

Automation Within a Novel Platform for the European Small Claims Procedure

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Abstract: Contemporary technology and artificial intelligence increasingly facilitate the delivery of justice by automating, accelerating, and supporting judicial procedures with digitisation and automation tools. This article analyses options for the automatisisation of the European Small Claims Procedure. The authors propose the digitisation of the procedure to a greater extent by additional features, such as AI-powered translation and text-to-speech tools, as well as creation of a trustworthy system for submission and storing of procedural documents based on the Estonian e-File example within the framework of the ongoing EU-funded SCAN II-project.

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1. Introduction

The lack of access to justice, caused by courts facing overwhelming workload and case backlogs, has become an increasingly prevalent issue, inducing researchers and governments alike to look for viable solutions to address the problem. The rapid advancement of new technologies that enable digitisation and automation by means of artificial intelligence (AI) has made it possible to modernise the delivery of justice as we see it today. Contemporary technological solutions have the capability to automate, accelerate, and support judicial processes that would otherwise require the time and expertise of a legal professional.

Implementing AI to automate processes in the judicial system has been widely discussed before, as well as already implemented in certain areas for tasks such as document review and preparation, algorithmic risk assessment, as well as outcome prediction (Contini, 2020; Pasquale, 2019; Reiling, 2020). Some scholars have also considered applying AI not just for these supportive tasks, but also for more decisive roles in the form of fully automated judgements (see, e.g., Morison & Harkens, 2019; Wideroth, 2020; Ulenaers, 2020; Rubim Borges Fortes, 2020).

As a result of these applications, several risks of using AI have been identified, including possible algorithmic bias and the potential to cause material or immaterial harm as well as the overall impact on fundamental rights. Due to the rapidly evolving nature of technology and AI, there is yet to be a consensus on how to define and regulate it. So, while there currently is not a regulation in place, the European Commission has put forward the proposed AI Act as well as set up a group of experts to advise the Commission on its AI strategy. This includes researching the potential risks, proposing means of mitigating them, suggesting a uniformly understood definition of AI, as well as coming up with policy recommendations and requirements for trustworthy AI (AI HLEG, 2019a; 2019b), which will be the key considerations in the integration of AI into the judicial system.

Therefore, taking into the account the present technological state of the art, but keeping in mind the limitations of the current legal framework, the digitisation and utilisation of automated processes can already be seriously considered for simpler judicial procedures.

This article aims to propose a practical and realistic use for digitisation and AI in the judicial system in the form of automated processes on a novel

EU platform for European Small Claims Procedure (ESCP), which would enable the online resolution of cross-border small claims. Due to its already simplified and standardised nature, the ESCP could be a feasible use case for digitising and automating the delivery of justice. A reconfiguration of the procedure into an online form would help modernise and popularise a currently rather underutilised legal instrument (see, e.g., Giacalone, Abignente & Salehi, 2021; Abignente, Giacalone & Tuccillo, 2020; Mesquita & Cebola, 2022; Simaitis, Vėbraitė & Markevičiūtė, 2022).

The automation and digitisation already provides a solution to certain issues that arise from the Procedure's cross-border nature and lack of harmonisation of national rules of the European Member States (MS), such as determining the jurisdiction, translating documents, or giving guidance on the applicable enforcement rules in a specific Member State. However, for the successful implementation of such a platform, some amendments to the ESCP Regulation would be necessary to ensure more uniform application of the procedural rules and facilitate the digitisation process.

2. Automation in the judicial system

The increasing discussion around the lack of access to justice, caused by courts being overburdened with excessive workload and case backlogs, has created a need for a legal technological transformation (Donoghue, 2017, p. 996). The rapid advancement of new technologies that enable the digitisation and automation of judicial processes by means of software, algorithms, as well as AI, is merely one avenue towards facilitating fairer, more streamlined, and efficient access to justice.

2.1 Automation and AI

The term 'legal automation' can be used to describe the process of implementing technology or software to perform or assist the performance of legal tasks that otherwise would have been conducted manually by a human. These tasks can vary from document review and preparation to algorithmic risk assessment and outcome prediction based on existing data. (Pasquale, 2019; Reiling, 2020)

The obvious benefits of automating certain tasks from the perspective of a legal practitioner or a court are time and cost efficiency. However, more

nuanced advantages, such as increased legal certainty, consistency, and predictability, can also be observed when automation is employed for more advanced tasks, such as legal reasoning or case analysis. This is because automated systems are able to exclude the variables of human error and bias, resulting in similar cases being treated more equally, which in turn leads to more harmonised, predictable, and consistent case-law (see Pagallo & Durante, 2016, p. 324; Ulenaers, 2020).

One way to achieve the automation of certain processes is through the implementation of AI. Despite the vast amount of research and literature on the matter, at the time of writing this article, there is no globally agreed upon official definition for AI, due to its complex, interdisciplinary, and rapidly evolving nature. In the 2020 White Paper on AI, the European Commission emphasised that the definition of AI in any new legal instrument would need to be moderately broad or flexible to allow for technical advancement, while remaining precise enough to guarantee the required legal certainty (European Commission, 2020).

The first definition of AI was put forward by the European Commission in its Communication on AI for Europe in 2018. It was later revised by the High-Level Expert Group (HLEG), which aimed to provide a definition that would avoid misunderstandings and could also be used and understood by non-AI experts. The proposed definition characterised AI systems as

software (and possibly also hardware) systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge, or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal (AI HLEG, 2019a).

However, the longevity of this definition is questionable, as it limits AI systems to something designed by humans. Considering the rapid pace at which technology is advancing, AI could be very capable of developing, or at least assist in the process of developing other AI systems itself, which would fall outside the scope of this definition.

That could be the reason why the human-designed aspect of the definition has been removed from the updated version provided in Article 3 of the proposed AI Act (2021) which, once passed, will be a landmark piece of legislation by being the first of its kind to regulate AI on a greater scale. The definition no longer contained the feature of being designed by humans

but did establish that the objectives to be reached by the AI would still be defined by humans, which once again may not be the reality in the future, once the AI is capable of acting to attain goals set by itself.

At this time, the proposal has been through several revisions, mainly focused on perfecting the mere definition of AI (see, e.g., Council of the European Union, 2022; Sidley Austin LLP, 2022; Bertuzzi, 2023). As reported by Euractiv in March 2023, the latest agreed-upon characterisation of an AI system is “a machine-based system that is designed to operate with varying levels of autonomy and that can, for explicit or implicit objectives, generate output such as predictions, recommendations, or decisions influencing physical or virtual environments,” with the agreement to remove the concept “machine-based” from the wording.

As the most sensitive part of the legislation, the final definition will eventually determine the scope for EU’s future legal framework on AI, how its use or implementation for different purposes will be regulated, down to details of attribution, and the extent to which human intervention will be required. However, keeping in mind the rapidly evolving nature of technology, any future legal instruments on the matter must be sufficiently technology-neutral and not overly specialised to avoid the risk of such legislation quickly becoming obsolete (Nyman-Metcalf & Kerikmäe, 2021, p. 30). Also, such a risk can already be anecdotally exemplified by the new ChatGPT application, the release of which has reportedly upended years of work by EU regulators on drafting the AI Act due to its unforeseen capabilities (Volpicelli, 2023).

2.2 The main considerations associated with AI and automation

There are several aspects to be taken into account when deploying AI for the purposes of automation. As discussed above, while there are considerable benefits to automatisisation, it must be recognised that it also has the potential to do harm, whether tangible (safety and health, financial harm) or intangible (loss of privacy, human dignity, discrimination), which could be minimised, provided that the AI systems adhere to a few set principles (European Commission, 2020).

Based on the *Guidelines on Trustworthy AI* by the High-Level Expert Group (AI HLEG, 2019b), the Commission’s Communication on Building Trust in Human-Centric AI identified the following seven key requirements with explanations as prerequisites for an AI application to be considered trustworthy:

- 1) Human agency and oversight
The principal aim of this requirement is to prioritize of human autonomy and ensure the existence of appropriate control and oversight mechanisms.
- 2) Technical robustness and safety
Requires AI algorithms to be secure, reliable, and robust to best avoid unintended consequences as well as intentional attacks or manipulation of data or the algorithm itself.
- 3) Privacy and data governance
The requirement aims to ensure that an individual's data will not be used to harm them and addresses the potential issue of using biased or inaccurate data to train the AI's algorithm.
- 4) Transparency
Requires that AI systems' capabilities, data gathering, and decision-yielding processes are traceable and explainable. Additionally, AI systems and persons responsible for them need to be clearly identified to ensure users are aware what they are interacting with.
- 5) Diversity, non-discrimination, and fairness
Reiterates the need to tackle the risk of using biased training and operational data for AI systems, which could lead to (in)direct discrimination.
- 6) Societal and environmental well-being
Encourages a sustainable approach to AI, as well as drawing attention to the risks of using AI for democratic processes, such as political or electoral discourses.
- 7) Accountability
Calls for the auditability of AI systems, ensuring that accountability and responsibility mechanisms are in place to be able to identify and assess any negative impacts of the AI. (European Commission, 2019)

While these specific requirements are currently non-binding, they nevertheless reflect European values, many of which are already regulated by other provisions of EU law, such as personal data and privacy rules, safety, environmental, and rules of non-discrimination and fairness.

One of such rules, for example, arises from the General Data Protection Regulation Article 22 on automated individual decision-making, which states that “[t]he data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her,” where “solely” is understood as a fully automated decision without

human review and “legal effects” as decisions which affect the individual’s legal status or rights (Gesley, 2021, p. 241). This is especially important when considering the extent to which judicial processes could be realistically automated, that is, whether automated judgements would be feasible in the European Union.

A significant emphasis, both in EU documents and in literature, has also been placed on considering the impact of AI on human rights (see, e.g., European Commission, 2020; Gesley, 2021; Nyman-Metcalf & Kerikmäe, 2021; Ulenaers, 2020). A study by the Council of Europe (2018) on the dimensions of human rights concerning automated data-processing technologies showed that numerous fundamental rights, including the right to a fair trial and due process, privacy and data protection, prohibition of discrimination, and others, could be greatly impacted from the use of AI, either due to flaws in the design of the AI systems or from the used data, without correcting potentially existing bias. A similarly considerable impact is to be expected in private law in terms of private autonomy, where the essential criteria of a contract are no longer considered by the human user of an AI-driven device or application but generated autonomously by an algorithm (Hoffmann, 2020).

Several use cases have realised some of these concerns and have become a learning experience for policymakers and AI developers alike. The most infamous case is perhaps the American risk assessment software COMPAS, developed by a private company Northpointe Inc. and used by human judges at the sentencing stage to help assess an individual’s risk of recidivism. While it was claimed to have a good range of predictive accuracy, one study nevertheless found that the algorithm exhibited a discriminatory racial bias, which could be either due to the bias embedded in the AI’s training data or to the programming of the tool itself, but this could not be determined due to the opaqueness of the software’s algorithm. (Contini, 2020, pp. 13–14; Ulenaers, 2020, pp. 7–8) Similar results in studies on AI displaying racial and gender bias when used for predicting criminal recidivism have also been demonstrated in Europe (see Tolan *et al.*, 2019).

Moreover, a landmark decision from the District Court of The Hague, Netherlands in 2020 found that the system risk indication (SyRI), used by the Dutch government to detect welfare fraud, violated the right to respect for private and family life as enshrined in Article 8 of the European Convention on Human Rights. It was found that the need for welfare fraud detection did not strike a fair balance between the invasion of private life

and failed to meet the requirements of transparency, causing the system as well as the national legislation governing it to be declared unlawful. The Dutch government announced that it would not appeal the ruling, making the court's judgement final (van Bekkum & Borgesius, 2021).

Data necessary for an AI to process and store in order to operate independently and to be able to carry out its tasks must not only be transparent, but also very clearly defined on a case-by-case basis (Denga & Hoffmann, 2023). Assessing the feasibility of using AI to automate the ESCP—be it for automatic translation of documents and input by the user, the system independently contacting and notifying the parties, or rendering any kind of decisions—has to take into account the principles of a trustworthy AI and, especially, the criteria imposed by the EU draft AI regulation, which follows a risk-based approach: Some AI practices classified as particularly harmful are to be banned altogether (Art. 5). Article 6(1) and Annex III to Article 6(2) contain an extensive regulation of high-risk AI systems, that is, those systems that pose significant risks to the health and safety or fundamental rights of individuals (Bavarian Ministry of Justice, 2022). In civil proceedings, these are AI systems that are intended to assist judicial authorities in the investigation and interpretation of facts and law (Annex 3, no. 8a).

Additionally, AI-based data processing has to comply with general data and privacy protection rules, as stipulated in the GDPR, as well as with fundamental rights to a fair trial and the prohibition against discrimination. It has to be assessed whether it is necessary or proportional for the ESCP and its tools to have access to open data, or any data outside the user's input to the platform (Tropp, Hoffmann & Chochia, 2022).

3. The European Small Claims Procedure

Established in 2007 by the Regulation (EC) no. 861/2007 of the European Parliament and of the Council, and amended in 2015 by the Regulation 2015/2421, the ESCP was the result of an identified need for judicial cooperation in civil matters that would enable the enforcement of rights arising from cross-border transactions.

The ESCP Regulation created an autonomous European Procedure that harmonises the national procedural rules of Member States to ensure

an accessible and a more efficient procedure, in terms of time and cost (Kramer, 2011). Its objective, as highlighted in the preamble, is increasing access to justice by having regard to the principles of simplicity, speed, and proportionality, while promoting fundamental rights recognised in the EU, such as the right to a fair trial.

The ESCP is available as a voluntary alternative to national procedures in all MS, except in Denmark, and enables people and businesses to pursue claims against an entity in another MS, without needing to travel or be familiar with the local procedural rules. Regarding the scope of the Regulation, as per Article 2, the ESCP can be used for monetary or non-monetary claims with cross-border elements arising from civil and commercial matters of up to 5,000 euros in value. Within the meaning of the Regulation, the term “cross-border” is explained in Article 3 and shall be understood as a case where at least one of the parties, the claimant or defendant, is based in a different Member State than where the court is seized. The Procedure cannot be used for claims arising out of employment contracts, maintenance claims, and violation of privacy and defamation claims, amongst others, that fall outside the scope of the regulation as defined in Article 2.

As a tool that is intended to reduce costs and time of international litigation, the Procedure is carried out via simple standard forms listed in the Annexes of the Regulation. The forms were created with careful consideration, consisting of mainly fill-in-the-blank and checkbox style questions, as the parties should not require legal or professional assistance in order to fill in and submit them (Kramer, 2008, p. 13).

3.1 Commencement, conduct and conclusion of the Procedure

The ESCP is carried out entirely through a written Procedure, except in certain circumstances decided by the court, in which case the oral hearing is conducted through the means of videoconferencing. The Regulation provides for fixed maximum deadlines for the parties as well as the court to ensure the speediness of the Procedure (Kramer, 2011).

The Procedure commences with the filing of Form A by the claimant to the competent court and in the language which the court accepts. The claimant shall provide the details for the defendant and the nature of the claim, as well as any evidence. In the case of missing or incomplete information, the court will notify the claimant and issue Form B to rectify the errors.

The claim is then forwarded to the defendant, who has 30 days to respond via standard Form C, in which the defendant may accept or reject the claim, submit their own evidence, and make a counterclaim. In the case a party does not respond within the prescribed time, they will be considered in default, and the court may issue a decision against them (European Commission, 2019b, pp. 27, 29).

The Court's judgement is issued within a standard Form D, which will also be the certificate of the judgement. The verdict is binding on the parties, and availability of appeal is determined by national procedural rules. The judgements of the Procedure are recognised and enforceable in the other Member States, and enforcement can only be refused if there has been a previous incompatible judgement between the same parties regarding the same claim. Refusal of enforcement on the basis of the substance of the judgement is not allowed (Stoileva, Gjorgjioska & Gorgieva, 2022, p. 10).

3.2 The observed shortcomings of the Procedure

It has been observed in studies and literature that the ESCP has not reached its potential in practice, mostly due to lack of training and awareness, but also because of substantive issues arising from the Procedure's cross-border nature and lack of harmonisation of national procedural rules (see, e.g., Giacalone, Abignente & Salehi, 2021; Abignente, Giacalone & Tuccillo, 2020; Mesquita & Cebola, 2022; Simaitis, Vėbraitė & Markevičiūtė, 2022).

The main criticism is that, although aiming to achieve harmonisation of rules, the Regulation leaves several vital aspects up for the Member States' national procedural legal framework to settle, leading to inconsistencies and inequalities in its application (Kacevska, 2022, p. 120–121; Simaitis, Vėbraitė & Markevičiūtė, 2022). These include issues such as interpretation of terms, as well as apportioning costs between the parties and availability to appeal the judgement. The lack of uniformity results in decreased consistency and certainty and discourages the use of the Procedure (Veersalu, 2023).

Another major critique has been the requirement to file the document with the competent court in a language that the said court accepts. The average consumer is not familiar with determining jurisdiction rules and could possibly require legal assistance as well as translating services to fill out the forms in a foreign language, resulting in incurring higher costs, and inadvertently defeating the intended benefit of the ESCP (Kramer, 2008, p. 13; Ontanu & Pannebakker, 2012).

It has also been observed that Member States' courts lack the technical infrastructure to allow for electronic management of cases. Namely, many courts still do not allow electronic submission of documents and rely on postal or hand delivery. The above issues could be largely addressed by promoting the digitisation of courtrooms and conducting the procedure over electronic means. (Abignente, Giacalone & Tuccillo, 2020, pp. 17, 25)

3.3 The SCAN and SCAN II Projects

To study the reasons behind the shortcomings and lack of interest in the ESCP, and to guarantee a more widespread and successful implementation, the Small Claims Analysis Net (SCAN) Project was realised from 2018–2020. The group of experts from nine universities across several Member States, constituting the SCAN Consortium, analysed the implementation of the Regulation and the best practices with the aim to prepare promotional materials and share knowledge about the ESCP as a procedural tool to consumers and legal practitioners. The principal objective was to increase the efficiency of the ESCP and address its shortcomings that discouraged consumer access to the Procedure (Abignente, Giacalone & Tuccillo, 2020, pp. 7–8).

As a result, the consortium developed and disseminated various guidelines and reports to raise awareness among consumers, practitioners, and judges regarding the added value of the ESCP, as well as an interactive online game, which helps a consumer or an SME to determine whether their claim could be solved via the ESCP. The game asks the user several questions regarding the nature of the claim and cross-checks the answers with the scope of the regulation to determine applicability. A similar game is available on the webpage to help the user determine the competent court to issue their claim with. These materials are gathered on the SCAN Project's website, which acts as a one-stop shop for all information regarding the Procedure, including access to the news, papers, presentations, guidelines, short videos, and more (see SCAN Project, n.d.).

In addition, the consortium proposed 19 amendments to the Regulation, which included *inter alia* increasing the financial limit of the claims, making the procedure compulsory for cross-border small claims, obliging courts to accept documents through electronic means and foster the digital handling of the Procedure, as well as setting up an automatic translation system or assistance (Abignente, Giacalone & Tuccillo, 2020, pp. 14–22). In fact, in their efforts to promote awareness and use of the ESCP, the consortium

emphasised the need to organise training on digitisation and the use of electronic means, and to require courts to have the necessary infrastructure to make use of electronic instruments (Abignente, Giacalone & Tuccillo, 2020, pp. 24–26).

The following SCAN II was developed upon the results of the first SCAN project in 2021 and is currently an ongoing project, having commenced in 2022 and expected to end in February 2024. The consortium consists of an interdisciplinary team of international civil procedural and private law as well as information technology experts from ten universities across several Member States.

The objective of SCAN II is to achieve better enforcement of the ESCP judgements by creating a comprehensive roadmap of all the enforcement rules of the MS and digitising the enforcement procedure by developing an IT platform, partly based on blockchain architecture, to provide guidance on the different national enforcement rules, on the one hand, and to promote enforcement procedures, on the other. This entirely tech-driven system aims to increase access to justice by providing a solution to the ESCP's main criticism of fragmentation and opaqueness of national rules, caused by the lack of harmonisation of procedural rules by the Regulation (see SCAN II Project, n.d.).

The SCAN projects have been one of the most notable efforts towards digitalising a judicial procedure. Due to its simple and standardised nature, the ESCP could be the first of its kind as a viable use case for a fully digitised and automated procedure.

4. Automating and digitising the ESCP

Based on the observed literature, the SCAN Consortium recommendations, and with regard to the rising need of a legal technological transformation to increase access to justice and to foster the use of the ESCP across the EU, the authors propose the complete digitisation and automation of the Procedure by equipping the novel online EU platform (ESCP Platform) that is currently being developed by SCAN II with certain additional functions. The supplementary features, as described further below, would contribute towards conducting the ESCP more efficiently and entirely online by utilising AI to automate its processes in several stages of the procedure.

Currently, the ESCP as an international procedural tool for solving cross-border disputes within the national courts of the Member States has not proven to be efficient. An online ESCP Platform, which integrates already existing technologies and automation tools to conduct small claim procedures entirely electronically, could not only increase the utilisation of the ESCP and solve many of its shortcomings already covered in this article, but it would also modernise the delivery of justice as we know it today and overall increase the efficacy of law (Hoffmann, 2023).

As a rather simple procedure, which is already standardised to a great extent, the ESCP could be a viable use case for an EU-wide procedure which is conducted entirely online and enhanced by AI tools and automation. Additionally, the deployment of such an EU-wide online platform would remove a significant burden from the national courts of Member States that are lacking either the initiative or adequate infrastructure to deal with cross-border cases today.

The idea for an online platform for small claims has already been proposed (see Mesquita & Cebola, 2022). In their proposal, the authors suggest a single-point online environment through which designated entities assigned by each Member State can manage the procedure internally. Such a platform should be administered by the European Commission, as is the case already for the EU Online Dispute Resolution platform for consumer conflicts. (Mesquita & Cebola, 2022, p. 15)

This article concurs with these ideas and aims to build upon them, by discussing the possibility of integrating certain tools within the platform to enhance the user experience and to achieve the aims of speediness, accessibility, and cost efficiency, as set out in the ESCP regulation.

The ESCP could be conducted entirely online, with the assistance of AI tools within the ESCP Platform to automate processes that would otherwise require the time, cost, and professional expertise. AI could be integrated in several stages from the filing and receiving of the claim to enforcing the final judgement, provided that the Member States' national competent courts are registered with the Platform. The forms are submitted electronically to the competent court, which then contacts the defendant with the request to join the ESCP Platform to view and respond to the claim against them. The final decision document is issued and can be downloaded from the Platform, which will also give guidance to the parties regarding the next steps following the judgement, such as enforcement, or availability of an appeal.

4.1 Determining applicability

Firstly, similarly to the Game of ESCP, developed by the SCAN Consortium, the ESCP Platform should include a set of Yes/No questions to help the user determine whether their claim falls within the scope of the Regulation. These may include questions about the size of the claim, the location of the parties, and the matter out of which the claim has arisen. The user would then be informed by the Platform whether their claim can be solved via the ESCP.

4.2 Filling the forms

The procedure will continue to be conducted via the standard forms, integrated into the online platform, where the party can fill out the form with the help of drop-down selections, checkboxes, and a selection of pre-established answers. However, the forms should be simplified in accordance with the recommendations from the SCAN Consortium (Abignente, Giacalone & Tuccillo, 2020, pp. 16–17). As the consortium identified, the current legal terminology used in the standard forms can be too complicated for the average consumer, and if the objective of the ESCP is to provide for a simple, cost-effective process, the forms need to be in simple language to avoid the need for legal assistance.

The Platform should be equipped with either an automated translation system or assistance (Abignente, Giacalone & Tuccillo, 2020, pp. 16–17) which, powered by an AI, would allow the user to fill in the forms either in writing or orally in their preferred language and translate it accurately in real time into another language for the receiving court as well as the defendant. Such a system within the Platform would eliminate the potential need for a translator, thus reducing the overall costs of the procedure. However, it should be guaranteed that such a translation functionality remains legally considered as a purely ancillary administrative activity, which does not interfere with the administration of justice in individual cases (as is the case for anonymisation or pseudonymisation tools) within the meaning of Recital 40 of the Draft AI regulation.

The European Commission has already developed a machine-translation service called eTranslation, launched in 2017, which could benefit from greater utilisation if integrated in the ESCP Platform. The European Commission information page on the service informs that the application is based on a free-to-use web page for EU institutions, public administrations,

and universities, amongst others, and is able to translate text or documents from and into any official EU language as well as a few others, including Russian, Arabic, and Chinese. The service also has an additional feature that allows the user to choose the domain of their source text, such as finance, health, justice, or general, which enables to provide a translation that takes into account the language specificities of the sector.

The eTranslation application can be integrated in the ESCP Platform, as has already successfully been done in a few European online services, including the Online Dispute Resolution and the e-Justice platforms. (European Commission, n.d., a; b) The tool can be coupled with EU's own speech-to-text service, which would enhance the user experience. Speech-to-text services are also something that courts are already familiar with, mainly for their use in transcribing court hearings, and therefore their use would not require additional legal approval (Contini, 2020, pp. 11–12).

The use of machine translation on the platform should be explicitly indicated and should include a disclaimer regarding the raw quality and accuracy of the automated translation service. As the accuracy of the translation cannot be guaranteed, it shall not be legally binding and the track record of original input by the user must remain intact and accessible to all parties.

4.3 Determining jurisdiction

Regarding the receiving court, it is currently up to the claimant to determine the competent court with jurisdiction to file the claim with. It can be assumed that the average person is not familiar with determining jurisdiction rules and may require legal assistance. In order to avoid this, the Platform must be sufficiently sophisticated to be able to designate the competent national court to forward the claim to. The provision of such a mechanism was also recommended by the SCAN Consortium (Abignente, Giacalone & Tuccillo, 2020, p. 23).

The previously mentioned game of ESCP also includes an interactive online questionnaire, which is able to determine, after a few sets of questions, the court that the claim should be filed with as according to jurisdiction rules laid out in Regulation 1215/2012. If integrated into the ESCP Platform, no legal assistance would be required as the system is automatically able to forward the claim to the correct national court, without being burdensome on the claimant.

4.4 Conducting the Procedure

The procedure shall still be conducted within the time limits provided by the ESCP Regulation, to ensure speediness. The electronic system in which documents are filed and stored should display the progress and indicate the stage at which the procedure is at, for example, by displaying the number of days left until the defendant must respond to the claim, or when the court is due to issue the judgement. A similar online platform for electronic submission and storing of documents, monitoring the progress of the proceedings, as well as disputing the claims and decisions is already used by Estonian courts via the e-File (*e-Toimik*) system.

E-File is a web-based system, which can be logged into with an Estonian ID. It allows people to participate in civil, administrative, criminal and misdemeanour proceedings electronically by enabling the electronic submission of documents and petitions to courts, police, and the prosecutor's office. Additionally, the system allows the person to receive documents and monitor the progress of the proceedings related to them, such as whether a hearing has been scheduled, documents have been received, any time-limits have been set, or a judgement has been made. These notifications can be subscribed directly to the person's or their representative's email address for regular updates on the proceeding. E-File can be also used to view and pay financial obligations, such as costs of proceedings or awarded sums (Registrite ja Infosüsteemide Keskus, 2019).

These features are yet to be covered in the SCAN II project, but a system analogous to the e-File could be considered for the ESCP Platform as a network for filing, submission, and viewing of documents as well as receiving updates on deadlines and the progress of the proceedings, notified directly to the parties' emails.

The platform should also provide a secure environment for videoconferencing, in case the court decides that an oral hearing is needed. The process of scheduling a hearing could also be automated: for example, Microsoft's Scheduler is able to independently determine a time suitable for everyone, send calendar invitations, as well as negotiate a time and schedule the meeting (see Microsoft, n.d.). The prerequisite for this is that the tool has access to sufficient information to be able to determine this, either through input from the parties or access to their calendars, similarly to Microsoft and its mail service Outlook.

However, the latter approach would realistically not be feasible as it raises privacy concerns. An online platform having access to the user's personal

calendar would not be considered proportional or balanced with the interest of merely scheduling a meeting or a hearing. For this reason, the platform needs an interim step, where the parties can choose between a few available times and the system would then determine or negotiate a time that is suitable for everyone and send invitations to schedule the hearing.

4.5 Conclusion of the Procedure

After the decision has been issued, the platform shall provide guidance and information to the parties regarding the next steps following the judgement. Depending on the national rules of where the party is located, the system is able to inform the party whether appeal for the ESCP judgement is available in their Member State.

Additionally, the IT system being developed by the group of SCAN II experts, as discussed in Section 3.3 of this article, which aims to provide guidance on national enforcement rules and goals to digitalise the enforcement procedure, would be integrated to this platform to create a one-stop shop environment for the small claims procedure.

4.6 Feasible extent of the automation of the ESCP

Several scholars have also previously considered the application of AI to a further extent, namely automating the judgement-making process using “robot judges” (see, e.g., Morison & Harkens, 2019; Wideroth, 2020; Ulenaers, 2020; Rubim Borges Fortes, 2020). The idea has been explored for general application at all levels of the court system, despite the complexity of the nature of proceedings (even in criminal matters), and at this stage the consensus is that the feasibility of fully automated proceedings is unlikely due to legal obstacles, many of which are constitutional, but also derive from data protection and privacy regulations, as discussed above.

The purpose of this article was not to dissect and explore these obstacles any further, but to determine a currently realistic scope of application of AI and automation for the ESCP on the suggested platform. Despite the simplified nature of the ESCP, a procedure with little or no undetermined legal terms and a limited range of judgemental discretion, considering the implementation of an AI judge as an additional feature on the ESCP Platform would nevertheless be controversial and the idea needs to be researched further.

Observing the direction that the EU is taking with the proposed AI Act as well as the requirements for a trustworthy AI, the prospect of automated judgements does not seem feasible at this stage. Coupled with the risks of opaqueness and the potential bias that algorithms used for such decision-making may reflect, as has been identified in several studies, it could prove difficult to ensure that an AI judge respects the fundamental rights, such as the right to a fair trial or protection against discrimination.

5. Some considerations and prerequisites for the successful implementation of an online ESCP Platform

While the digitisation and automation of the ESCP will surely make the procedure more convenient, there nevertheless remain some obstacles arising from the Regulation that should be addressed. Namely, concurring with the SCAN Consortium recommendations, the Commission should consider amending the ESCP in certain aspects to encourage and foster a more widespread application of the Procedure.

Firstly, the Member States' national courts competent to handle ESCP cases should be required to accept documents in electronic format under Article 25(b) of the ESCP Regulation. The SCAN study showed that way too many courts still rely on the postal service or hand delivery of documents (Abignente, Giacalone & Tuccillo, 2020, p. 17), making the submission of documents inconvenient, time-consuming, and possibly costly, especially for cross-border cases. For the feasibility and proper online functioning of the proposed ESCP Platform, the courts must allow the submission of digital documents.

Secondly, too many procedural rules are currently left to the national laws of the Member States to determine, which hinders the uniform application of the Procedure. Several of these matters should be harmonised by the Regulation, including the possibility to appeal, admissibility of evidence, and fixing of court fees (Abignente, Giacalone & Tuccillo, 2020, p. 19). Harmonising the rules on these would address some of the critiques aimed at the Regulation and would ensure increased consistency and equality in the application of the Procedure.

The authors agree with the Consortium's recommendation of making the ESCP compulsory for resolving cross-border cases in the EU (Abignente, Giacalone & Tuccillo, 2020, p. 15). The low application of the Procedure has shown that consumers and practitioners prefer their own, more familiar national procedures to the ESCP. However, it was observed by the Consortium that the mandatory nature of a regulation generally results in greater awareness (Abignente, Giacalone & Tuccillo, 2020, p. 15). Given that one of the key issues for ESCP is the lack of awareness and training regarding it, the mandatory nature to apply it for cross-border small claims would certainly not only increase the knowledge of the Procedure, but also its actual application.

Finally, in the long run, it would be practical to promote and require the use of the ESCP Platform for resolving cross-border small claims disputes and allow other traditional means only in exceptional cases. This would help to ensure the effective application of the developed Platform and limit the fragmentation of the different instruments, tools, and means available to initiate and settle claims, which may create more confusion and discouragement and leave the Platform unutilised.

6. Conclusion

To conclude, the rapid advancement of new technologies and AI has made it possible to modernise the delivery of justice by the means of digitisation and automation. Contemporary technological solutions have the ability to automate, accelerate and support judicial processes, and, in turn, revive legal instruments or procedures that have been underutilised.

The possibility to speed up judicial processes has the potential to increase access to justice by relieving courts from facing overwhelming workload and case backlogs. AI has already been implemented in supportive tasks, such as document review or risk assessment, saving time and money for processes that would otherwise be time-consuming and costly, as they require professional expertise. Given the advances in technology, the digitisation and utilisation of AI can be seriously considered for modernising and automating simpler judicial procedures to a great extent.

Despite the obvious benefits, there are nevertheless several risks arising from the application of AI and the removal of human review from the processes,

such as lack of transparency or explanation of any decisions made, or even algorithmic bias. At the time of writing this article, there is no regulation or common definition of AI in place. However, to mitigate the risks which have the potential to cause serious harm, the European Commission has put forward guidelines and recommendations for the trustworthy application of AI, which include transparency, accountability, and human oversight. Additionally, certain limitations to AI and automation already stem from the existing legal framework on human rights, as well as privacy and data protection regulations.

The aim of this article was to propose a practical and realistic use for digitisation and AI in the judicial system in the form of automated processes on a novel EU platform for the ESCP, which would enable the online resolution of cross-border small claims.

The modernisation of the ESCP has already been initiated by the Small Claims Analysis Net (SCAN) projects, which first set out to identify the shortcomings of the procedure and the reasons behind its underutilisation and then to provide solutions in the form of guidelines and information sharing. Currently, a team of SCAN experts is developing a novel online EU platform for digitising the enforcement procedure.

In this article, the authors proposed a complete digitisation and automation of ESCP by providing the SCAN platform with additional functionalities, such as an AI-powered translation and a text-to-speech tool, by integrating the already existing SCAN games into the platform to determine applicability and jurisdiction, using the Estonian e-File as a model for creating a system that allows electronic submission and receiving of documents, tracking the progress of the procedure, and receiving updates to the user's email. These features would contribute towards conducting the ESCP more efficiently by using existing technology to automate several stages of the Procedure. Additionally, it would create a one-stop shop environment for all the information and tools needed for settling a cross-border claim.

Finally, to ensure the proper functioning of the proposed Platform, the ESCP Regulation needs to be revised in several aspects. This includes greater harmonisation of procedural rules, requiring the acceptance of electronic documents, and making the Procedure compulsory to encourage its wider use. Moreover, the authors recommend the use of the ESCP Platform as the principal means to initiate and settle cross-border small claims to avoid the fragmentation and abundance of options, which can be disadvantageous and confusing for the user.

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