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## EUROPEAN SMALL CLAIMS PROCEDURE IN THE REALM OF THE OTHER EUROPEAN PROCEEDINGS

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**ABSTRACT:** In this article, the European Small Claims Procedure (hereinafter – ESCP) will be analysed in the context of the other European procedures, namely Brussels I bis Regulation (Regulation (EU) No 1215/2012), European Enforcement Order Procedure, European Payment Order Procedure and Consumer ODR Procedure. The aim of each procedure, their benefits for users and drawbacks are compared to establish the areas in which the European Small Claims Procedure can be improved or modified contributing better towards the development of more efficient and user-friendly European Union civil proceedings system. Results of the SCAN | Small Claims Analysis Network consortium studies of the application of the ESCP are used as a basis of this article. The article among other issues will cover premises to introduce seamlessly integrated dispute resolution methods and tools in the European Small Claims procedure such as early-diagnostics, negotiations, mediation, etc. to create a pyramid-shaped dispute resolution system so that only the disputes that cannot be resolved by using other tools would be channeled to the adjudicative stage.

**KEYWORDS:** EU Civil Procedure; Small Claims Procedure; EU Law, Civil Proceedings; ODR.

**SUMMARY:** 1. THE EUROPEAN PROCEEDINGS' ENVIRONMENT.— 2. ANALYSIS OF THE ESCP.— 3. POSSIBLE VECTORS FOR REFINING OF THE ESCP.— CONCLUSIONS

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## 1. THE EUROPEAN PROCEEDINGS' ENVIRONMENT

In the recent decades, the European Union has adopted a number of regulations in the area of civil justice with the aim of simplifying cross-border litigation, reducing its costs, and providing tools that could facilitate access to justice for businesses and also consumers. These regulations were adopted gradually to cover a specific area that was selected instead of introducing a large piece of universal legislation. Hereby it created the legal system in which there are several different legal tools adopted at EU level that have similar intent: to provide EU citizens (natural and legal persons) with the clear means to protect one's rights against infringements with the cross-border (intra-EU) element. The aim of this article is to distinguish between these EU proceedings and determine the goals, boundaries, benefits and drawbacks for users for the each of them. The ESCP proceedings are analysed to establish their place within the EU legal system in the context of the other EU civil proceedings, and delineate its future evolution.

The most important regulation for European civil and commercial litigation is EU Regulation, No. 1215/2012<sup>1</sup> (hereafter – Brussels Ibis Regulation). It sets jurisdiction rules, abolished exequatur procedure for the most judgments delivered in EU Member States. Sometimes it is even said that the Brussels Ibis Regulation is *the magna carta* of international procedural law in Europe<sup>2</sup>. Although Brussels Ibis Regulation does not set procedure of dispute resolution *per se*, but it is the one regulation that makes disputes between persons originating from different EU Member States work by setting the jurisdictional ground rules. Brussels Ibis regulation is mandatory in its nature and sets clear boundaries to its applicability. The Member States cannot introduce alternative national legislation on issues covered by the Brussels Ibis Regulation. This legal act, therefore, establishes jurisdiction rules not only for civil and commercial disputes overall but also for below analysed EU Regulations meaning that without this regulation, the intra-EU-cross-border disputes would be extremely difficult to handle. Nowadays this regulation is probably one of the most frequently applied and does not receive much criticism.

The Regulation No. 805/2004 on the European Enforcement Order<sup>3</sup> (hereafter – EEO Regulation), Regulation No. 1896/2006 creating a European order for payment procedure<sup>4</sup> (hereafter – EOP Regulation) and Regulation

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<sup>1</sup> Regulation (EC) No 1215/2012 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters. OL, 2012, L351, p. 1-32.

<sup>2</sup> P. Mankowski. Research Handbook on the Brussels Ibis Regulation. Edward Elgar Publishing, 2020.p. 9.

<sup>3</sup> Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. OL, 2005, L 143, p. 15-39.

<sup>4</sup> Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. OL, 2006, L399, p. 1-32.

No. 861/2007 establishing a European Small Claims Procedure<sup>5</sup> (hereafter – ESCP Regulation) are so-called second generation<sup>6</sup> EU regulations which aim to abolish exequatur procedure, provide procedural minimum standards, or even provide a self-standing European procedure for cross-border cases. We believe that the latter regulations have not reached all their goals, they are still not well-known for the public or even lawyers, and the joint reform of these legal acts should be discussed. The main aim of EEO Regulation is set conditions that a judgment could be certified as uncontested while EOP and ESCP Regulations establish separate procedures which should be simple, swift and attractive for litigants in EU Member States.

The EEO Regulation was introduced to ensure free circulation of judgments, court settlements and authentic instruments in all Member States, cancelling the procedure of the recognition and enforcement of a foreign court judgment. A judgment can be certified as EEO if set conditions are fulfilled (it is enforceable in the Member State of origin and certain minimum requirements are met). It is obvious that the significance of EEO Regulation diminished after adoption of the Brussels Ibis Regulation. The latter Regulation abolished the exequatur procedure for most civil and commercial disputes. It can be mentioned that the evaluation of EEO Regulation is ongoing and statistical data and opinions of different institutions are collected by European Commission now. Still, it could be said that available information provides that usually EEO is used for authentic instruments. For instance, in Lithuania, in year 2019 89 authentic instruments certified as EEO were submitted for enforcement and only 18 certified judgments were submitted<sup>7</sup>. Council of Notariats of European Union also stressed that authentic instruments drawn up by notaries or other public officer holders are an important part of EEO<sup>8</sup>. We believe that EEO Regulation played an important role in abolishment of exequatur procedure within EU Member States and now has lost its importance as Brussels Ibis Regulation came into force.

European Commission considered that the EOP Regulation will be sufficient help for plaintiffs in cross-border civil and commercial cases, because between 50 and more than 80 percent of claims in courts of first instance in the Member States are uncontested<sup>9</sup>. The EOP Regulation introduced a written procedure which does not require presence before the court nor the assistance of a lawyer. No documentary evidence is needed to support the

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<sup>5</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. OL, 2007, L199, p.1-22. The Regulation was amended by adopting Regulation No. 2015/2421.

<sup>6</sup> B. Hess. *Europäisches Zivilprozessrecht*. C.F. Müller, 2010. p. 23.

<sup>7</sup> Information received from from Chamber of Lithuanian Bailiffs.

<sup>8</sup> Position paper of the Council of Notariats of the European Union (CNUE) On the evaluation of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. 20/11/2020. Available online here: <http://www.notaries-of-europe.eu/index.php?pageID=18032>.

<sup>9</sup> EU Commission „Proposal for a Regulation creating a European order for payment procedure” COM (2004) 173 final 3, Explanatory Memorandum.

application and no further actions of the claimant are required during the procedure. Although, the European Court of Justice (hereafter – CJEU) ruled that in consumer disputes the court can request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, to carry out an *ex officio* review of the possible unfairness of those terms<sup>10</sup>. The procedure is designed only for uncontested claims. The defendant can lodge a statement of opposition within 30 days of the order being issued. The defendant must only indicate that he contests the claim, without having to specify reasons for it. Notwithstanding this fact, report on the application of EOP Regulation showed that the Regulation is not quite as popular as it had been anticipated. According to the available information, which includes the years up to and through 2015, between 12,000 and 13,000 applications for European orders for payment are received by the courts of Member States per year. The highest numbers of applications (more than 4,000 annually) are in Austria and Germany where also most European orders for payment are issued<sup>11</sup>. We could see that the potential of the Regulation is still not exploited.

The ESCP Regulation creates a comprehensive adversarial procedure, which is available to plaintiffs as an optional instrument for cross-border claims, alongside the existing procedures at the national level. The ESCP is, since the amendments brought about by Regulation No. 2015/2421, applicable to claims not exceeding 5 000. Unlike the procedure for the EOP which is limited to monetary claims, non-monetary claims can be the subject of a claim under the ESCP Regulation. The scope of the Regulation applies in the same way as the other instruments, i.e., to civil and commercial matters. Interestingly, there are further substantive exclusions, which state that matters concerning, for instance, employment law, tenancies of immovable property, except for actions on monetary claims, or violations of privacy and of rights relating to personality, including defamation, are also excluded from the scope and cannot be the subject of ESCP<sup>12</sup>. The EOP procedure should be more appealing for legal entities and the ESCP procedure is more dedicated for consumer disputes. Amendments of ESCP in year 2015 also aimed to strengthen the use of distance communication technology, including conducting oral hearings, taking of the evidence, enabling the e-service of documents and distant payment of court fees.

Both the EOP and the ESCP Regulation procedures are meant to be conducted mainly by means of standard forms. CJEU confirmed that regarding the general scheme of Regulation No 861/2007, it must be noted that that regulation provides solely for the rights and obligations of the applicant and defendant in the main proceedings. It follows that Forms A and C in Annexes

<sup>10</sup> CJEU preliminary ruling of 19 December 2019, Case No. C-453/18 and Case No. C-494/2018.

<sup>11</sup> Report on the application of Regulation (EC) 1896/2006 of the European Parliament and of the Council creating a European Order for Payment Procedure COM (2015) 495 final.

<sup>12</sup> E. Storskrubb. *Civil Procedure and EU Law. A Policy Area Uncovered*. Oxford University Press, 2008, p. 224.

I and III to that regulation must be filled in respectively. No other section is provided for other persons who may be involved in the dispute in the main proceedings<sup>13</sup>. In seeking to speed up litigation, the ESCP Regulation sets specific time limits for various stages of the proceedings. The text of the Regulation as well as the recent amendment do not foresee any sanctions for exceeding the time limit, apart from the foreclosure sanction for parties not complying with their duties within the set procedural time<sup>14</sup>. The Regulation does not contain rules on the appeal. This is left to the national laws of the Member States.

As we could see, all these so-called second generation regulations have their problems and the implementation of the procedures is not as successful as it was anticipated. All three mentioned Regulations are not well-known for the public or even practitioners and they are applied quite rarely and even concrete statistical data on the application is lacked. It could be agreed that sounder and more detailed national statistics are sorely needed, and if made available will certainly provide better information on how the procedures function. This will also increase the comparability of the collected data. Better national statistics would help identify more courts experienced in handling EOP and ESCP claims and allow an investigation of possible best practices as well as their dissemination together with acquired expertise<sup>15</sup>. Also, the national procedures influence the way the EEO, the EOP and the ESCP are applied. The limited experience and lack of understanding for practitioners means that national rules and national traditions influence more and more these procedures.

To disseminate information on Regulations more effectively, also more detailed and relevant up-to-date information must be available on e-Justice portal. A database of the most important judgments in the field of discussed Regulations would help to gather and spread information of the practice. Training of practitioners on all Regulations, not only on Brussels Ibis Regulation, should be organized more frequently in all Member States. In such way lawyers and judges would better understand in what instances which Regulation should be applied, would have broader knowledge on cross-border litigation and perhaps would interpret provisions of European instruments according to the aims of EU civil procedure. We believe that the level of awareness of Brussels Ibis Regulation is much higher as it is necessary to apply jurisdiction rules in all cross-border civil or commercial disputes and on the other hand EEO, EOP and ESCP Regulations are only of optional nature.

Notwithstanding all the problems, we agree that second generation Regulations have great political value<sup>16</sup>. These European instruments paved the

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<sup>13</sup> CJEU preliminary ruling of 22 November 2018, Case No. C-627/2017, para 26.

<sup>14</sup> E.A. Ontanu. Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures. Intersentia, 2017.p.48.

<sup>15</sup> *Ibid.* p. 419.

<sup>16</sup> *Op. cit.* p. 248.

way to abolish *exequatur* in Brussels Ibis Regulation by reducing fear and reinforcing mutual trust.

EU Regulation on online dispute resolution for consumer disputes<sup>17</sup> (hereafter — ODR Regulation) is a quite different legal act. Similarly, like the ESCP Regulation it is devoted to consumer disputes, but otherwise it has many differences. According to the Art. 2 of the Regulation, it is applied to the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or service contracts between a consumer resident in the Union and a trader established in the Union. The ODR Regulation aims to facilitate access to alternative dispute resolution (hereafter – ADR) and ODR providers by creating a European ODR platform<sup>18</sup>. Since 15 February 2016, the ODR platform is available to consumers and businesses in all official EU languages for complaints concerning online sales or service contracts in the EU. However, it should be mentioned that from the 1<sup>st</sup> of July 2017 the scope of the Regulation is also expanded to consumers or traders in Norway, Iceland and Liechtenstein.

The aim of the Regulation is to provide consumers with a practical approach to resolving domestic or cross border disputes in their own language without the need of court proceedings. The ODR platform allows consumers to submit their applications on settlement of disputes to the platform in the language of their choice, and then use an online ADR procedure to resolve the dispute. It is to be stressed that the ODR Regulation contains no detailed requirements for the dispute resolution procedure itself. It can be agreed that the European ODR platform does not act as a dispute resolution service itself, but merely as a ‘clearing house’ that brings together consumers, businesses and ADR or ODR providers<sup>19</sup>. We believe that ODR Regulation, as well as above mentioned regulations, are not well known by the public and they are still applied too rarely.

## 2. ANALYSIS OF THE ESCP

To analyse the possibilities to improve the ESCP, the construction of the ESCP and its drawbacks shall be discussed as well as the reasons that influenced them.

The ESCP was intended to be speedy, simple to use and requiring lower costs than other available alternatives. The ESCP aimed at application without the need of legal advice. At the same time ESCP was created as an al-

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<sup>17</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. OL, L165, p. 202-213.

<sup>18</sup> See <https://webgate.ec.europa.eu/odr/>

<sup>19</sup> G.P. Calliess, S.J. Heetkamp. Online Dispute Resolution: Conceptual and Regulatory Framework. SSRN Electronic Journal (2019). p. 16. Available online: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3505635](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3505635)

ternative to domestic (national) procedures, meaning that it is the claimant that decides whether to use ESCP or other available option. The ESCP was intended to be more advantageous than available domestic alternatives for it to be used resulting in situation that the applicability and popularity of the ESCP depend on each different Member State and its legal system. However, drawbacks of the ESCP can be identified even without comparing the ESCP to the certain domestic proceedings.

The ESCP Regulation sets the general rules of the procedure. The ESCP is initiated by submitting form A (Statement of Claim) alongside supporting evidence to the competent court. The competent court is selected according to the rules set in Brussels Ibis Regulation. If the claim is not sufficiently clear, the court is to use form B to give the claimant opportunity to rectify the shortcomings of the claim. The defendant is to submit its position in standardised form C. The procedure shall be conducted in a written form. The court or tribunal may hold an oral hearing if it considers necessary. All documents and hearings are to be conducted in the language or one of the languages of the court or tribunal. After the hearing, the court shall issue a binding decision in form D which is enforceable in all Member States without it any additional recognition or exequatur.

The common ground of the ESCP is sufficiently clear and simple at the first sight. However, the drawbacks of the ESCP are revealed once the procedure is applied in practice as the devil hides in the details.

The first problem identified is the language of the ESCP. It already has been mentioned that ESCP applies to cross-border disputes. Art. 6 of the ESCP Regulation sets that the forms and supporting evidence shall be submitted in the language or one of the languages of the competent court. It makes the ESCP dependant on the national language of the certain Member State in which the proceedings are conducted. It is noteworthy that in some Member States only documents submitted in national language are accepted, without any bilingual option. Even though the forms are available in the language of each Member State, the supporting evidence is to be translated, thus the costs of the procedure dramatically increase. The costs of the dispute are to be reimbursed pursuant to the national rules, although unnecessary or disproportionate costs are not to be reimbursed (Art. 16 of the ESCP Regulation), leaving it up to the competent court whether costs of translations are proportionate. Although online forms are provided in a language a user chooses, the forms are provided in one selected language only and are not bilingual, meaning that in order to fill the standardised form, a party to the dispute is to open to different sets of forms: one in the language of the competent court, another – in the language the user understands. It also decreases user-friendliness of the ESCP. Therefore, the language of the ESCP is one of reasons discouraging from use of the ESCP.

Another issue that inconveniences users of ESCP is related to procedures of appeals. According to Art. 17 of the ESCP Regulation, it is governed by the

national procedural rules of the respective Member States. Thus, both the possibility to appeal the decision adopted during the ESCP and the rules applicable differ in each Member State. Moreover, national regulation of some Member States requires an attorney to sign on the appeal which is in direct contradiction with the principle that representation of a lawyer shall not be mandatory in ESCP proceedings.

It can be observed that the application of the national rules to the ESCP proceedings is a source of complications. This problem was programmed by the initial decision on how the ESCP is to be drafted. It is noteworthy that ESCP was drawn not as a unified procedure, applicable to all EU Member States, but rather as an instrument creating general principles only. Art. 19 of the ESCP Regulation expressly states that subject to the provisions of the ESCP Regulation, the “procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.” This method of creating the ESCP resulted in 27 different sets of procedural rules. ESCP applies to cross-border disputes only, thus, the procedural rules of the Member State the Respondent is domiciled in applies (Art. 3 of the ESCP). It creates situation that if a Claimant intends to launch an ESCP dispute, it shall be done in the courts of another Member State, in the language of another Member State and pursuant to the procedural rules of another Member State. Depending on the fact whether the respective Member State provides easily accessible information on its civil procedure in foreign languages, the Claimant might be in a need of legal assistance not because the civil procedure is complex, but because it is unknown to the Claimant coming from different jurisdiction. This is not only against the idea that the ESCP dispute should be sufficiently easy to conduct without legal assistance but also discourages from proceeding with the ESCP claim overall. If the intention of the ESCP was to simplify the procedure in cases concerning small sums and thus increase access to justice, then this aim cannot be achieved by creation of 27 different procedures.

Another reason that prevents the more frequent application of ESCP in cross-border disputes is a voluntary/optional nature of its application. Users tend not to opt for possibilities that are new and initially more difficult to understand if they have such choice. If comparing ESCP Regulation with other EU Regulations analysed in this article, the example of a mandatory EU regulation is Brussels Ibis Regulation. It has already been mentioned that Brussels Ibis Regulation is probably one of the most well-known and most often applied. Therefore, the voluntary option whether to use the ESCP does not encourage use of the ESCP Regulation and creates opportunity to choose a different legal instrument that is better-known and not more convenient or advantageous for the user.

Lastly, the analysis on costs and benefits often results in choosing another procedure or dropping the dispute entirely, especially having in mind that the value of such cases is not high. analysis of the ESCP. The costs decrease not



only applicability of ESCP, but the barriers to access to justice in cross-border small value disputes remain.

As one of the means of solving the problem thereof, the European E-Justice portal<sup>20</sup> was accommodated with the information on the ESCP. The idea behind it is to provide general summarised information in each national language of the EU that are easily understandable and applicable for users of ESCP. However, the analysis of the contents of E-Justice portal on ESCP proceedings in various Member States suggests that the effectiveness of this tool directly depends on timely and efficient information being uploaded. It was noticed that some information is obsolete. In some chapters the links provided redirect to the legal regulation and/or informational webpages in national languages without translations to the other official languages of the EU. Therefore, the E-Justice portal does not eliminate the problems created by the decision that the ESCP Regulation should not establish universal proceedings for small claims' disputes throughout the EU.

The same problem is relevant to any other informational tool on ESCP. Its effectiveness and subsequently the applicability of the ESCP directly depends on the content of the information on the national procedure. If such information is not provided in a user-friendly manner, its contents are obsolete, and it direct viewers to webpages in national languages, then such a tool will not be sufficient. Therefore, it is necessary to analyse other means of eliminating the problems that make the ESCP non user-friendly, rarely applicable, and that result in low public awareness.

### **3. POSSIBLE VECTORS FOR REFINING OF THE ESCP**

Art. 1 of the ESCP Regulation sets its goals as simplifying, speeding up and making less expensive litigation concerning small claims in cross-border cases. As we can see from the previous chapter there are multiple issues with efficiency and awareness in relation to the ESCP. These problems preclude exploiting of full potential of the amazing ideas that lay behind the ESCP Regulation. If there is no adequate alternative to solve a problem of too-expensive, too-complex and too-slow cross border adjudication of intra-EU small claims, we believe the ESCP Regulation should be further developed. Below we discuss main directions of possible upgrades that may help the regulation to achieve its goals and unleash its full potential.

#### *Unification*

Lack of unity in procedural terms of the ESCP results in multiple variations of ESCP procedures in practice, instead of one.

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<sup>20</sup> <https://e-justice.europa.eu/home?action=home>.

That creates inequality of users of the proceeding on a broad scale. The inequality starts from the very beginning with different rules of court fees and finishes with differences as to the availability of an appeal.

On the other hand, 27 variations of the ESCP Regulation are obscure. The Regulation creates an initial vision of a simple and easy procedure. However, as discussed previously such a view is misleading. Selection of court where to start your ESCP would result in conduct of the proceeding in lines with the national rules of the particular Member State by virtue of Art. 19 of the ESCP Regulation. A user cannot identify the specific variation and compare it with possible alternatives offered by jurisdiction rules of Brussels Ibis Regulation without proper knowledge of sources of national procedural law that shall be applied. Due to legal training focusing on single jurisdictions and language barriers it is rather difficult if not impossible even for professional users.

These issues effectively would be solved by introducing a unified proceeding. All the most significant aspects of the proceeding should be included in the body of the regulation itself. The application of national rules can help to accommodate the particularities, but the application of national rules should not result in significantly different modalities of the ESCP as it is now.

#### *Digitalisation, automation and online connectivity*

The SCAN<sup>21</sup> consortium studies of the ESCP revealed that in the number of countries courts do not accept digital documents and digital evidence, and the management of the ESCP proceeding is not automated. Even in countries where level of digitalisation of civil proceeding is high, there are no links between the European E-Justice portal and national E-justice systems.

In the current era of the fourth industrial revolution it is odd and outdated to design a proceeding based on the premise of paper-document processing. This should be changed if we seriously consider offering users of small value disputes efficient, fast and simple method for their resolution. In our thinking, new generation of the ESCP should be based on a fully digital format, fully online connectivity, adequate up-to-date automation, and operational links between EU and national e-justice systems.

Efforts of courts to operate in conditions of COVID-19 pandemic demonstrated that EU national judicial systems can adapt to a digital format and online connectivity. In Lithuania, more than 70 percent of all civil cases are examined remotely, employing digital filing, digital payment and management of court fees, digitalization of all materials of civil cases, automated case management, online-access to civil case files, e-service to parties, massive conversion of physical hearings into videoconferencing via Zoom and

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<sup>21</sup> **SCAN – Small Claims Analysis Net** is a **EU-funded project** coordinated by University of Naples Federico II, involving other 8 partners in a consortium. More information here: <https://www.scanproject.eu/>

other advanced technologies. Such progressive practices from Lithuania and other digitally advanced countries should be used as a basis for modification of the ESCP towards digital format, online connectivity and automation.

Automation can be an efficient direction to solve many issues. The SCAN studies have identified, for example, translation issues and referrals of cases to the proper judicial forum as main obstacles in fluent functioning of this proceeding. AI-enhanced translation solutions may be integrated into the system.

Technological progress should not stop with the application of AI functionalities for automated translations only. AI-based technologies may be used to improve handling of repetitive issues, assistance for users and judges, increasing user satisfaction, and so on.

### *Methodology shifts*

The current setup of the ESCP seems rather outdated from the methodological perspective as well. Its current design streamlines all low-value disputes straight to adjudication. However, modern trends in efficient dispute resolution systems do the opposite. They integrate dispute diagnostics, negotiations and mediation methodologies for early settlement of disputes before presenting any dispute to a judge for adjudication. Such a pyramid-shaped method of dispute resolution helps to reduce cost, increase speed and satisfaction of parties.

We believe the future of efficient pan-European low-value dispute resolution lays with implementation of a pyramid-style dispute resolution methodology where adjudication comes as a last resort. Handling of an intra-EU low-value dispute should start with early dispute diagnostics, then seamlessly evolve into negotiations, mediation and adjudication if previous stages of a dispute do not result in settlement.

In addition to advocating for enlarging the methodological base of small claims dispute settlement and advancing toward full online connectivity, the authors of this article also recommend consolidating the efforts to develop the consumer ODR and the ESCP. Merging these two streams may help to save costs and reveal points for synergies in the development of both these pan-European instruments of dispute resolution.

### *Simplification and user-friendliness*

One of the backbones of the ESCP is the idea that this proceeding should be easy to use by non-professionals. The SCAN analysis of the ESCP proceedings application, in reality, reveals that there is still a persistent need to simplify user's interface. The current version of the ESCP forms is not easy to handle by non-professionals. There are number of questions which require

professional advice and guidance to answer. Art. 11 of the ESCP Regulation envisages assistance to the parties that shall be ensured by the Member States. In real life such assistance is not easily accessible. Even if a user can access it, it is not satisfactory when professionals themselves find they must deal with complex and difficult practicalities of selection of proper court to address, translations, payment of court fees, differences in variations of proceedings, and so on.

The ESCP interface should be redesigned to allow fluent use by non-professionals and increase user-friendliness.

### *Binding nature*

Art. 1 of the ESCP Regulation stipulates that this proceeding is available as an alternative option *vis-a-vis* domestic proceedings. This means that EU common rules intended for more effective handling of intra-EU low-value claims are applied only as an alternative to main-stream rules – domestic rules. This is a paradox in the current modern dispute resolution environment. Cost efficiency and optimal speed are predominant concepts nowadays in well balanced dispute resolution systems. A dispute resolution system where a user can elect to use more expensive, slower and less effective proceeding does not meet modern quality standards.

The ESCP should be made mandatory for intra-EU small claim matters. Such a shift in the nature of the ESCP may not only increase the frequency of its use. It can catalyze more rapid development of it as well. Alternative application may be left as an option for use with domestic low-value disputes.

## **CONCLUSIONS**

The ESCP was introduced in the European realm of civil proceedings as a second-generation instrument for more efficient handling of low value intra-EU civil claims. It was a significant step in the evolution of pan-EU cooperation in the civil justice field. However, recent studies of the ESCP practical application revealed that there are many shortcomings hindering the full realization of the potential of the basic principles on which this process is built.

The current evolution of the EU civil procedure instruments can be characterised as an increase of mutual trust among Member States, furthering gradual harmonisation or unification and efforts to achieve optimal efficiency. In this context obstacles preventing the full functionality of the ESCP can be surmounted by striving for a unified procedure and improving its design as well as technical aspects.

Upgrades in the form of unification, digitalization, automation, online connectivity, simplification of user's interface, should be combined with the wider scope of modern dispute resolution methods and with a requirement

that the ESCP proceeding be mandatory. These steps can help develop a progressive, comprehensive and powerful tool to deal with low-value disputes at a pan-European level. We believe the ESCP should be refined in these directions.

Hereby the third-generation prototype of the EU civil procedure instruments can be born. This could mark a meaningful step in the evolution of the EU cross-border civil dispute resolution toolkit.

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