TALLINN UNIVERSITY OF TECHNOLOGY
School of Business and Governance
Department of Law

Karine Veersalu

AUTOMATION WITHIN A NOVEL PLATFORM FOR THE EUROPEAN SMALL CLAIMS PROCEDURE

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Supervisor: Thomas Hoffmann, PhD

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Karine Veersalu ……10.05.2023……
(signature, date)
Student code: 201761HAJB
Student e-mail address: kveers@ttu.ee

Supervisor: Thomas Hoffmann, PhD:
The paper conforms to requirements in force

……
(signature, date)

Chairman of the Defence Committee:
Permitted to the defence
……
(name, signature, date)

ABSTRACT

Contemporary technology and artificial intelligence have made it possible to modernise the delivery of justice by automating, accelerating, and supporting judicial processes with digitisation and automation tools. This research analyses the main concerns arising from the use of AI in the judicial system and discusses the EU legal framework and guidelines in place to mitigate them.

The research question that this paper mainly focuses on is in what ways and to what extent can artificial intelligence and automation tools be presently realistically implemented for the European Small Claims Procedure. The aim of this research is to suggest a practical use of artificial intelligence and technology in the judicial system to automate the European Small Claims Procedure to enable the complete online resolution of cross-border small claims in the EU. This can be done by expanding the scope of the ongoing EU-funded SCAN II-project by automating the procedure to a greater extent through additional features such as AI-powered translation and text to speech tools as well as creating a trustworthy system for submission and storing of procedural documents based on the Estonian e-File example.

Finally, amendments to the ESCP Regulation will be discussed that are necessary to allow the proper functioning of the suggested Platform in all Member States. The in-depth understanding of the risks, the legal framework and the procedure allows to offer informed and practical suggestions of means to digitise and automate the ESCP.

Keywords: access to justice, automation, digital justice, European Small Claims Procedure

INTRODUCTION

The following bachelor's thesis is formatted as an article, which has been accepted for publication in the TalTech Journal of European Studies (ISSN 2674-4600) on May 5, 2023. The article has been written in co-authorship of the bachelor student Karine Veersalu and supervisor Dr. Thomas Hoffmann. The bachelor student is the first author of the article and conducted the main part of the research and writing. The citation of this article is in accordance with the requirements of the publishing journal using the Harvard system of citation.

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 issue. Contemporary technological solutions that enable the digitisation and automation by the means of Artificial Intelligence (AI) have made it possible to modernise the delivery of justice by automating, accelerating, and supporting judicial processes that 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 applied in certain areas for tasks including document review and preparation, algorithmic risk assessment as well as outcome prediction. From these applications several risks of using AI have been identified, including potential algorithmic bias and the ability to cause material or immaterial harm as well as the overall impact on fundamental rights. While there currently is not a regulation in place for AI, the European Commission has set up a group of experts to advise the Commission on its AI strategy, which includes researching the potential risks and proposing means of mitigating them from a value and principle-based approach for a trustworthy AI.

Therefore, taking into 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 still already be seriously considered for simpler judicial procedures. This research aims to suggest a practical and realistic use for AI in the judicial system in the form of automated processes on a novel EU platform for European Small Claims Procedure (ESCP), that 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.

The reconfiguration of the procedure into an online form would help to modernise and popularise this currently rather under-utilised legal instrument as well as provide a solution to some of the issues that arise from the Procedure's cross-border nature and lack of harmonisation of national rules of the European Member States. The research question that this article aims to answer is in what ways and to what extent can artificial intelligence and automation tools be presently realistically implemented for the European Small Claims Procedure.

The qualitative method for this research mainly involves a critical analysis of EU guidelines, legislation, and the proposed AI Act as well as relevant works by other scholars to evaluate the current state of the framework which governs the use of AI and to determine the potential risks and the legal limitations of using AI in a judicial process.

Moreover, the ESCP Regulation, field specific articles, and the Small Claims Analysis Net (SCAN) project documents are used to understand the ESCP and its shortcomings to ascertain why this procedure would be an appropriate and viable use case for automation. The combination of an in-depth understanding of the risks, the legal framework and the procedure will allow to offer informed and practical suggestions of means to digitise and automate the ESCP.

The first chapter will provide an overview of automation and AI, which includes an analysis of the proposed, but not yet agreed upon definitions for AI. The main concerns arising from their application, such as potential human rights violations and algorithm bias will be explored and exemplified by use cases, and the EU measures of mitigating said risks will be discussed.

The second chapter will explain the nature and step-by-step process of the ESCP and discuss its shortcomings. Additionally, in the chapter's subsection, the author will cover the SCAN projects which have studied the reasons behind the Procedure's shortcomings and are also working towards creating the online platform for the ESCP. As the SCAN projects have been one of the most notable efforts towards digitising the ESCP, the project documents form an essential part of this thesis.

Based on those observations, in the third chapter and its subsections, the author explains what makes the ESCP a viable use case as well as how automation could address the certain issues that have been identified regarding the Procedure. As a result, the article proposes the complete digitisation and automation of the Procedure by equipping the online EU platform currently being

developed by SCANII with certain additional functions, such as AI-powered translation and text to speech tools as well as creating a trustworthy system for submission and storing of procedural documents based on the Estonian e-File example. The supplementary features would contribute towards conducting the ESCP more efficiently and entirely online by utilising AI to automate its processes in several stages of the procedure. Moreover, the author briefly discusses the realistic extent to which this judicial process can be automated, more precisely regarding the prospect of automated judgements.

Finally, the fourth chapter discusses certain necessary amendments to the ESCP Regulation, that would enable the successful implementation of such an online platform.

Automation Within a Novel Platform for the European Small Claims Procedure

Karine Veersalu
Thomas Hoffmann

Department of Law
Tallinn University of Technology
Ehitajate tee 5, 19086 Tallinn, Estonia
Email: kveers@ttu.ee
Email: thomas.hoffmann@taltech.ee

Abstract:

Contemporary technology and artificial intelligence more and more facilitates the delivery of justice by automating, accelerating, and supporting judicial procedures with digitisation and automation tools. This paper analyses options for the automatization of the European Small Claims Procedure. The authors suggest 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 creating 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.

Keywords: access to justice, automation, digital justice, European Small Claims Procedure

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 issue. The rapid advancement of new technologies that enable the digitisation and automation by the 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 ability to automate, accelerate, and support judicial processes that 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 including document review and preparation, algorithmic risk assessment as well as outcome prediction (Contini, 2020; Pasquale, 2019; Reiling, 2020). Some scholars have also considered the utilisation of 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).

From these applications several risks of using AI have been identified, including potential algorithmic bias and the ability 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 (High-Level Expert Group on Artificial Intelligence, 2019a, 2019b), which will be the key considerations in the integration of AI into the judicial system.

Therefore, taking into 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 still already be seriously considered for simpler judicial procedures.

This article aims to suggest 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), that would enable the online resolution of cross-border small claims. Due to its already simplified and standardized nature, the ESCP could be a feasible use case for digitising and

automating the delivery of justice. The reconfiguration of the procedure into an online form would help to modernise and popularise a currently rather underutilised legal instrument (see e.g. Giacalone *et al.*, 2021; Abignente *et al.,* 2020; Mesquita & Cebola, 2022; Simaitis *et al.,* 2022).

The automation and digitisation would already provide 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, 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 platform some amendments to the ESCP Regulation would anyway be necessary to apply the procedural rules more uniformly and facilitate the digitisation process.

2. Automation in the judicial system

The increasing discussion around lack of access to justice caused by courts facing overwhelming 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 the 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 employing automation for more advanced tasks like legal reasoning or case analysis, as 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 harmonized, predictable, and consistent caselaw (see Pagallo & Durante, 2016, p 324; Ulenaers, 2020).

One way to achieve automation of certain processes is through the implementation of AI. Despite the vast amount of research and literature on the matter, as 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, which aimed to provide a definition that would avoid misunderstandings and could also be used and understood by non-AI experts. The proposed definition characterized 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," (High-Level Expert Group on Artificial Intelligence, 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 that 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 greater scale. The definition no longer contained the feature of being designed by a human but did include that the objectives to be reached by the AI would still be human defined, which once again may not be the reality in the future if 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,)*. 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 notion of "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 that 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). Such risk can also already be anecdotally exemplified by the new ChatGPT application, which emergence reportedly has upended the years of work of the EU regulators drafting the AI Act due to its unforeseen capabilities (Volpicelli, 2023).

2.2. 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 automatization, it must be recognised that it also has the potential to do harm, whether material (safety and health, financial harm) or immaterial (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 High-Level Expert Group's Guidelines on trustworthy AI (High-Level Expert Group on Artificial Intelligence, 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 (European Commission, 2019a):

1) Human agency and oversight

   The principal aim of this requirement is to prioritise 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.

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

To exemplify, one of such rules arises from the General Data Protection Regulation Article 22 on automated individual decision-making, which states that "The 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, i.e. whether automated judgements would be feasible in the European Union.

Great amount of emphasis has also been put on considering the impact of AI on human rights, both in EU documents and in literature (See e.g., European Commission, 2020; Gesley, 2021; Nyman-Metcalf & Kerikmäe, 2021; Ulenaers, 2020). Council of Europe's study on the human rights dimensions of automated data processing techniques showed that numerous fundamental rights, including 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 from the design of the AI systems or from the use data, without correcting potentially existing bias. A similarly considerable impact is expected in private law in terms of private autonomy, when essential criteria of a contract are not considered any more by the human user of an AI-driven device or application, but generated autonomously by the 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, which was developed by a private company Northpointe Inc. and used by human judges in the sentencing stage to help assess the individual's risk of recidivism. While claimed to have a good range of predictive accuracy, a study nevertheless found that the algorithm exhibited discriminatory racial bias, which could have arisen from either bias embedded in the AI's training data set or the programming of the tool itself, however 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 study results of 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 did not meet the transparency requirements, causing the system as well as the national legislation governing it to be declared unlawful. The Dutch government announced 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 and 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). Art. 6(1) and Annex III to Art. 6(2) contain an

extensive regulation of high-risk AI systems, i.e. 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 Nr. 8 a).

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 Platform and its tools to have access to open data, or any data outside the user's input to the platform.

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 (see e.g. Treaty of Amsterdam 1997, Tampere Programme 1999, EU Green Paper 2002).

The ESCP Regulation created an autonomous European Procedure that harmonises Member States' national procedural rules to ensure an accessible, and a more efficient procedure in terms of time and cost (Kramer, 2011). Its objective, as highlighted in its preamble, is increasing access to justice by having regard to the principles of simplicity, speed, and proportionality, while promoting fundamental rights recognized in the EU, such as right to a fair trial.

The ESCP is available as a voluntary alternative to national procedures in all MS, except for 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 meant 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 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 videoconferencing means. 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 that 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 based on the substance of the judgement is not allowed (Stoileva *et al*., 2022, p. 10).

3.2. 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 *et al.*, 2021; Abignente *et al.,* 2020; Mesquita & Cebola, 2022; Simaitis *et al.,* 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 *et al.,* 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 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; Ontanau & Pannebakker, 2012).

Member States' courts have also been observed to not have the technical infrastructure to allow electronic management of cases. Namely, many courts still do not allow electronic submission of documents and rely on postal or hand delivery. The abovementioned issues could be addressed to a great extent by promoting the digitisation of courtrooms and conducting the procedure over electronic means. (Abignente *et al.,* 2020, pp. 17, 25).

3.3. The SCAN & 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 realized from 2018-2020. The group of experts making up the SCAN Consortium from nine universities across several Member States analysed the implementation of the Regulation and best practices with the aim to create dissemination materials and raise knowledge of 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 et al., 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 exists 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 news, papers, presentations, guidelines, short videos and more (see SCAN Project webpage).

Moreover, 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 accepts documents through electronic means and foster the digital handling of the Procedure, as well as setting up an automatic translation system or assistance (Abignente et al., 2020, pp. 14-22). In fact, in their initiatives for promoting awareness and use of the ESCP, the Consortium emphasised the need to organise training regarding digitisation and the use of electronic means and require courts to have the necessary infrastructure to make use of electronic instruments. (*Ibid*., 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 (MS).

SCAN II's objective is to achieve better enforcement of the ESCP judgements by creating a comprehensive Roadmap of all MS's enforcement rules and digitising the enforcement procedure by developing a partly blockchain architecture based IT platform to provide guidance on the different national enforcement rules on one hand and promote the 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 harmonization of procedural rules by the Regulation (see SCAN II Project webpage).

The SCAN projects have been one of the most notable efforts towards digitalising a judicial procedure. Due to its simple and standardized 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 SCANII 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, that 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 covered in earlier in this article, but it would also modernise the delivery of justice as we know it today.

As a rather simple procedure, that is already standardised to a great extent, the ESCP could be a viable use case for an EU-wide procedure that is conducted entirely online and enhanced by AI tools and automation. Additionally, the deployment of such EU-wide online platform would remove a significant burden from Member States' national courts 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 platform should be administered by the European Commission, as is the case already for the EU Online Dispute Resolution platform for consumer conflicts. (*Ibid,* 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 otherwise would require the time, cost, and expertise of a professional. 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 within 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 can 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 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 *et al.,* pp. 16-17). As was identified by the Consortium, the current legal terminology used in the standard forms may be too complicated for the average consumer, and if the objective of the ESCP is to provide for a simple, cost-effective process, then the forms must be in simple language to avoid the need for legal assistance.

The Platform should be equipped with either an automated translation system or assistance (*ibid.*) which powered by an AI would allow the user to fill the forms either in written or spoken manner in their preferred language and translate it accurately in real time to another language for the receiving court as well as the defendant. Such system within the Platform would eliminate the potential need for a translator, resulting in overall reduced costs for the procedure. However, it should be guaranteed that such a translation functionality would legally remain considered as a purely ancillary administrative activity which does not interfere with the administration of justice in individual cases (as it is the case for anonymisation or pseudonymisation tools) within the meaning of recital 40 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 to the ESCP Platform. The European Commission information page on the service provides 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 where the user can choose the domain of their source text, such as finance, health, justice, or general which enables to render a translation that has taken into account the language specificities of the sector.

It would be possible to integrate the eTranslation application in the ESCP Platform, as has already been successfully done in a few European online services, including the Online Dispute Resolution and the e-Justice platforms. (European Commission, n.d.) 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 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 within 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, currently it is 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 could require legal assistance. To avoid this, the Platform must be sufficiently sophisticated to be able to determine the competent national court to forward the claim to. The existence of such mechanism was also recommended by the SCAN Consortium (*Ibid*., 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. Conduct of the Procedure

The procedure shall still be conducted within the time limits provided by the ESCP Regulation, to ensure speediness. The electronic system where documents are filed and stored should display the progress and indicate the stage in which the procedure is in, i.e. showing the number of days left until the defendant must respond to the claim, or when the court is due to issue the judgement. Similar online platform for electronic submission and storing of documents, observing 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 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 the courts, police, and prosecutor's office. Additionally, the system allows the person to receive documents and observe 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 ordered directly to the person's or their representative's email for regular updates on the proceeding. It is also possible to view and pay the financial obligations through the e-File, such as any proceeding fees or awarded sums. (Registrite ja Infosüsteemide Keskus, 2019)

These features have yet to be covered in the SCANII project, but an analogue system of 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 proceeding, notified directly to the parties' emails.

The Platform should also include a secure environment for videoconferencing in case the court decides that an oral hearing is necessary. The process of scheduling a hearing could also be automated, for example Microsoft's Scheduler is a program that is able to independently determine a time suitable for everyone, send the calendar invitations, as well as negotiate a time and schedule the meeting (See Scheduler for Microsoft 365). The prerequisite for this is that the tool has access to enough information to be able to determine this, either by 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. Therefore, there would need to exist an interim step within the Platform, where parties can select a few available times and the system would then determine or negotiate the suitable time for everyone and send the invitations to schedule the hearing.

4.5. Conclusion of the Procedure

After the decision has been issued, the Platform shall give 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 aims 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 via 'robot-judges'. (See e.g. Morison & Harkens, 2019; Wideroth, 2020; Ulenaers, 2020; Rubim Borges Fortes, 2020) The idea has been explored for general application in all levels of the court system, despite the complexity of the nature of proceedings (i.e. even in criminal matters), and the consensus is that at this stage is that the feasibility of fully automated proceedings is unlikely due to legal obstacles, of which are many constitutional, but also derived 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 presently 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 in the ESCP Platform would nevertheless be controversial and the idea would need to be further researched in depth.

Observing the direction that the EU is going in with the proposed AI Act as well the requirements for a trustworthy AI, the prospect of automated judgements currently does not seem feasible. Coupled with the risks of opaqueness and potential bias that algorithms used for such decision-making may reflect, as has been determined by several studies, it could prove difficult to ensure that an AI-judge respects the fundamental rights such as 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 *et al.,* p. 17), making the submission of documents inconvenient, long, 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 up for the Member States national law 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 (*Ibid*. 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 concur with the Consortium's recommendation of making the ESCP compulsory for resolving cross-border cases in the EU (*Ibid.* p. 15). The low utilisation 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 (*Ibid.* p. 15). Considering 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 the actual utilisation of it.

Lastly, 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 that exist to initiate and solve the 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 ability to speed up judicial processes has the potential to increase access to justice by relieving courts facing overwhelming workload and case backlogs. AI has already been implemented for supportive tasks such as document review or risk assessment, saving time and money for processes that otherwise would be time consuming and costly, as they require the expertise of a professional. Considering the technological state of the art, the digitisation and utilisation of AI can be seriously considered to modernise and automate simpler judicial procedures to a great extent.

Despite the evident benefits, there are nevertheless several risks that arise from the application of AI and the removal of human-review from the processes, such as lack of transparency or explanation for any decisions made or even algorithmic bias. At the time of writing this article, there is no regulation or common definition in place for AI. 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 arise already from the current legal framework on human rights as well as privacy and data protection regulations.

The aim of this article was to suggest 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 set out to first identify the shortcomings of the procedure and the reasons behind its underutilisation and then 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 the complete digitisation and automation of ESCP by equipping SCAN's platform with additional features, such as an AI-powered translation and text to speech tool, integrating the already existing SCAN games to the platform for determining applicability and jurisdiction, and using the Estonian e-File as an example for creating a system that allows the electronic submission and receiving of documents, observing the progress of the procedure, and receiving updates to the user's email. These features would contribute towards conducting the ESCP more efficiently by utilising existing technology to automate several stages of the Procedure.

Additionally, it would create a one stop shop environment for all information and tools necessary for solving the cross-border claim.

Finally, to enable the proper functioning of the proposed Platform, the ESCP Regulation should be revised in several aspects. This includes harmonising procedural rules to a greater extent, requiring the acceptance of electronic documents, and making the Procedure compulsory to foster a more widespread use. Moreover, the authors recommend the use of the ESCP Platform as the principal means to initiate and solve cross-border small claims to avoid the fragmentation and abundance of options, which could be disadvantageous and confuse the user.

Karine Veersalu is currently enrolled as a bachelor's student in the European Union and International Law programme at the Department of Law in Tallinn University of Technology. She has been the student research assistant in the Department since Spring 2021 and has worked on projects for international stakeholders in various issues of Estonian private law, civil procedure law, and public law. In 2022 she participated in the national data collection for the SCANII project and reported on the Estonian enforcement rules on ESCP Judgements.

Dr. **Thomas Hoffmann** is tenured associate professor of private law at the Department of Law (TalTech Law School) of Tallinn University of Technology. He graduated in 2005 and in 2006 also obtained his PhD in law at the University of Heidelberg. Thomas' research focuses on comparative private law, here especially on insolvency law, private international law, contracts in digital environments, and consumer law. He has provided comprehensive research on Estonian, German, and international law to various stakeholders within numerous EC tenders. Thomas keeps track with forensic issues by serving as Of Counsel for bnt Attorneys-in-CEE in Tallinn. A list of his publications is available at http://bit.ly/1fz4RkT.

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