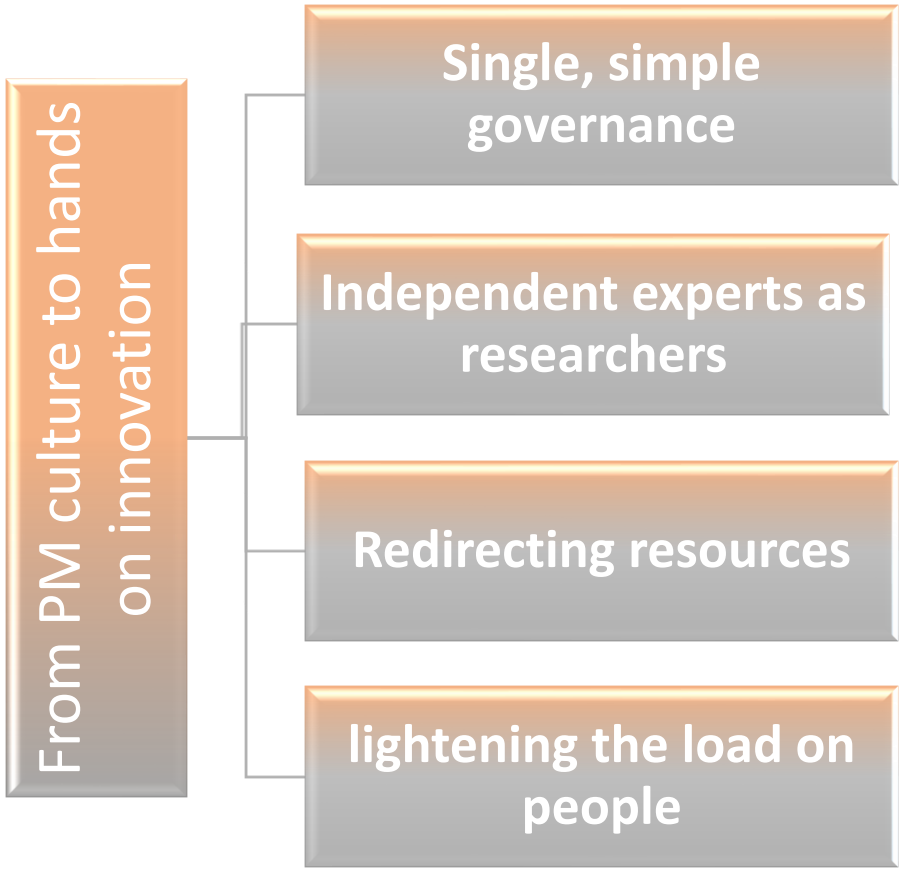

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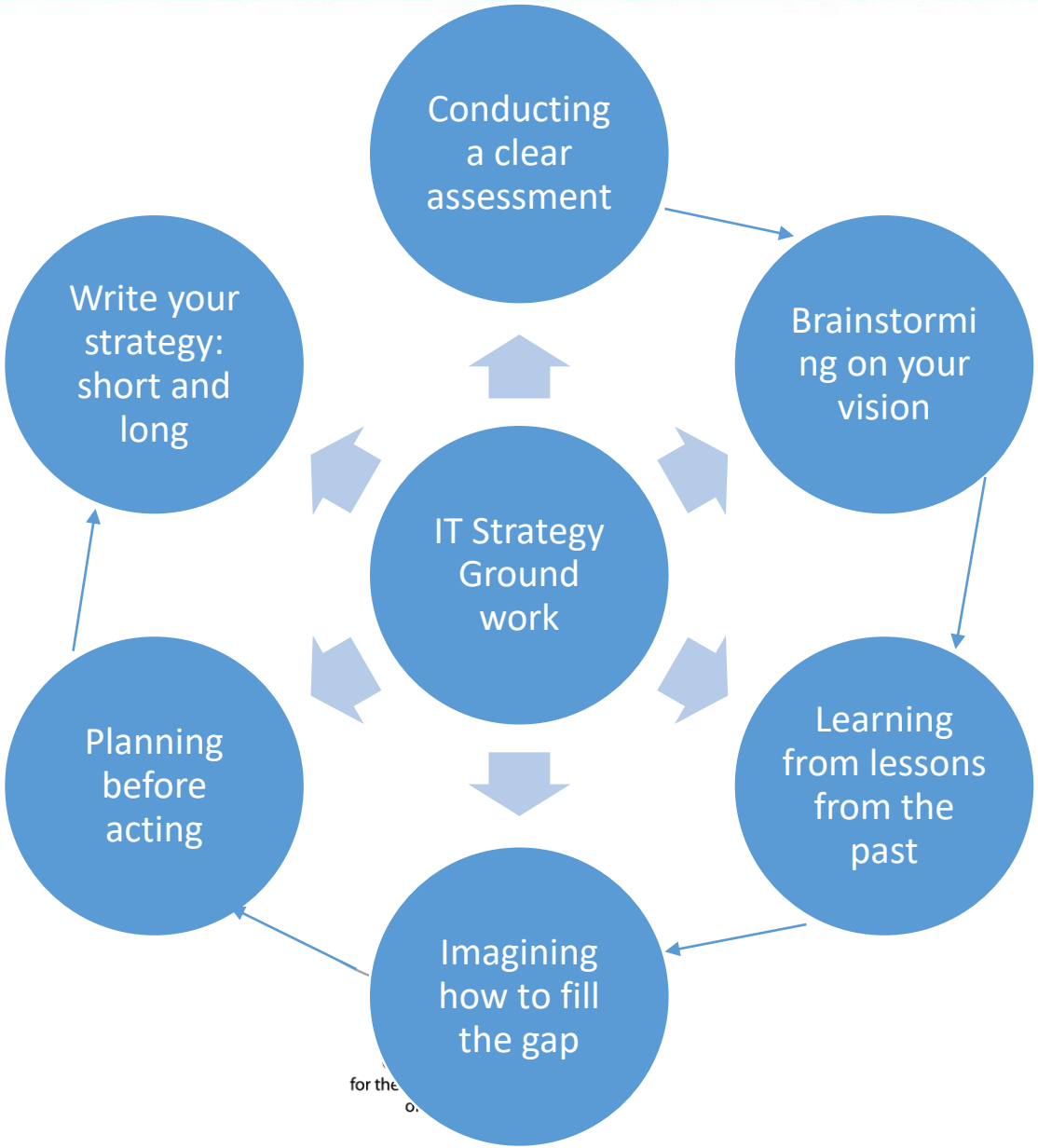
Tool #2

DESIGNING AND MANAGING AN INFORMATION TECHNOLOGY (IT) STRATEGY IN A JUSTICE SYSTEM

Assistance given in drafting IT Strategy

A step-by-step approach


Conducting a clear assessment
Brainstormi ng on your vision
Learning from lessons from the past
Imagining how to fill the gap
Planning before acting
Write your strategy: short and long
IT Strategy Ground work

1.Targets and field of activity of the IT Strategy

- Scope of the Strategy
- Field of activity

2. Identify and assess the expected results of the IT systems to be developed in application of the strategy

2.1Adopt a needs-based approach to set up your objectives

- *Efficient management of the courts and prosecutors' offices*
- *Facilitatetheaccesstothejustice-Efficientcommunicationbetweenparties, lawyers and courts, as well as with prosecutors' offices*
- *Efficient solving of cases*
- *Efficient execution of judgements*
- *Improving legal certainty*
- *Data protection*
- *Facilitating the supervision of the courts and prosecutors' offices*
- *Ensuring transparency and contributing to the fight against corruption*
- *Improving the relationship with the media (accessibility, spokesperson, watchdogs)*
- *Offering a reasonably foreseeable system*

2.2 Prioritize your investment to achieve certain objectives based on an impact/cost analysis

- Criteria of use
- Criteria of costs

3. Clarify the status of the different IT applications to be listed in your strategy to the specific situation of your justice system

- List of critical computer applications
- List of non-critical computer applications

4. **Principles for the software (purpose: help stakeholders with the categorisation of software to invest in)**

- Open source software
- Closed source software
- Procurement of software (standard, owned)

5. Technical standards to be adopted by the IT strategy

- Archiving
- Ergonomic principles
- Electronic signature
- Exchange of documents (compatibility of systems)
- Structure of documents
- Certification of documents
- Indexing of judicial decisions
- Data protection

6. IT Architecture

- Totally decentralized
- Partially decentralized
- Totally centralized

7. IT Security and data protection

- Risk management
- Data protection

8. IT Services

a. Availability: Principles (include in table per software and application)

b. Interruptions

c. IT Human resources

9. Project Management

- Methodology of project management: how to integrate needs, then plan expectations and prioritise projects
- Overall organisation of the project management
- Procedure for identifying needs
- Criteria for prioritising needs and projects
- Categories of projects and competencies

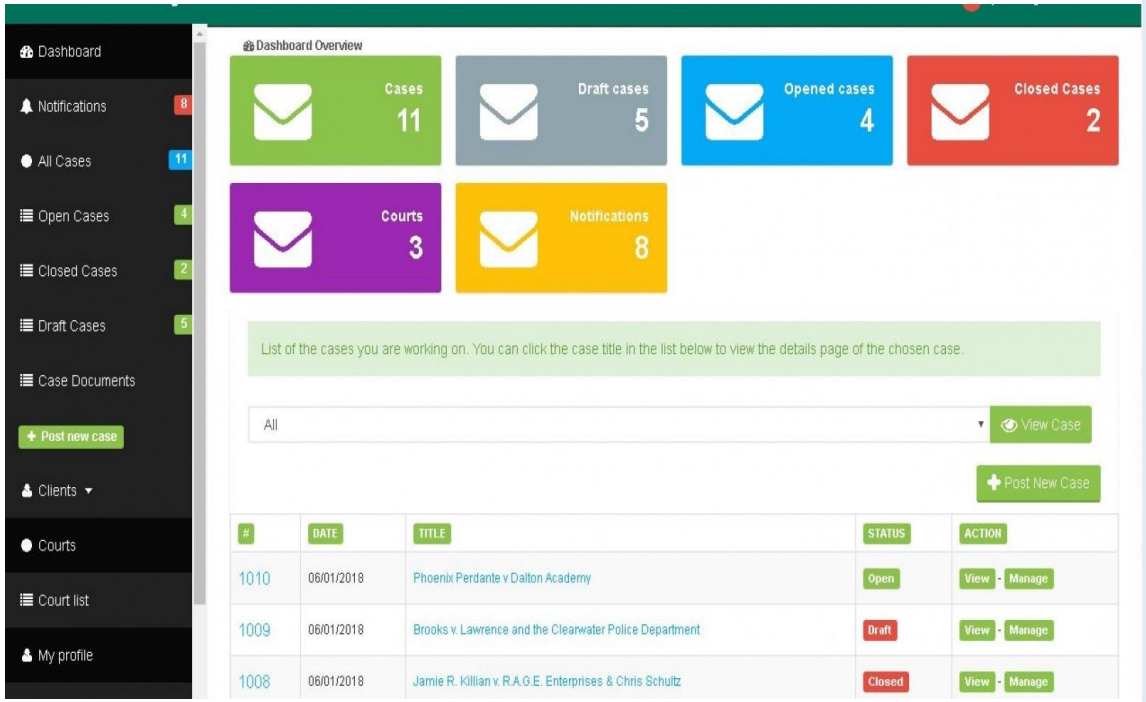
10. Implementation of the strategy

- The sequence of steps below can be followed to produce an IT strategy:
  - The body responsible for drawing up the IT strategy discusses the points set out in this document and chooses between the options proposed.
  - The draft is then submitted to the relevant authority for approval.
  - The strategy is circulated and implementing documents such as:
  - - organisational arrangements for overseeing projects in the justice sector; - process for taking account of users' wishes;
    - IT communication plan;
    - etc.
  - are drafted, approved and implemented.

Tool #3

OUTLINE ON BUILDING A CASE MANAGEMENT SYSTEM THAT SERVES THE USERS

Why a new CMS?



1. Activities to carry prior to take any action regarding your CMS

- *Considering the replacement of your old CMS by a new one*
- *Set up your short term and long-term objectives*
- *Scan your court environment to identify institutional partners to involve in the design and implementation process*
- *Define your budget ability and the type of financial resources available or economic constraints to take into consideration for the CMS functioning lifelong*
- *Review the complete legal framework in place and your ability to reform it if necessary beforehand*
- *Decide about the major orientations that will frame your work in the years to come*

2. Suggestions of steps to follow in designing a new CMS

- *Identify an adjudication or a court activity area to start with, and eventually the others to follow.*
- *Draw up an ideal information flow chart for each area of the court activity concerned in order to map the information exchange process.*
- *Apply the procedural framework that provides rights to access information, authorizes or makes mandatory to take action for each step and any actor, and check that the combination of the two is compliant with the fair trial principles and provisions established by article 6 ECHR.*
- *Assess the current flow of information and make an inventory of the methods, practices and tools that support the exchange of information in order to identify the discrepancy between the current and the ideal situation.*

3. Suggestions of steps to follow in implementing a new CMS

- *Identify key functionalities to the CMS that will structure the organization of the court.*
- *Run a test in real conditions using a pilot of the CMS and learn from the findings*
- *Submit a full report to your governance in order to decide about (launch, report or cancel) the deployment of the CMS at a large scale*

Tool #4

CHECKLIST on a different steps and actions to be taken during implementing IT project within a justice system

The Checklist inspired by the Cyberjustice Guidelines on how to drive change towards Cyberjustice provides an overview of the different steps and actions to be undertaken when implementing an ICT project within a judicial system.

Tool #5

Suggested grid for evaluating IT projects

Tool that can serve for self-evaluation to monitor and evaluate the progress achieved

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Thank you

Questions / Discussion

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