

BUILDING INTEROPERABILITY FOR EUROPEAN CIVIL PROCEEDINGS ONLINE

Editors

Francesco Contini

Giovan Francesco Lanzara

Building Interoperability for European Civil Proceedings Online

editors

Francesco Contini
Giovan Francesco Lanzara



© 2013 by IRSIG - CNR

Le fotocopie per uso personale del lettore possono essere effettuate nei limiti del 15% di ciascun volume/fascicolo di periodico dietro pagamento alla SIAE del compenso previsto dall'art. 68, commi 4 e 5, della legge 22 aprile 1941 n. 633.



Le fotocopie effettuate per finalità di carattere professionale, economico o commerciale o comunque per uso diverso da quello personale possono essere effettuate a seguito di specifica autorizzazione rilasciata da CLEARedi, Centro Licenze e Autorizzazioni per le Riproduzioni Editoriali, Corso di Porta Romana 108, 20122 Milano, e-mail autorizzazioni@clearedi.org e sito web www.clearedi.org.

The research, the making and publication of this book have been made possible by the European Commission's grant JLS/2009/JCIV/09-1AG (Directorate-general Justice Freedom and Security) for the project 'Building Interoperability for European Civil Proceedings OnLine' (2010-2013).

Building Interoperability for European Civil Proceedings Online / editors Francesco Contini and Giovan Francesco Lanzara. – Bologna : CLUEB, 2013
420 p. ; ill. ; 24 cm
ISBN 978-88-491-3787-3

Progetto grafico di copertina: Oriano Sportelli (www.studionegativo.com)

CLUEB
Cooperativa Libreria Universitaria Editrice Bologna
40126 Bologna - Via Marsala 31
Tel. 051 220736 - Fax 051 237758
www.clueb.com

Finito di stampare nel mese di marzo 2013
da Studio Rabbi - Bologna

TABLE OF CONTENTS

Introduction, <i>Francesco Contini, Giovan Francesco Lanzara</i>	9
--	---

Part 1: Theoretical Issues

Chapter 1 – Beyond Interoperability: Designing Systems for European Civil Proceedings Online, <i>Francesco Contini, Giovan Francesco Lanzara</i>	17
1. Introduction	17
2. Developing e-Government services in the EU	19
3. The European Interoperability Framework and the national justice systems	20
4. The circulation of agency in judicial proceedings	22
5. The circulation of agency in EPO and ESCP: Data from the simulation ..	26
6. Interoperability and beyond	29
7. The critical role of infrastructure	31
8. Institutional infrastructure and institutional interoperability	36
9. Sources of complexity	38
10. Design questions and strategies	44
11. Designing alternative architectures for European Civil Proceedings Online	49
12. Concluding remarks	55
 Chapter 2 – Legal Interoperability: the case of European Payment Order and of European Small Claims Procedure, <i>Marco Mellone</i>	 57
1. Introduction	57
2. Legal interoperability and the preliminary aspects of European payment order and of European Small Claims Procedure - jurisdiction, <i>lis pendens</i> and service of documents	59
3. Legal interoperability and the running of European Order for payment and Small Claims procedures	64
4. Legal interoperability and the issue of the language: looking for an autonomous solution	76
5. The legal interoperability and the taking of evidences	81

Chapter 3 – Semantic Interoperability for European Civil Proceedings Online, <i>Marta Poblet, Josep Suquet, Antoni Roig, Jorge González-Conejero</i>	85
1. Introduction. Semantic interoperability issues for the European Small Claims Procedure (ESCP) and European Order for Payment procedure (EPO)	85
2. Background: Semantic web technologies	87
3. Semantic interoperability	89
4. Information management and Ontologies	91
5. Semantic interoperability toolbox for the European Payment Order and European Small Claims Procedure	103
6. Conclusions	107
 Part 2: National case studies	
Chapter 4 – The case of Money Claim Online and Possession Claim Online in England and Wales, <i>Giampiero Lupo</i>	111
1. Introduction	111
2. The PCOL and MCOL Institutional Background	112
3. The installed base and the history of the project	121
4. The Configuration of the System	132
5. The Day-to-day working of MCOL system	136
6. Possession Claim Online, a MCOL spin off	144
7. Discussion: Lessons Learned	148
8. Concluding Remarks	155
9. List of Acronyms	157
10. Annex	158
Chapter 5 – The Central Department for Enforcement on the basis of Authentic Documents in Slovenia, <i>Gregor Strojín</i>	161
1. Introduction	161
2. Institutional setting and governance of the judiciary	161
3. Project background and the installed base	170
4. Development strategy and history of the project	174
5. Configuration of the system	185
6. Functioning of the system	192
7. Discussion and evaluation	204
8. Method	212
9. Acronyms	213
Chapter 6 – CITIUS: the Electronic Payment Order Procedure in Portugal, <i>Paula Fernando, Conceição Gomes, Diana Fernandes</i>	215
1. Introduction	215
2. Institutional Background	216
3. The project background, The development strategy and the history of the project	225
4. The configuration of the system	243

5. The functioning of the system	251
6. Discussion and Evaluation	260
7. Method	262
8. Acronyms	263
9. Annex	264
Chapter 7 – The case of Trial On-Line in Italy, <i>Davide Carnevali, Andrea Resca</i>	273
1. Introduction	273
2. The TOL environment	275
3. Before TOL. The challenge of the first e-justice system	280
4. Trial On-Line (TOL): the system “all-in-one”	284
5. TOL at the Tribunal of Milan	298
6. Concluding remarks, discussion and evaluation	309
Part 3: European case studies	
Chapter 8 – Experimenting with European Payment Order and of European Small Claims Procedure, <i>Gar Yein Ng</i>	317
1. Introduction	317
2. Methodology	317
3. Claimants under EPO and ESCP: main problems	318
4. Conclusions	332
Chapter 9 – The case of e-Curia at the Court of Justice of the European Union, <i>Francesco Contini</i>	335
1. Introduction	335
2. Institutional background: the Court of Justice of the European Union	335
3. History and development of e-curia	344
4. The functioning of e-Curia within the registries of the Court of Justice	348
5. Functioning of e-Curia for “external users”	353
6. How interoperability has been pursued in e-Curia	358
Chapter 10 – The Schengen Information Systems and the European Arrest Warrant, <i>Marco Velicogna</i>	363
1. Introduction	363
2. Institutional Background	365
3. The Schengen Information System	375
4. The EAW in action in Italy	402
5. Preliminary conclusions	411
6. Some lessons for the creation and evolution of an EU scale interoperability infrastructure	412
7. Acronyms	416
About the authors	419

Introduction

Francesco Contini, Giovan Francesco Lanzara

This book investigates the problems of trans-border interoperability in European e-justice. It contributes to an understanding of the dynamic complexities involved in the design of e-justice applications enabling online trans-border judicial proceedings in Europe. The book aims at providing some answers to the following critical questions: How should online trans-border judicial proceedings be designed in order to deliver effective and timely justice to European citizens, businesses and public agencies? How interoperable e-justice systems can be developed so that they can effectively support the circulation of judicial agency across EU member countries? Based on extensive research, we explore and assess the complex entanglements between law and technology, and between national and European jurisdictions that emerge when developing even relatively simple e-services like those supporting the European small claims procedure and European payment orders.

The research, the making and publication of this book have been made possible by the European Commission's grant JLS/2009/JCIV/09-1AG (Directorate-general Justice Freedom and Security) for the project 'Building Interoperability for European Civil Proceedings OnLine' (2010-2013).

The book collects the papers presented at the final conference of the project, held in Bologna the 15-16 June 2012 that has offered room to investigate the e-justice development at national and trans-border level, and identify possible solutions to the problems currently faced in this area of judicial reform.

The core thrust of the book is the notion of circulation of judicial agency across media, across national borders, and across functional domains, that is the capability for an individual, or business, or public agency to enact actions with trans-border legal effects. Particular emphasis has been put in the in depth analysis of a blend of national and European case studies. They provide a rich and unique empirical background to map out how e-justice works, how judicial agency circulates in ICT-enabled proceedings and what are the technical, legal, institutional and semantic conditions that enhance or hamper it. Cases comprise leading national e-justice applications developed in England and Wales, Portugal, Slovenia and Italy. The book analyses also European e-

justice applications like the European Payment Order and the European Small Claims Procedure currently supported by the e-justice portal (e-justice.europa.eu), e-Curia (at the European Court of Justice), the Schengen Information Systems and the European Arrest Warrant.

Case data are analysed by developing an original theoretical framework that takes account of the opposing requirements of interoperability and evolvability of systems. Due to the growing interdependencies of law, technology, languages and institutions between European member states, a rise in the level of dynamic and interactive complexity is predictable in trans-border judicial procedures. Such complexity, though, must be controlled so that it does not overwhelm the capabilities of professional users and ordinary citizens at carrying out their judicial transactions with ease and at low cost.

The book aims to develop a broader perspective on the interoperability problems arising from the interaction of national judicial systems. We point at the critical relevance of developing a European technical and institutional infrastructure in order to support the trans-border circulation of judicial agency. Effective circulation of judicial agency requires multi-layer interoperability, a carefully designed shared infrastructure, and strategies to reduce and handle interactive and dynamic complexity. The design challenge is to develop systems that balance between procedural simplicity and minimal complexity requirements compatible with functionality and legal fairness, and at the same time are capable of evolving and adapting to changing circumstances.

The book does not offer easy managerial recipes or ready-made solutions to handle the many-sided complexity involved in developing e-justice applications supporting trans-border judicial proceedings. By building upon the achievements and the limitations of current approaches to e-government and e-justice, its main purpose is to help expand the awareness of the institutional complexities involved in the development of judicial e-services and open up a window upon a range of viable design criteria and scenarios.

The book is intended to be a valuable resource for researchers, practitioners, policy makers interested in the problems of e-government and in the development of e-justice.

Outline of the book

Part 1 introduces and discusses key concepts for the development of effective e-justice applications enabling national and trans-border judicial proceedings.

In Chapter 1 by Francesco Contini and Giovan Francesco Lanzara the notions of interoperability and circulation of judicial agency are introduced, as well as functional simplification, infrastructure, and system adaptability. The

major critical interdependencies between ICT and law, national jurisdictions and functional domains are spelled out. The major sources of interactive and dynamic complexity hindering the circulation of agency are identified and discussed. Design strategies and criteria for handling complexity in the legal, technological and institutional domains are proposed.

In chapter 2 Marco Mellone deals with the problems of legal interoperability. He illustrates the EU legal framework for trans-border civil proceedings in detail and discusses the critical legal issues affecting the regulations of the European Payment Order and the European Small Claim Procedure.

The question of semantic interoperability is the topic of chapter 3 by the Barcelona team composed by Marta Poblet, Josep Suquet, Antoni Roig and Jorge Gonzales-Conejero. They explore problems of communication and interpretation of meaning when legal transactions must be acted out across different national justice systems. The chapter discusses the opportunities offered by contemporary semantic technologies to mitigate semantic frictions to the circulation of judicial agency, and identify a set of specific semantic tools to face some of the key problems affecting the circulation of agency.

Part 2 presents national experiences of e-justice and discusses their implications for interoperability and the circulation of agency. Case studies follow a common methodology and are structured according to a common template, although with some variations which depend on their specificity. National cases are arranged from the simplest to the most complex one. They describe the development and the deployment process of the applications and discuss the findings in the light of the concepts presented in the first part of the book.

Chapter 4 by Giampiero Lupo illustrates England and Wales' Money Claim (MCOL) and Possession Claim On Line (PCOL), comparing their different architectures and performances. MCOL features here as the most prominent illustration of how an effective e-service can be implemented through the smart exploitation of the technological and organizational installed base and of how a strategy of functional simplification can support interoperability and the circulation of agency in the national justice system.

Gregor Strojín's chapter 5 deals with Slovenia's COVL, a money claim e-service in which maximum feasible simplicity is pursued through a mix of legal, organisational and technological changes. The establishment of a national jurisdiction for injunctive orders, coupled with changes to the pre-existing procedural rules, created an institutional environment favourable to procedural digitization. This has been carried out mostly with internal resources granting a strong control of the judiciary over the entire system.

In chapter 6 Paula Fernando Diana Fernandes and Conceição Gomes present Portugal's CITIUS, an electronic payment order procedure developed through the years in a piecemeal fashion by cultivating the legal and technological installed base. The system complexity has been controlled through the

joint introduction of legal and technological changes, so as to adapt law and technology to each other in a stepwise fashion. The mutual and recursive adaptation has been possible since, like in Slovenia, technological development has been carried out with limited outsourcing, thus securing more flexibility in system development.

Davide Carnevali and Andrea Resca discuss Italy's Trial On Line in chapter 7, definitely the most complex and problematic national case of e-service implementation that we have encountered in our research work. The case illustrates the legal, technical and institutional factors that hamper the e-justice development and the circulation of judicial agency in digitally enabled civil proceedings, turning technological innovation into an almost impossible mission. But the case also shows how the take off of the system could happen only after a dramatic downsizing of the originally ambitious, comprehensive plan and a radical simplification of the proceedings.

Part 3 presents the European case studies. The focus is on the ongoing e-justice development experiences at the trans-border level and on the assessment of the e-justice procedures available to European citizens, business and public administration.

In chapter 8 Gar Yein Ng offers a further contribution to the assessment of trans-border legal interoperability. She reports on the simulation experiments conducted to test the practical use EPO and ESCP. The findings point to the micro-sources of complexity that make the circulation of trans-border judicial agency difficult in practice for both claimants and courts and provide inputs for improving the circulation of agency.

Chapter 9, written by Francesco Contini, presents e-Curia, the e-justice application developed by the European Court of Justice. E-Curia is a case in which a smart regulation of technological components, unconventional solutions to the problems of identification and transmission of procedural documents, and an effective black-boxing of procedural complexity carried out by the registries of the Court have led to a smooth and successful development of the first e-justice application supporting trans-border litigation.

Finally, problems of system interoperability and evolvability are the subject of Marco Velicogna's chapter 10 on the European Arrest Warrant (EAW) and the Schengen Information System (SIS). The chapter illustrates how the pre-existing information infrastructure and organisational units put in place to grant the interoperability levels required by the Schengen agreement contributed to the implementation of the EAW. At the same time, it shows how at the present stage of development the entanglements between technological and organisational components are hindering the evolution of the system in unexpected ways.

Acknowledgments

The research has been co-funded by the European Commission's grant JLS/2009/JCIV/09-1AG (Directorate-general Justice Freedom and Security) for the project 'Building Interoperability for European Civil Proceedings On-Line' (2010-2013), to which the Authors wish to express their gratitude for the financial support.

Giovan Francesco Lanzara wishes to thank the London School of Economics and Political Science and his colleagues of the Innovation and Information Systems Group at the LSE Department of Management for the fertile intellectual exchanges that throughout the years have nurtured some of the ideas and research work that fed into this book. He is also grateful to the Department of Political and Social Sciences of the University of Bologna for relieving him of part of the teaching load in the academic year 2012-2013, which greatly facilitated project-related work and the completion of the book.

Francesco Contini feels deeply indebted to the Research Institute on Judicial Systems of the Italian National Research Council for the support and encouragement during the 30 month long project and the drafting of the book. Also, he wants to thank Richard Mohr, since some of the key concepts used in the book have been developed and refined during discussions and previous work carried out together.

Part 1

Theoretical Issues

Chapter 1

Beyond Interoperability: Designing Systems for European Civil Proceedings Online

Francesco Contini, Giovan Francesco Lanzara

1. Introduction

In this chapter we lay out a conceptual framework to analyse the complex issues involved in building European trans-border interoperability in the domain of Civil Justice. We propose design guidelines to tackle the dynamic complexity in building interoperable systems to enable and support the circulation of judicial agency across European trans-national borders. Agency is defined here as the capacity of an entity – human and nonhuman – to act and produce effects. By circulation of agency we mean the possibility for such capacity to be transmitted and be performative across different media, national borders, and functional domains. We set the problem of interoperability within the broader issue of the design of large-scale information systems and infrastructures that must enable the circulation of agency. Interoperability is a necessary requirement, among others, to support such agency.

Our analysis rests upon a set of basic concepts that have been recently developed in the research literatures on large-scale information infrastructures,¹ complex adaptive systems,² generativity³ and innovation⁴. We will show that

¹ Star SL, Bowker GC (1999) *Sorting things out: classification and its consequences*. Cambridge Mass. Ciborra CU, Braa K, Cordella A, Dahlbom B, Failla A, Hanseth O, Hepso V, Ljungberg J, Monteiro E (2000) *From control to drift: the dynamics of corporate information infrastructures*. Oxford University Press, USA, Hanseth O (1996) *Information technology as Infrastructure*. Ph.D Thesis, School of Economics and Commercial Law, Goteborg University, Goteborg. Monteiro E (1998) *Scaling Information Infrastructure: The Case of Next-Generation IP in the Internet*. *The Information Society* 14 (3):229-245. Star SL (1999) *The ethnography of infrastructure*. *American behavioral scientist* 43 (3):377-391. Star SL, Bowker GC (2006) *How to infrastructure*. *Handbook of new media: Social shaping and social consequences of ICTs*:230-245.

² Hanseth O, Lyytinen K (2010) *Design theory for dynamic complexity in information infrastructures: the case of building internet*. *Journal of Information Technology* 25:1-19. doi:10.1057/jit.2009.19. Holland J (1996) *Hidden order: How adaptation builds complexity*. Basic Books.

³ Zittrain J (2009) *The future of the internet – and how to stop it*. Yale University Press.

⁴ Contini F, Lanzara GF (eds) (2009) *ICT and innovation in the public sector*. European

a fuller and more articulate understanding of the relevance and, also, of the limitations of interoperability as a critical design feature, can be achieved by relating it to the ideas of infrastructure, flexibility, generativity, and dynamic complexity. Meeting interoperability requirements is a crucial aspect in enabling communication between systems, but such requirements must be gauged with the equally critical requirements of flexibility and evolvability. Workable, effective solutions to the problem of enabling and supporting trans-border European systems in the domain of justice and, for that matter, in other public service domains, critically depend on striking the right balance between sets of conflicting pressures and requirements.

The ultimate goal of the chapter is to provide tentative design guidelines for building European trans-border interoperable systems and procedures in the area of civil justice. The design guidelines are based upon the conceptual discussion and the lessons learned from the national and European case histories. Intendedly, our indications should complement, substantiate, and hopefully extend, at a more detailed and theoretical level, the broad principles and guidelines established by the European Interoperability Framework v2.0, which is currently under discussion.

Our aim is to enrich the concept of interoperability as it is defined in the EU documents by giving it a more generative, dynamic interpretation. In order to do that we identify the ways in which legal, technological and organizational conditions shape the circulation of agency in e-justice. As we will show in the following, both the digital medium and the trans-border dimension across the EU Member States (MS) add further levels of normative, semantic, organizational and technical complexity to the problem of the circulation of agency in the judiciary.

The conceptual framework is a distillation of our previous research work and of the experiences accumulated through the case studies we have undertaken in the present project. In turn, the case findings can be used as a first test of the framework, and will help to further refine the framework itself. Many of the ideas developed in the present study can be extended to the more general problem of designing effective systems for European trans-border public services in the perspective of pan-European integration.

The chapter is organized as follows: in sections 2 and 3 we provide a short reference to the European strategy for developing e-government services and the European Interoperability Framework (EIF). Then in sections 4 and 5, we develop our ideas about the circulation of judicial agency across different media and different jurisdictions within the European Union and, based on case

studies in the making of e-government. Palgrave Macmillan, Basingstoke (UK). Lanzara GF (2009) Building digital institutions: ICT and the rise of assemblages in government. In: Contini F, Lanzara GF (eds) ICT and innovation in the public sector. Palgrave, pp 9-48. Tuomi I (2002) Networks of innovation. Oxford University Press Oxford, England.

materials, we spell out the sources of complexity (problems, bottlenecks and friction) that interfere with the smooth circulation of agency. In sections 6 and 7, we discuss the notion of interoperability by relating it to the general problem of designing infrastructures to support transborder public services and enable the circulation of agency. In section 8 we focus on interoperability across institutional frameworks, or institutional interoperability, as a critical aspect of designing EU trans-border systems in the judiciary and the public sector at large. Subsequently, in section 9 we discuss the major sources of complexity arising in the development of ICT-enabled trans-border judicial services, and, in section 10 we propose strategies for designing infrastructures and ICT-enabled procedures. Finally, in section 11, based on the former discussion, we design and assess a number of alternative institutional scenarios for organizing the European Small Claim Procedure online.

2. Developing e-Government services in the EU

During the last decade the Commission of the European Communities has made a strong commitment towards the development of European e-Government services, namely, public services that the administrations of the Member States are to deliver to any European citizen, administration or enterprise issuing a request, application or claim, without distinction of territory or nationality. The development of European Public Services is seen as a necessary component of the making of the common market and the empowerment of European democracy. The full support to the common market requires that MSs develop eGovernment services that must be open and seamlessly accessible throughout all Europe, so that European citizens and businesses are enabled to carry out transactions with public administrations other than their own (see European Interoperability Framework v. 2)⁵. According to the European eGovernment policy, the implementation of trans-border public services will require that MSs' public administrations and nation-based technical and legal systems be made interoperable, that is, able to communicate and exchange data, documents and information with one another. Such transactions must be given a legal form, that is, in order to be effective, they must meet the legal requirements established at European and national level. In addition, they must be understandable from a semantic point of view. At a more general level the effective implementation of the European eGovernment policy requires that both the EU and the MSs support the circulation of agency across national borders and public sectors. This raises the question of how

⁵ European Commission (2004) European interoperability framework for pan-european e-government services. IDA working document. <http://ec.europa.eu/idabc/en/document/2319/5938.html>. Retrieved 2010-12-17.

such requirements may be fulfilled, that is, which alternative technical and institutional architectures should be designed in order to support pan-European interoperability. No matter which architectural solutions are envisaged or which technical systems are developed, in order to grant the trans-border circulation of administrative agency European Public Services and Information Systems must rely on a **common infrastructure** (see *Linking up Europe: the Importance of Interoperability for eGovernment Services*). Therefore, the design of technical and institutional architectures that may enable and support trans-border interoperability is at the core of the concerns of this chapter.

3. The European Interoperability Framework and the national justice systems

Two are the leading EU documents that offer directions for the development of e-justice in Europe: the ejustice action plan (<http://eur-lex.europa.eu/LexUriServ/>) and the European Interoperability Framework. The ejustice action plan (2009-2013)⁶ aims at developing the use of information and communication technologies (ICT) at European level in the field of justice. The European Interoperability Framework, in its most recent version (EIF v2.0, 2010)⁷, establishes the main principles and guidelines by which MSs should abide when they develop their National or Government Interoperability Frameworks (NIF or GIF). The EIF recommendations should be taken into account in order to deliver trans-border services for the European citizens, enterprises, and other MSs' public agencies and administrations. It is important to stress that in the vision of the European Commission the EIF does not replace the NIFs, but complements them according to the *principle of subsidiarity*, the first of the twelve principles listed in the EIFv.2 and one of the leading principles of European integration. This means, for example in the case of e-services in civil justice, that national courts and Ministries of Justice are responsible for delivering services across European borders when they receive trans-border claims. But in order to be able to do that they should adapt or update their technology, language, legal rules and procedures, and institutional and organizational structures according to the EIF guidelines. In other words, the national frameworks must become interoperable by means of

⁶ Council of the European Union (2009) Multi-annual European e-Justice action plan 2009-2013. Bruxelles.

⁷ European Commission (2010) European Interoperability Framework (EIF) for European public services v2.0. Annex 2 to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions 'Towards interoperability for European public service'. European Commission, Bruxelles.

the European Interoperability Framework. As it will be illustrated later, this is not an easy goal to attain, due to a variety of reasons. Trans-border interoperability puts high pressures on national administrations, and, most critically, inflates the overall procedural and architectural complexity. In addition, it is highly unlikely that all MSs could attain an interoperable connection with EIF with the same easiness and speed.

The EIF v.2 distinguishes four types of interoperability, which are of interest for the present project: technological, legal, semantic, and organizational/institutional. (We preferably use the expression *institutional interoperability* rather than *organizational*, as it underlines the institutional features of public administrations).

For a trans-border e-service to be delivered the requirements of the four types of interoperability must be fulfilled. For administrations and agencies of the MSs full interoperability involves:

- Cooperating partners with compatible visions, aligned priorities, and focused objectives (a shared political context).
- Aligned legislation so that exchanged data is accorded proper legal weight (some shared rules or agreements for establishing legal validity of actions and documents; entitlements and obligations)
- Coordinated processes in which different organizations achieve a previously agreed and mutually beneficial goal (alignment of bureaucratic procedures and routines)
- Precise meaning of exchanged information which is preserved and understood by all parties (meanings of data and legal acts must be kept stable across borders and sectors)
- Planning of technical issues involved in linking computer systems and services (based on shared protocols and standards)

Even if the principles and guidelines of the EIF have not a mandatory character and do not replace national frameworks, the conditions and requirements for trans-border interoperability are very demanding for most national governments. Several studies have shown that national justice systems in the EU MSs are very heterogeneous⁸ and for most of them, in their present state, the attainment of an effective trans-border circulation of agency will require a great effort at redesign and restructuring.

Due to differences in the MSs' conditions, it is likely that the interactions between the EIF and each NIF will generate a broad range of different solutions and configurations, thus increasing complexity, for a number of reasons:

⁸ Fabri M, Contini F (eds) (2001) *Justice and Technology in Europe: How ICT is Changing Judicial Business*. Kluwer Law International, The Hague, The Netherlands. Contini F, Lanzara GF (eds) (2009) *ICT and innovation in the public sector. European studies in the making of e-government*. Palgrave Macmillan, Basingstoke (UK). Reiling D (2009) *Technology for Justice. How Information Technology Can Support Judicial Reform*. Leiden University Press, Leiden.

- Firstly, NIFs start out at different stages of development. Some countries, like UK and Finland have already established and tested their NIF, which is already operating; some are still in the process of building it, but lag behind, like Italy; some have not yet started to even think about the issue.
- Secondly, NIFs sit upon different installed bases and legacy systems, each with their own specific structural and functional features that will most likely generate path-dependence in their further developments. This amounts to saying that some developments and adaptations to harmonize the NIF with the EIF may be costly and difficult to realize.
- Thirdly, NIFs respond to different bureaucratic and legal requirements in each MS. It is likely that in some countries, like for instance Italy, the linkage and harmonization of the NIF with the EIF will be accomplished by further legislation, thus injecting further legal complexity into the system.

All these elements will influence the path of transformation of the NIFs and will most likely increase the level of complexity of the whole system. In other words, we may be confronting the paradoxical outcome that the pressure to convergence and conformity to the EIF guidelines by the MSs will also generate heterogeneity, because it is likely that each single national administration or agency will find its own distinctive way to align its procedures and systems to EIF principles. At the same time, MSs with an already well-developed infrastructure and interoperability framework will lobby for extending their solutions to other countries. All this amounts to saying that the adoption and implementation of EIF guidelines by the MSs will most likely generate processes of destabilization in the national jurisdictions (in the legal code, in the administrative procedures, in the technical solutions, etc.).

The processes by which the MSs' justice systems change so as to become aligned with the guidelines of the EIF are critical; hence it is important to monitor them carefully, because ultimately it will depend on their outcomes whether a smooth and swift circulation of judicial agency can effectively be implemented across trans-national borders.

4. The circulation of agency in judicial proceedings

If a major objective of European e-government policy is to improve accessibility and user friendliness of public services for European citizens it is obvious how the circulation of agency across media, functional domains and national jurisdictions is critical for extending the market and democratic rights. Agency is enabled, channelled, or hindered by technical, procedural and institutional arrangements which may influence the capacity to act in various ways, enhancing, guiding, or limiting it. Whoever engages in developing

trans-border ICT-based judicial proceedings must necessarily aim at enabling some kind of legal agency, empowering individuals, businesses and administrations to produce legal effects through their actions. Indeed, ICT-based innovation in government, namely in justice, is often seen as the design of arrangements that should facilitate effective and seamless delivery of services, and in order to do that interoperability is a critical factor, albeit not the only one.

The term ‘agency’, as we use it here, does not exclusively refer to the purposeful activities of human actors, but is attributed to anything (actor, object, document, system, code, device, tool) that may produce effects, to anything that makes something happen, thus changing the state of affairs. Indeed, in complex technical and institutional environments it might be often difficult or even impossible to locate agency exclusively in the human agent, or in a group of human agents. It is often more rewarding to attribute it to systems and networks constituted of human and non-human components, which are both called ‘actants’⁹ In other words, the human agent as such is not or needs not be the only locus of agency in a complex system. Agency is also shaped and channelled by a variety of non-human actants. To make some examples from the judiciary, even the courtroom, through its spatial and procedural arrangements, is an ‘active’ component of the agency carried out in oral proceedings, because its procedures and decisions effect changes in the state of things and even produce new realities; or, at the smaller scale of single artifacts, the transcript or the video of the hearing works as an ‘actant’ inasmuch as it ‘makes do’, enabling the circulation of agency within a complex network of humans and artifacts. To further illustrate how different technical or legal arrangements can enable or hinder agency in judicial systems, we can take the case of digital signature and identification, that are required in order to grant an actor some form of legal agency: depending on the means of identification, which can be more or less constrictive, technically feasible or legally acceptable, the actor’s capacity to act legally can be greatly enhanced or severely limited.¹⁰ Following from these considerations, it is important to stress here that judicial agency does not only amount to the exchange of bits and infor-

⁹ Callon M (1992) The dynamics of techno-economic networks”. In: Coombs R, Saviotti P, Walsh V (eds) *Technological Change and Company Strategies: Economic and Sociological Perspectives*. Hartcourt Brace Jovanovich, London, pp 72-102. Latour B (1992) Where Are the Missing Masses? The Sociology of Few Mundane Artifacts. In: Bijker WE, Law J (eds) *Shaping Technology Building Society. Studies in Sociotechnical Change*. The MIT Press, Cambridge, MA, pp 225-258. Latour B (2000) Technology is society made durable. In: Grint K (ed) *Work and Society: A Reader*. Blackwell Publishing, Malden, MA.

¹⁰ Mohr R, Contini F (2011) Reassembling the legal. *The Wonders of Modern Science in Court-Related Proceedings*. Griffith Law Review - Special Symposium: The Laws of Technology and the Technology of Law 20 (3):994-1019.

mation, but produces changes of status, and in order to be effective must be made itself 'legal'. Interoperability, therefore, must not just enable or facilitate exchange of bits and flows of data across systems, but must support the production and transmission of legal effects across different systems, domains and territories. It should be recalled that the legal connotation of agency is a substantive feature of all government and public administration activities, not just of the domain of justice.

In designing European civil proceedings online the issue of agency has both a qualitative and a quantitative aspect, and the two are related. First, the 'character' or kind of agency in judicial proceedings is affected in several ways. Agency must be able to travel across different national jurisdictions (legal, administrative and contractual environments), different functional domains (legal, technological, organizational, economic), and different media (oral, paper, digital).¹¹

In the specific cases of European Small Claims Procedures and European Order for Payment the kind of agency that must circulate online is mainly, although not exclusively, legal. In order to effect smooth circulation of agency the interoperability framework must allow for the trans-border transmission of data, the recognition of the data's and documents' legal validity, the constancy of the meaning of data, documents and specific legal actions, and the administrative effectuality or performativity of judicial decisions across national jurisdictions. In judicial systems the circulation of agency is traditionally effected through conventional (paper-based) procedures and supported by material artefacts like case folders, printed documents, dockets, etc., or, as we have just mentioned, the spatial layout of the courtroom. We can refer here to a 'conventional configuration',¹² which impinges on a local or national jurisdiction. However, the development of European legal e-services entails a re-configuration of agency across two major 'complexity leaps': one leap is due to the new mediation of agency brought in by the digital environment, the other is caused by 'boundary crossing' across different national jurisdictions.

Agency in trans-border judicial proceedings cannot be carried by (and 'housed' within) the conventional configuration within a national jurisdiction, but it must be extended across multiple national borders and across different media through sequences and networks of *agencements*, which connect pre-existing and new components in emerging techno-institutional configurations.¹³ To this purpose, national legal and administrative systems must learn to communicate with one another and engage in cooperative action; also, they

¹¹ Ibid.

¹² Ibid.

¹³ Contini F, Lanzara GF (eds) (2009) ICT and innovation in the public sector. European studies in the making of e-government. Palgrave Macmillan, Basingstoke (UK).

Figure 1 - Complexity Leaps

		Jurisdiction	
		National	Trans border
Media	Conventional	Conventional paper based procedures	EPO and ESCP at present
	Digital	National ejustice case studies	EPO and ESCP digitally enabled

must learn to operate in a new multimedia environment, where the digital media ‘remediates’ the legal practices, the procedures, the familiar tools, the meanings, that is, it remediates agency and the channels through which it circulates. The outcome of this reconfiguring process is an emerging assemblage of heterogeneous components, multi-media, multi-functional and multi-national, across which judicial and administrative agency should presumably be able to circulate through the channels, linkages, and gateways that provide for systems interoperability, traveling across multiple jurisdictions and across multiple media.

While the circulation of agency in the conventional configuration is relatively straightforward, it may not be so in the new conditions, due to the rising complexity generated by the interdependencies among systems and components that were not originally connected but must now be connected so as to deliver the intended performance. If complexity is not reduced or absorbed through appropriate strategies, several impediments may slow down, restrict or block the circulation of agency. Blocks may be of different nature: technological (data and documents are not exchanged due to technological malfunctioning), semantic (data are exchanged properly but actors don’t use the appropriate language and the procedural requirement cannot be fulfilled), legal (a meaningful exchange of data occurs but the exchange is not performed accordingly to relevant legal specifications). Repeated blocks will jeopardise the circulation of agency and divert people from using the online procedures.

This leads us to bring the quantitative aspect into the picture, which we deem critical. Financial investment and design efforts in building interoperability and infrastructure for trans-border civil proceedings can be justified and sustained if they support substantial agency circulating across borders, otherwise they will be pointless. The overall value added and the users’ benefits of the new procedures depend on a critical mass of users that can enjoy

increasing returns and positive externalities. However, so far the few statistical data available seem to point to a limited use of such procedure. Even when the linguistic barrier is not an issue and economies are tightly coupled as in the case of Austria and Germany the number of EPO is quite low: a total of 3.700 claims summing up the two countries (total value of 72 million Euro, and an opposition rate of 3% in Austria).¹⁴

5. The circulation of agency in EPO and ESCP: Data from the simulation

As stated by the European Commissioner for Justice, the European Payment Order and the European Small Claim Procedures are legal tools enacted “to help individuals and businesses with cross-border litigation” and “for simplifying cross-border debt recovery”. EPO and ESCP want to “offer citizens and businesses the means for quicker, more efficient resolution of cross-border cases, by making it easier to enforce a claim against a defendant in another Member State”. The Citizens guide prepared by the Commission (http://ec.europa.eu/civiljustice/publications/docs/guide_litiges_civils_transfrontaliers_en.pdf) emphasizes that businesses and individuals can apply without the advice of a lawyer, and that procedures are easily accessible fast and streamlined.

The European regulations have attempted in various ways to simplify the procedure and reduce uncertainty. In theory, superimposing a unique pan-European procedure to the pre-existing multitude of heterogeneous national procedures offers to EU citizens and companies a unique standardised procedure working in each Member State. Also formal requirements have been kept as simple as possible: the simple hand written signature (not certified by a local authority nor supported by any additional document) is accepted as valid, while in many countries the defendant must certify or validate the authenticity of the signature; pro-se litigation is accepted, while in various countries legal patronage is needed; cases can be filed using normal postal services, while in several European judiciaries plaintiffs and defendants have to go to the court counter to file cases. Finally, the data to be entered into the various forms to be exchanged in the procedure are relatively simple, and standardised. Only in a few cases the parties have to provide relatively complex written statements (like the description of the claim). Even if the language barrier and the need to provide such statements in the language of the seized court may be problematic, efforts have been made to design a procedure accessible to citizens and businesses without the involvement of professional lawyers and without going to court.

¹⁴ http://www.justiz.gv.at/internet/file/8ab4ac8322985dd501229ce2e2d80091.en.0/folder_justiz-online_0310_en.pdf.

With the purpose to test if EPO and ESCP could meet the EU objectives we conducted a practical experiment to simulate the procedures. A UK correspondent tried to file an EPO and an ESCP to an Italian court (see chapter 8 by Gar Yein Ng) following the instructions provided by the e-Justice portal (e-justice.europa.eu) and the European Judicial Atlas in Civil Matters (ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). The experiment highlighted a number of problems affecting the circulation of agency that make it difficult for a generic user the handling of the procedure in practice.

The first obstacle we encountered was the identification of the jurisdiction and of the seized court. Users have to apply a complex set of regulations and if the seized court is not the one with the jurisdiction, the court will dismiss the case. Then, before filing a case, the claim has to be described, using the language of the seized court, and court fees have to be paid. More precisely, the exact amount of the fee has to be calculated, and a suitable means of payment identified. Here another problem emerged, since the Civil Justice Atlas (i.e. the official information provider for this kind of procedures) stated that in Italy online payments were not accepted. Therefore the claimant had to find out a way to pay the court fee without going to Italy: everything but easy. Even more interesting the discovery that differently from what stated in the Civil Justice Atlas, also in Italy it is possible to pay EPO and ESCP court fees with a normal bank order to a specific account: the information provided in the Atlas were not updated.

Finally, once the case was filed and the EPO issued, the registry did not serve the document to the plaintiff and the defendant, as it is supposed to do according to the European regulations. The court decided that in this case, instead of following the European rules, it was better to follow the national rules. Therefore the plaintiff had to find a way to get the EPO from the counter of the court, possibly without coming to Italy. The simulation has highlighted several other problems, but even these simple illustrations suffice to show how difficult it is to fulfil the goals established by the Commission. The circulation of agency from one jurisdiction to another is hampered not only by language barriers or procedural complexity, but also by a number of micro-issues of an administrative and procedural kind and by the difficult (or wrong, or contingent) interpretation of European regulation by national courts. Minimal as these procedural slips may be, still they produce the effect of interrupting the procedure and frustrating the user. The development of an effective e-justice system supporting the circulation of agency in trans-border procedures must provide a solution to this types of problems, otherwise people will not be attracted to use these new tools.

In this connection, it is reasonable to expect that in the initial stage of development of the digitally supported ESCP there will be a low frequency of legal transactions throughout the system. A critical issue then is how to create a mechanism to attract high numbers and bootstrap the system in order to gen-

erate a critical mass of users. For this to be obtained it is necessary to make the use of the system as accessible and simple as possible for the generic, naive user. This means that designers must find ways to hide complexity from the eyes and hands of the users as much as possible. Systems and procedures must be initially simple so that users find it convenient to use them, for example because they are faster and less expensive than the conventional ones.

This line of reasoning leads us to the consideration that the European Interoperability Framework is likely to be successful if it allows for the design of low complexity and high accessibility procedures for final users. This is even more important if we consider that such European remedies are in competition with national payment orders and small claim procedures. A potential claimant, before filing an EPO, should consider the possibility to request a local payment order. Geographic and linguistic barriers can reduce access to justice for some players (for a normal citizen to hire a lawyer in a different country can be extremely difficult), but not for others, as many companies doing their business in Europe. Therefore EPO and ESCP, and the ICT systems designed to enable their use, must be designed in particular for the potential users that may have problems in accessing cross-border proceedings through the traditional national remedies.

At the same time, it should provide incentives for national jurisdictions (or national service providers) to invest in the development of such procedures. An external political pressure, as the one currently made by the EU financing e-Codex, could support the development, but also long-term incentives have to be identified. We surmise that one of the incentives for national jurisdiction could be to have a system simplifying the handling of such procedures at national level.

In addition, poorly interoperable systems create problems and bottlenecks to the circulation of agency, data, meaning, etc., generating unwanted complexities and a rough, impervious territory through which judicial agency will circulate with difficulty and be poorly performative. The question then is:

What kind of interoperability do we want? How should interoperability be conceived and implemented so that the complexity of the procedures and infrastructures can be effectively handled?

The scope of interoperability, therefore, should reach beyond the simple exchange of electronic data and legal documents between systems. It should encompass the whole legal procedure from facilitating the user's access to supporting the judges and judicial offices that receive the claim and issue a decision. Electronic data exchange and e-filing are certainly important aspects of the procedure, but do not, by themselves, grant the circulation of judicial agency.

In the light of the above considerations, in the following section we take our next step by examining and extending the concept of interoperability presented in the EIF documents.

6. Interoperability and beyond

In the EIF documents interoperability stands up as a key concept in the European Commission's strategy for developing pan-European e-government solutions. It is defined as

“the ability of disparate and diverse organizations to interact toward mutually beneficial and agreed common goals, involving the sharing of information and knowledge between organizations via the business processes they support, by means of the exchange of data between their respective information and communication technology (ICT) systems” (EIF, p. 2).

In other official documents interoperability is generically defined as *“the ability of organizations to work together to common goals”*, emphasizing the outcome of interoperability rather than the features and conditions that make it possible.

In an earlier version of the EIF the idea of interoperability is illustrated through the image of a chain:

“Interoperability is like a chain that allows information and computer systems to be joined up both within organizations and then across organizational boundaries with other organizations, administrations, enterprises or citizens”.

The image of the chain is at same time suggestive and misleading. On the one hand it suggests connectivity and linkages between the rings, the modular components of the chain, but on the other hand fails to reveal what makes the linkages possible, that is, some standard features that all the rings must share in order to be linked to one another. Similarly, another image often used (see e-Codex <http://www.e-codex.eu/>) is that of a train of gears: a series of toothed wheels that transmit, and eventually transform agency, force, movement from one element to another along a train of gears. This image is equally suggestive, but equally misleading: the mechanical representation tends to conflate agency and the supporting infrastructure into a tightly coupled system or mechanism. Firstly, what make the transmission of the action possible are not the gears as such, but the shared standard size of each tooth. The size of the wheel gears can change, but the size of the tooth must stay fixed in order for the gears to be coupled and transmit the movement. Secondly, such image keeps out all conceptions of flexibility and adaptability. Indeed, both the chain and the gear convey an image of interoperability as a static property, whilst the means by which interoperability is provided necessarily evolve as technological, legal and institutional conditions change.

It has been pointed out that interoperability is a concept that finds its origin in the field of computer-based communication and standardization:

*“ ... (It) denotes usually what kind of communication and integration one wants to achieve between computer systems. The way to achieve interoperability is usually considered to be by reaching an agreement on a set of shared standards”;*¹⁵

*“...interoperability is not really a theoretical concept that will help us when we want to understand the aspects and issues that matter when we try to develop and implement pan-European eGovernment solutions”.*¹⁶

One might question whether this concept, in its current formulation, can help us to harness the full complexity of the problem-at-hand. For instance, one might reasonably doubt whether the original meaning and scope of the concept can be maintained when it is transposed to non-technical domains, such as the different national legal codes, the organizational settings, and the semantic domains, that must also be made ‘interoperable’ to enhance the circulation of agency. Secondly, one might wonder whether interoperability captures everything that needs to be taken into account when developing pan-European transborder procedures (in the judiciary or other domain). Thirdly, one is struck by the generally positive overtones aired in bringing the interoperability issue to the fore. It seems as if the more interoperability we are able to reach, the better solutions we will be able to provide to our pan-European design problems.¹⁷ To wit, one might question whether high or full system interoperability is always desirable, or whether too much interoperability at one specific level and a specific time might yield undesired consequences at a different level or at a later time. Obviously, the flip side of too much interoperability is the lack of flexibility. In the end, one might legitimately ask what degree of interoperability is desirable or necessary, and how interoperability, once built into the European eGovernment framework, can be maintained and adapted over time. Elements of a processual and evolutionary approach are absent in the current version of the EIF, but in our opinion they are critical and should not be left out of any design endeavour.

Indeed, if we delve more deeply into the meaning and scope of interoperability, we are led to reframe our ways of looking at interoperability as the main focus of the project. Though interoperability is a key issue in the development of e-government services across Europe, it is not the only one. Other, equally critical, issues are flexibility and adaptability over time. All designs, then, must keep a balance between interoperability and flexibility, and this puts limits as to the degree of interoperability that can or should be achieved. Building interoperability cannot be framed only as the one-shot design of interfaces and linkages between specific systems by the implementation of technical standards or by the alignment of administrative and legal

¹⁵ Hanseth O. Comments April 12th, 2011.

¹⁶ Ibid.

¹⁷ Ibid.

systems, or by enforcing a semantic reduction of linguistic variety. More critically, interoperability should not be thought of as an intrinsic property of interacting computer systems, lest of the systems that are in place and operating here and now. It cannot be designed simply as a result of a convergence and homogenization among systems, procedures, and applications, whereby National Interoperability Frameworks must conform to the EIF guidelines in resetting their procedures, applications and organizational equipment. Firstly, this will most likely feed variety and inflate an unmanageable complexity (see Section 9 for detail); secondly, it will create conditions that might impede further systems adaptation and change as interoperability requirements change.

The conditions for interoperability do not reside in the systems that happen to run at a specific point in time, but in the underlying infrastructure that supports systems operations and communications. Interoperability, then, is be more productively framed within the broader issue of the development of Information and Communication Infrastructures. The concrete possibility of attaining interoperability depends on the existence and the quality of the **underlying infrastructure** – technical, legal, organizational, and semantic and on the features of the agency that such infrastructure enables. We believe that a more satisfactory conceptualization of interoperability requires a thorough analysis of the existing infrastructure at the European level. Establishing a connection between infrastructure and interoperability will enable us to track the multiple sources of complexity that affect the building of interoperability.

7. The critical role of infrastructure

Based on the previous considerations, we suggest that in order to face the complex challenges of European e-Government it is useful to shift our focus from interoperability to the conditions that make interoperability possible (or impossible), that is, to the underlying infrastructures that support the trans-border operations and communications of nation-based systems. Looking at infrastructures allows us to develop a broader view of the complexity involved in the making of European Small Claims Online Procedures and also construct a richer conceptualization of interoperability.

We will start from the idea of information infrastructure, around which a number of scholars have done substantive research in recent years.¹⁸ An information infrastructure can be defined as “*a shared, open (and unbounded),*

¹⁸ Broadbent M, Weill P, Clair DS, Kearney A (1999) The implications of information technology infrastructure for business process redesign MIS quarterly 23 (2):159-182. Hanseth O, Lyytinen K (2010) Design theory for dynamic complexity in information infrastructures: the

heterogeneous and evolving installed base".¹⁹ In turn, the installed base is "a set of ICT capabilities and their users, operations and design communities".²⁰ Information infrastructures result from the convergence of Information Technologies and Systems and Telecommunication Technologies. Due to its elusive and ever shifting features, it's definitely not easy to grasp what an infrastructure is as a stable empirical object. An infrastructure is made of standards, protocols, gateways, converters, linkages, channels and other components that allow for certain functionalities to be implemented, connected and operated in a network. Said in a nutshell, an infrastructure is the underlying base and support for the circulation of agency. Infrastructures retain relational and ecological qualities²¹. They are not 'things' or fixed entities that can be designed *ex ante*, by sticking to a blueprint, and eventually built into a finished state. Also, they evolve over time: they are built in a piecemeal fashion, grow in reach and range, and adapt to changes in user requirements and enabling technologies. Therefore infrastructures cannot be, literally, 'designed', nor can they be designed and managed by a single overarching actor. The only thing that can be done is cultivating and nurturing them along the way as they evolve and reconfigure²².

There are many examples of working technical infrastructures that enable 'connectedness' and 'interoperability', but the most appropriate analogy that can be made is perhaps that of the railway network allowing for the circulation of trains. Likewise, industrial economists and economic historians have studied electric and telephone networks²³. Today the paramount infrastruc-

case of building internet. *Journal of Information Technology* 25:1-19. doi:10.1057/jit.2009.19. Monteiro E (1998) Scaling Information Infrastructure: The Case of Next-Generation IP in the Internet. *The Information Society* 14 (3):229-245. Ciborra CU, Braa K, Cordella A, Dahlbom B, Failla A, Hanseth O, Hepso V, Ljungberg J, Monteiro E (2000) From control to drift: the dynamics of corporate information infrastructures. Oxford University Press, USA. Contini F, Lanzara GF (eds) (2009) ICT and innovation in the public sector. European studies in the making of e-government. Palgrave Macmillan, Basingstoke (UK).

¹⁹ Hanseth O, Lyytinen K (2010) Design theory for dynamic complexity in information infrastructures: the case of building internet. *Journal of Information Technology* 25:1-19. doi:10.1057/jit.2009.19.

²⁰ *Ibid.* p. 4.

²¹ Star SL (1999) The ethnography of infrastructure. *American behavioral scientist* 43 (3):377-391. Star 1999, see footnote 1.

²² Ciborra CU, Braa K, Cordella A, Dahlbom B, Failla A, Hanseth O, Hepso V, Ljungberg J, Monteiro E (2000) From control to drift: the dynamics of corporate information infrastructures. Oxford University Press, USA. Dahlbom B, Janlert L-E (1996) Computer future. Unpublished manuscript. Hanseth O, Lyytinen K (2010) Design theory for dynamic complexity in information infrastructures: the case of building internet. *Journal of Information Technology* 25:1-19. doi:10.1057/jit.2009.19. Lanzara GF (2009) Building digital institutions: ICT and the rise of assemblages in government. In: Contini F, Lanzara GF (eds) ICT and innovation in the public sector. Palgrave, pp 9-48.

ture is the Internet. Recently, convergence between ICT and telephone network infrastructures enables access to a range of functionalities, services and systems by using the mobile phone, which becomes itself a piece of infrastructure in our own pockets. In all these instances of infrastructure, standards and protocols are core elements.²⁴

In order to provide European interoperability in the domain of Civil Justice, as in any other public sector domain, an infrastructure must be assembled that is shared by all MSs and by the potential users (citizens, enterprises etc.) as a sort of common good. The European infrastructure can be here provisionally defined as a shared platform that allows some forms and levels of interoperability and communication among diverse domains, sectors, and territories. As one can distinguish different types of interoperability²⁵, so one can distinguish different types of infrastructure in different domains. Thus, an *information infrastructure* consists of a set of standards, protocols and gateways that link the running applications, programs and systems. It connects, supports and enables the exchanges of bits, data and information between different technological and human agents. A *legal infrastructure* is made by shared legal principles, rules and procedures that link the many national jurisdictions and help them communicate and inter-operate. In legal terms, this is mainly based on the EU principles of legal cooperation and mutual recognition. A *semantic infrastructure* provides mechanisms for inter-language communication and coding, including channels or converters between different languages, that is, human or automatic interpreters and translators. An *institutional infrastructure* consists of institutional and organizational structures that can carry out the relevant administrative and business processes across national borders.

More to the point, infrastructures make interoperability possible as a particular kind of agency. When the components of an infrastructure are well functioning or not obtrusive to human action they tend to be taken for granted by the users of the infrastructure. Indeed, the user perceives itself as handling an application or a tool, or interacting with a simple interface rather than using the underlying infrastructure that makes the application run and the use of the tool possible (ex. mobile phone or faucet). Agency can then be car-

²³ David PA, Bunn JA (1988) The economics of gateway technologies and network evolution: Lessons from electricity supply history. *Information economics and policy* 3 (2):165-202. David PA, Wright G (1999) General Purpose Technologies and Surges in Productivity: Historical Reflections on the Future of the ICT Revolution. Hughes TP (1987) The evolution of large technological systems. The social construction of technological systems: New directions in the sociology and history of technology:51-82.

²⁴ Nielsen P, Hanseth O Towards a design theory of usability and generativity. In: ECIS 2010 Proceedings, 2010. AISeL.

²⁵ See the European Interoperability Framework v.2.0, 2010.

ried smoothly across systems, media and territories. When this happens, it means that the infrastructure has absorbed and hidden away from the user most of the complexity involved in the transactions. However, the infrastructure itself can reach high levels of complexity that might run against the maintenance and the smooth functioning of the infrastructure or cause the impossibility for the infrastructure to evolve over time. This is why it is so important to design infrastructures in modular components that ‘unpack’ and ‘unbundle’ complexity²⁶ (see section 9).

In the European Union, the Schengen Information System (SIS) represents a good illustration of the complexities involved in the development of infrastructures. SIS is the set of data bases, applications, and the underlying infrastructure used by the member states to collect and exchange data relevant for border control and law enforcement purposes (in particular the European Arrest Warrant). Since the nineties, SIS has evolved providing new services and progressively including new Member States. Firstly, the original system has been improved with the deployment of SIS 1+. Later on, thanks to a new evolution of the systems and of the underlying infrastructure called SISone4ALL, also Denmark, Sweden, Finland, Norway and Iceland could exchange and share data within the Schengen Information System and therefore join the Schengen area. But the original design of SIS had limitations and its extension to a larger number of countries was considered impossible or unlikely. If the infrastructure proved to be able to evolve in order to generate new services and include new users, now it has reached a dead end. Its high complexity makes it impossible to add new modules so as to provide additional functions or the access to new member states. However, efforts to replace SIS and SISone4ALL with a new SIS II have been defeated by the features of the existing infrastructure. The decision to set up SIS II dates back to 1996. After 15 years and more than 130 million Euro spent, the new platform is still under development. The difficulties faced by SIS II – analysed in detail in one of our project case studies (see chapter 10 by Marco Velicogna on EAW) – highlight a mix of technological failures at the development level, the difficult and risky migration from the old to the new data bases, and also entanglements between the legal framework (i.e. the regulations enacted to make legal and keep under control the use of SIS II) and the technological developments. Building a large information infrastructure from scratch while assuring at the same time the required compatibility with pre-existing infrastructural components soon reaches unmanageable levels of complexity.

²⁶ Hanseth O, Lyytinen K (2010) Design theory for dynamic complexity in information infrastructures: the case of building internet. *Journal of Information Technology* 25:1-19. doi:10.1057/jit.2009.19.

In spite of the central role of infrastructures in constituting and supporting interoperability, in most of the documents of the European Commission there is only occasional mention of infrastructure. The infrastructural dimension is not analytically distinguished from the system dimension, that is, from the systems and applications that run *upon* and *thanks to* the infrastructure. Thus, for example, in the technological domain interoperability is often defined as a property of a stand-alone system connected to another stand-alone systems thanks to other technological systems placed in-between (gateways, interfaces, standard protocols, guidelines etc.). Yet, interoperability is not just that; rather, it is a consequence of the features and the dynamics of the infrastructure.

Accordingly, standards, protocol, formats, guidelines are indeed mentioned as critical elements for ensuring interoperability, but their infrastructural significance is insufficiently stressed. They are not regarded as critical infrastructural elements that have a dynamic of their own. This is not at all surprising, because an infrastructure is not a ‘thing’ defined by boundaries, and is often deeply entangled with the mundane artefacts and systems of everyday use. Illustrations of mundane artefacts holding infrastructural qualities are, for example, the laptop, the credit card, the mobile phone, the passport, the faucet: they all become parts of an infrastructure when they embody standards that make them connectable to other pieces of infrastructure to the purpose of the circulation of data, money, voice, water, humans, goods and services, agency, and other things.

Similarly, there is in our opinion an insufficient consideration of the infrastructural dimension in the legal and institutional domains, where the conditions for interoperability are essentially associated to the issue of how to enforce alignment of MPs’ legal systems and institutional structures and processes in order to do joint business. We believe that efforts at designing and aligning systems without consideration for the underlying, and at present rather thin, European institutional infrastructure may become a further source of complexity.

We submit that many of the phenomena and issues we encounter in the development of the European Payment Order and the European Small Claims Proceedings Online fall outside the scope of the concept of interoperability, that is, they cannot be reduced to the problem of obtaining straight ‘linkability’ and communication between systems. Rather, they involve the design and evolutionary change of complex infrastructures that are necessary for granting *interoperability-over-time*. The concept of interoperability must therefore be assessed within the broader field of infrastructure design, which is precisely what we should investigate if we want to provide sound indications for building interoperability in EU Civil Proceedings Online. Up to this point, however, we have discussed mainly the role of infrastructures in enabling the exchanges of bits and data. We have, therefore, mainly looked at specific fea-

tures of information and communication technologies. But when technologies enter the public sector to support e-Government and e-Justice systems, the exchange of bits and data enabled by the infrastructure is useless if it is not made legal. Technologies and technology-enabled activities must be made legal to produce the expected results within legal or administrative proceedings. This is the only way by which agency can circulate and yield effects with legal validity. From an information systems perspective, judicial proceedings are regulated exchanges of data and documents required to inform the judge that will take the binding decision. The legal component is therefore no less important than the technological ones. Unfortunately, the present state of affairs in the EU is that, while an email can be adequate enough to stipulate a complex contract between private companies, in the judicial domain just one European judiciary (Finland) accepts simple emails as a legal means to file a lawsuit. Not only legal issues, but also administrative problems can hinder the circulation of agency. As we have discovered with a simple simulation of EPO and ESCP, local administrative oddities and questionable interpretation of the regulation could create bottlenecks and slow down and even interrupt the smooth execution of the procedure. Legal and institutional interoperability are thus critical for the circulation of agency.

8. Institutional infrastructure and institutional interoperability

The requirement of institutional interoperability originates from the peculiar nature of the emerging institutional configurations that unfold from the encounter of existing institutional frameworks with ICT infrastructures. Even a cursory look at the development of ICT infrastructures leads us to appreciate that achieving technical interoperability requires radical changes in the ways organizations work. In other words, as the existing organizations and administrative agencies increasingly come to share a technical infrastructure, they must change their procedures and routines, or must develop new ones in order to be able to communicate and inter-operate for the purpose of delivering public service. In this respect, new technology brings new organization. Also, new organizing capabilities must be developed, that are supported by the infrastructure. Public sector organizations become less and less self-contained systems, defined by their own in-house operations and technology, and more and more components ‘hooked up’ or ‘plugged in’ larger assemblages connected by interfaces, linkages and gateways of various kinds. As Dunleavy, Margetts, Bastow and Tinkler remark²⁷, they do not run their own operations,

²⁷ Dunleavy P, Margetts H, Bastow S, Tinkler J (2006) *Digital era governance: IT corporations, the state, and e-government*. Oxford University Press, Oxford.

at least not entirely, nor are fully in control of their own information resources. The classical Weberian model of formal bureaucratic organizations no longer seems adequate to account for their characteristics and behavior.

Even the relatively simple administrative actions contemplated by the delivery of e-services such as Money Claims On Line in England and Wales are never exclusively *owned* by a single actor, but require the coordinated and synchronized contributions of multiple actors, which must be able to map and acknowledge one another's procedures, so that issues of legitimacy, mutual recognition, accountability and validity are not raised all the time.²⁸

For example, in the specific case of MCOL we notice that the overall functionality of the service is shared and operated by a number of agencies, both public and private, which share large bodies of data circulating across the assemblage:

- the accounting company must be able to connect to software companies and to the Country Court Bulk Centre in Northampton;
- the banks and the credit card companies must be made compatible with the legal requirements for access and identification by the software applications, and viceversa;
- back up systems and offline/online interfaces must be designed in order to assure system redundancy and resistance in the case of breakdowns;
- connections to other services and functions of the public sector must be devised, for example demographic files, bio-medical files, etc.

As a further illustration of the critical role of institutional interoperability, one of the major obstacles and design problems encountered in the implementation of e-services is the lack of understanding and coordination among the several public and private agents involved in the projects, which create serious problems both for the development of a sound technical infrastructure from available components and for the seamless functioning of the system. On the contrary, the technical issues involved in making the assemblage can in general be dealt with more easily. In other words, the technology is available and can be easily adapted, while formal legal procedures, established institutional frameworks and engrained organizational routines are less prepared to accept and accommodate the new systems and technical artefacts. They cannot be easily changed. We have reason to think that this kind of problems will arise in the development of European trans-border services.

²⁸ Kallinikos J (2009) Institutional complexities and functional simplification. The case of Money Claims Online. In: Contini F, Lanzara GF (eds) ICT and innovation in the public sector. European studies in the making of e-government. Palgrave Macmillan, Basingstoke (UK), pp 174-210. See also chapter 4.

In practice, the development of full institutional interoperability at the European level is a long and difficult endeavor, and the roadmap available to-date is just a rough sketch so far. It definitely involves integrating and enriching the various Government Interoperability Frameworks existing in the EU, but the grounds and the strategies by which that can be accomplished is a matter of discussion. Interoperability implies ‘sharing’ as opposed to ‘owning’ resources, it implies open technologies, systems and software applications as opposed to a proprietary approach, so that the European public agencies may generate results that can be interconnected, re-used, and shared to the purpose of increased effectiveness. However, the dominant organizing logic of most national bureaucracies is still proprietary, based on owning and controlling resources. This logic hinders the development of effective institutional infrastructures and slows down the diffusion and sharing of platforms, frameworks, solutions, tools, and components. As a consequence, the novel institutional capabilities associated to ‘sharing’ an infrastructure do not consolidate and trans-border collaboration among agencies is difficult to achieve.

9. Sources of complexity

As we said above, critical challenges in building interoperability are, first, the control and reduction of complexity, and, second, the allocation of complexity to the different (human and non human) components of the infrastructure. Depending on what kind of infrastructure is designed, a likely consequence of bringing together European MSs to cooperate in the production of e-services could be a dramatic increase of the number of interactions among jurisdictions (interactive complexity). Also, the transition from conventional to digital services and the integration between multiple media require the mobilization and coordination of a complex mix of stakeholders, technologies, regulations, agencies, etc. The ICT infrastructure interacts with the legal and institutional infrastructures of the public sector generating complexly entangled configurations that we have called ‘assemblages’.²⁹ Research has shown that one of the reasons why carefully designed and engineered systems do not meet expectations about their use or performance is because they are too complex, often beyond the possibilities of being effectively handled by single individuals or overarching management authorities. Complexity is the most serious obstacle that may affect the circulation of agency in European Small Claim Online Proceedings Online.

²⁹ Contini F, Lanzara GF (eds) (2009) *ICT and innovation in the public sector. European studies in the making of e-government*. Palgrave Macmillan, Basingstoke (UK).

The sources of complexity are many. First of all, complexity originates from the interactions between different functional domains. Technology, the law, politics, language and the economy are such domains. Each domain is ruled by a specific code. Their interactions produce both intended and unintended effects, especially when they confront one another and claim rights of control or priority over specific issues. In other words, the different codes tend to generate competitive regimes, with tensions and frictions between them that must be resolved and streamlined.

For instance:

- Strategies for reducing complexity in the ICT domain may generate legal or bureaucratic complexity; for instance, specific technologies are not accepted because not considered compatible with legal or functional specification. This is the case of web-based access to procedural data that is often free and open in common law countries. The simple web-based connection is not legal in many European jurisdictions due to privacy concerns, and more complex technological applications have to be developed.
- Conversely, the normative requirements for the regulation of ICT solutions imposed by the law may induce unnecessary technological complexities and intricacies (such as the mandatory use of digital signature or the establishment of “access points” in Italy’s Trial on Line).
- Technology can inscribe and absorb organizational and legal complexity. For instance, the identification of users, the transmission of documents, and the registration of case-related data can be totally or partially inscribed into and delegated to technological components. Of course delegation can be done at different extents depending on the different legal rules in each national jurisdiction, easier in UK and Finland, more difficult in Italy and Portugal.
- The delegation to technology may lead, in turn, to increased organisational and legal complexity. An increased number of regulations (therefore higher legal complexity) may be required to specify how technology must work or users should operate it. An increased number of public and private organisations may be involved in the electronic delivery of the services, thus increasing the overall organisational complexity.
- The adoption of simple shared solutions such as email (in Finland), debit/credit card (MCOL in UK), or open standards and open source software applications may speed up the growth of the infrastructure in terms of number of integrated components and number of users. Such solutions enlarge the potential number of users that can have easy and low-cost access to the system, and consequently facilitate the adoption of the procedure and the circulation of agency. However, these simple solutions are not acceptable to other MSs.

- Yet, the process of choice among competitive solutions may lead software development firms and vendors to heavy lobbying and to business strategies that turn e-government development into a political and market battleground.³⁰
- A high level of political complexity may render the adoption of simple, cost-effective solutions unfeasible or make the law-making process overly time – and energy-consuming.

The relationships and the frictions between the diverse functional domains are to be resolved through smart *mediations* that make communication and inter-operation possible without paying a much too high price in terms of complexity. A whole set of interoperability problems rise from the fact that each one of these functional domains strives to work as an autonomous regulatory regime in its own right, but at the same time has to communicate with the other domains. As we will see in the cases, the efforts at making smart mediations have been unequally successful in the different countries. In many an instance the mediations themselves may become a source of complexity.

Secondly, further sources of complexity arise from the heterogeneity of the EU MSs, the different languages, legal frameworks and organizational routines, that may make trans-border communication and coordination problematic. For example, coming to the trans-border scope of EPO and ESCP, multiple language translation services to make such procedures simpler and more accessible for any European citizen may generate high semantic ambiguity and/or high bureaucratic costs, while the simple solution of using one common language for all transactions will likely put the burden on the users who must pay the costs of learning the language.

Also the different legal and technological installed bases of the judiciaries of the MS contribute to the increase of complexity, and the search for a common standard solution of identification, and secure transmission of data and documents may be difficult. As large components of the installed bases are made up of national legislation and country-specific bureaucracy and technology, it is likely that pressures upon the national installed bases to adapt to the EIF guidelines will require changes that will make them larger and more complex. Each national judiciary will try to integrate with the EIF according to its own specific characteristics, by introducing changes compatible with its own specific installed base. In the end that might result in the development of an increasingly fragmented European infrastructure – indeed, an unintended effect with respect to the goal of developing common European systems in the judiciary.

The solutions adopted for identification and signature in the four national case studies illustrate the point. MCOL uses a combination of registration

³⁰ DeNardis L (2009) Protocol politics: The globalization of Internet governance. MIT Press, Cambridge, MA.

(providing user name and password) and use of credit or debit cards. In COVL identification is based on the registration on an *ad hoc* web portal, while TOL and CITIUS adopt digital signature and external certification authorities. The last two systems works just for professional lawyers, while MCOL and COVL identification is provided also to normal citizens. Each country has the legitimate interest to promote a European solution compatible with its own system: from a national perspective it is a matter of maximum feasible simplicity. It is unreasonable to ask the English or Slovenian judiciary to develop a PKI infrastructure for digital signature, and very difficult to convince the Italian Ministry of Justice to get rid of the current reliable infrastructure.

To find an acceptable technological mediation between these different installed bases may be extremely difficult. In addition, the problem is also legal since each national technological solution is consistent with a national legal framework. The identification of mediation between the legal and technological infrastructures of the 27 member states is the task currently faced by e-Codex, and it will be rather difficult to identify a viable solution without injecting complexity in the overall architecture.

Thirdly, an additional source of complexity is **time**. As we said above, interoperability is not just a matter for today, it cannot be built once and for all by fixing a final, 'closed' solution, but must be maintained and adjusted over time. Conditions for interoperability change over time: new user needs emerge, the underlying infrastructure shifts and drifts, standards and requirements vary, legislation is modified, and new technical solutions and ICT innovations pop up in the market. All the components (legal, institutional, technological, etc.) evolve over time and the inter-temporal interactions among them generate dynamic complexity. The problem of inter-temporal harmonization affects both the different types of infrastructure at the national level and the trans-border interactions between the different national jurisdictions. What must be achieved, then, is system coordination and communication over time.

Even this cursory description shows how the growth of complexity can affect the development of European trans-border judicial systems and lead to a range of interconnected consequences, some of which unintended and not necessarily predictable. We want to stress here the highly interactive and interdependent character of the complexity effects we have described. Particularly, one may notice how an excessively high legal-procedural density, which may be called for by the adoption of leading edge ICT applications in the legal proceedings, might itself call for more organizational and administrative complexity. This might lead to the paradoxical consequence that ICT-based innovations, originally designed to the purpose of procedural and bureaucratic simplification, bring instead more bureaucratization (as it has been the case of Trial On Line in Italy).³¹

³¹ Fabri M (2009) E-justice in Finland and in Italy: Enabling versus Constraining Models.

All the sources of complexity described above have an influence on building interoperability and on the agents' capability to undertake effective action in order to issue a claim or obtain whatever service online. In other words, ineffective reduction of complexity may create conditions that seriously impair the circulation of agency across different national jurisdictions and functional domains. For example, non-ambiguous personal identification may be difficult, access to service may be problematic, the procedure may be too complex and time-consuming, etc. In this connection, our case studies show that one of the critical 'complexity' issues is the identification and the access of the user to the e-service system. As Kari Kujanen has remarked³²,

if "the e-services are built to meet the requirements for written form and signature instead of considering whether the same requirements are necessary in e-service (or even in a paper-based procedure)"

then the law is not fulfilling its primary task, that is, "enabling the citizens to have good service from the courts".

The growth of complexity may generate problems both at the level of the procedure and at the level of the infrastructure, and the two levels are closely interrelated. Firstly, complexity may affect the interfaces and procedures available to the users of e-services. For example, the enforced adoption of highly demanding and not widely diffused technological components or unfriendly interfaces and procedures makes the use of the e-justice applications difficult and keeps down the number of users. In turn, the small number of users may hinder or slow down the growth of the infrastructure, thus negatively affecting the development and deployment of the application. This was the case of digital signature ten years ago in Italy's Trial On Line, and it could also be the case of the European Small Claims Procedure Online, as our simulated experiment of ESCP suggests. Ideally, in order to effectively bootstrap the system, access to the new EU judicial procedures should be made possible with technological components already available to potential users – citizens, lawyers, court staff and judges. It is the approach followed by e-Curia, MCOL and COVL, all easily accessible from users.

Secondly, complexity may affect the infrastructure underpinning the e-service system. The development of the system requires the creation of a large number of technological and normative components, often leading to a growing number of actors in the delivery of the service. Even the simple MCOL works thanks to the operations of a number of private and public organizations, that normally are not involved in the conventional configuration of the

In: Contini F, G.F.Lanzara (eds) ICT and Innovation in the Public Sector European Perspectives in the making of e-government,. Palgrave, Basingstoke, pp 115-145.

³² Report on the First Research Seminar of the project. February 23-26, 2011.

justice systems. These actors, individual or organisational, public or private, are often connected through a network of contractual relations that further increases the complexity of the architecture. As a result, frictions between market requirements and public values, conflicts of interests, or contractual ambiguities may slow down the development of the system. Situations like vendor lock-ins may inject high levels of complexity into the system.

Indeed, there is an ambiguous relationship between procedural and infrastructural complexity. If we wish to design simple and easy to use interfaces and procedures so that the EU Civil Justice system becomes largely and concretely accessible to the mass of European citizens (this is a basic requirement of the EU policy and a critical element for success), then the infrastructure must be designed so as to absorb and black-box complexity away from the user. However, this will likely create a complexly entangled infrastructure, technological and organizational, that is hard to maintain and adapt when needed. On the other hand a much too simple infrastructure risks overloading the user with complexity that she can't practically handle, thus shunning system adoption and the further expansion of the infrastructure. The design problem then can be formulated as one of dynamic balance: at each stage of the system development process how complexity should be allocated so as to achieve an effective balance, that is, how much complexity should go in the procedure without hindering adoption and use, and how much complexity should go into the infrastructure without hindering its adaptation and change and keeping the system sustainable from a financial perspective. As the balance shifts over time, it is reasonable to begin with simple procedural solutions, that will attract the users, who then can learn to use the system, which can then be further developed with richer functionalities, that in turn will attract more users, in a positive self-amplifying feedback.

This is precisely what happened with MCOL: the web forms have been made more complex to allow a better description of the cases, and the identification engine has been moved from an ad hoc to a general purpose solution taking advantage of concurrent infrastructural developments. Also TOL, after a long development process, went online with simple payment order and is currently extending its functionalities to include the digital handling of more complex cases as civil executions and bankruptcy. A concurrent dynamic could be the development of the infrastructure to make system access and use easier. MCOL switched from the ad hoc identification described above to the multipurpose identification provided by the DirectGov portal. Slovenia's COVL too has been for easy user access and use. It also provides additional functionalities, like the search of attackable assets, that make debt recovery easier, and therefore contribute to attract users. Even e-Curia, enabling digital procedures at the European Court of Justice, has been designed to be easily accessible and support the complex litigation handled by the court.

Here one of the design principles was to have a system open to the lawyers working in most peripheral areas of the Union, not just to big law firms specialised in EU law.

10. Design questions and strategies

In proposing design strategies that respond to the critical requirement of reducing systems' complexity we must draw a clear analytical distinction between the complexity of the infrastructure and the complexity of the ICT-enabled procedure – a distinction that we have introduced in the previous section. However, they are related, in the sense that a fragmented or complexly entangled infrastructure, or a lack of it, will create problems for the design and adoption of simple procedures and applications that can support the circulation of agency. Inversely, high complexity of user interfaces and judicial procedures will hinder access to the system and the extended use of it. As a consequence the system will never take off, the underlying infrastructure will never develop, and increasing returns will not be generated. A positive, self-reinforcing learning process will not begin. Therefore both the procedural and the infrastructural complexity will affect the users.

10.1. *Design of infrastructure*

In building interoperability for European Civil Proceedings Online, and more specifically in the development of a platform supporting EPO and ESCP, the design focus should be on the infrastructure. The critical design problems reside in the development and 'cultivation' of the infrastructure in the different domains: technological, legal, institutional and semantic. Design action should then be taken in all of these domains simultaneously.

A number of questions can be posed:

- *How should the infrastructure be designed in order to reduce or at least prevent the rise of complexity?*
- *What is a viable infrastructural architecture that will enhance systems' interoperability and support low-complexity legal procedures?*
- *How does the complexity of the infrastructures bear on the EU Small Claims Online Procedure?*

We know from the research literature that infrastructures are successful when they support the agents' everyday routines without being perceived as obtrusive. Some design strategies will be sketched here according to the minimalist imperative:

- *Design system architectures that have minimal complexity (or maximum simplicity) compatible with function.*

10.1.1. Modularity

Modularity is recognized as the basic strategy to reduce complexity and enhance flexibility.³³ We generally understand modularity as a principle for decomposing a system or product into a fixed number of component modules that, once assembled, make up for the entire (bounded) system. Modularity reduces complexity by disconnecting complexity from size. Modular infrastructures are assembled with components that can be independently added to or disconnected from the whole without great loss for the functionality and the functioning of the whole. However it must be pointed out that in the case of information infrastructures modularity cannot be assumed as a principle that covers the whole of a system. Infrastructures and large-scale heterogeneous systems have no fixed boundaries, they are expanding, open ended, and multilayered, they accrue and release components in their development. Therefore we confront a sort of *layered modular architecture*³⁴, where modules from different domains happen to be assembled and connected in a sort of open-ended, evolving architecture. Also, modularity becomes a critical feature for system development and change.

10.1.2. Piecemeal development

Large scale infrastructures cannot be created or changed as a whole, but local, modular components are always up for grabs. Piecemeal development is greatly facilitated by modular structure. Tight and dense entanglements impede piecemeal development and make system change very difficult. Therefore in building infrastructure for the European judiciary the first questions we should ask are the following:

- *Which is the first piece of infrastructure that facilitates the connection between the different components? Is it a set of gateways between national systems or, alternatively, a (centralized) EU case management system for EPO and ESCP?*
- *Which is the killer application that may bring a growing number of users interested in using the system?*
- *What makes judicial agency circulate? A digital channel for docs transmission or a system providing an effective workflow (CMS)?*

Agency must be able to circulate precisely because it is the very use of the system that allows the debugging and the fine-tuning of the system (system learning), and because just in this way users will be able to learn to use the system (user learning). Infrastructures become unobtrusive and generate

³³ Simon HA (1969) *The sciences of the artificial*. The MIT Press, Cambridge, MA.

³⁴ Yoo Y, Henfridsson O, Lyytinen K (2010) Research commentary: The new organizing logic of digital innovation: an agenda for information systems research. *Information Systems Research* 21 (4):724-735.

value only when are regularly used by a large mass of users. And regular monitoring of the use of the available components has to be carried out. At present we don't even know how many EPO and ESCP are requested each year, but we suspect they are still a much too small number to bootstrap the system.

To speed up the bootstrapping we should start with designing a procedure/interface similar as much as possible to other digital experiences of potential users such as paying taxes on line, buying a flight ticket, applying for an administrative service to a local or central authority. The idea of online forms currently available seems to follow this approach but, as emerged in the simulation of EPO and ESCP, there are still too many sources of ambiguity. The guidance provided to both external users and court people is still too weak and can definitely be improved.

10.1.3. *Generativity*

Infrastructures should have generative properties, that is, they should be able to evolve through multiple extensions and ramifications that connect and integrate existing and new components.

- *How can interoperability solutions be found that are at the same time robust and effective today, but also flexible and adaptable to incoming requirements at a reasonably low cost?*

Flexibility and evolvability of systems and infrastructures are further design requirements that might be at odds with standardization, reliability and robustness. The tension between standardization and flexibility may be addressed through the concept of generativity³⁵. Generativity is the essential quality that characterizes the dynamics of information infrastructures and technological innovation. A generative infrastructure is an infrastructure that can generate novel configurations by leveraging emerging opportunities and adapting to new requirements. It is easily transformable through the application of simple rules, that is, capable of extending into new patterns. Obviously, in the case of e-government applications for delivering e-services to citizens generativity is necessarily limited by the requirements of standardization, security and reliability of the procedures.

10.2. *Design of ICT-enabled procedure*

Assuming the basic EIF principle of user-centricity for the design of the European Small Claims Procedure and European Payment Order, and keeping in mind our requirement of complexity absorption, we might approach the design problem at the micro-level beginning with the following question:

³⁵ Zittrain J (2009) *The future of the internet – and how to stop it*. Yale University Press.
Maeda J (2006) *The laws of simplicity*. Mit Press, Cambridge, MA.

- *How should the European Small Claims Procedure and European Payment Order be designed in order to be practically and swiftly used by the generic user, individual citizen, business company as expected by EU policy makers?*

To answer this question we propose here two ‘dual’ design requirements for the effective absorption of complexity: maximum feasible simplicity and maximum handleable complexity.

We move our steps from John Maeda,³⁶ who has synthetically condensed the critical design space that we are confronting by asking the dual questions:

How simple can you make it? <<<<>>>> How complex does it have to be?

Duality here means that the design problem can be expressed with two distinct and related formulations, where in either formulation the design objective becomes the constraint in the other one. That is to say that the pursuit of simplicity is subject to the requirement of variety and the pursuit of variety is subject to the requirement of simplicity. Both too much simplicity and too much variety are bad, and a well-designed procedure and system must strike a dynamic balance between the two.

Maximum Feasible Simplicity (or Minimal Feasible Complexity)

Whoever sets up to design judicial procedures online should start with the following question:

- *What is the **Maximum Feasible Simplicity** for an online procedure compatible with functionality and with fair legal and administrative procedure?*

In other words, how far can functional simplification of legal and administrative procedure go without jeopardising or nullifying the legal validity and fairness of a procedure? How much functionality (controls and safeguards) can be ‘safely’ removed from the procedure without detracting effectiveness and meaning from it? The questions hide a dilemma:

On the one hand, if we want to follow the user-centricity principle and also trigger a self-reinforcing positive feedback leading to a critical mass of users fast enough, we must design small claims online procedures that users find easy and convenient to use. But, on the other hand, simplicity of the procedure cannot go below a minimal threshold, beyond which the range of functionalities and actions available to users will become too narrow, and the procedure will not match the variety of the users’ needs and demands. In that case the procedure will fail to generate substantial value for the user, and the user will not find the procedure attractive or useful. As a result, a critical mass

³⁶ Maeda J (2006) *The laws of simplicity*. Mit Press, Cambridge, MA.

will not be generated and the system will not take off but most likely choke. Consequently, the system will not have a chance to learn from the user.

The threshold for maximum simplicity is ultimately decided or discovered by the users themselves on the basis of their experience with the procedure. If users don't feel at ease with a procedure and don't use it because they experience it as too complex for them, that will call for further simplification. In the opposite case, the users might be unsatisfied with a much too simple procedure that does not allow important functions (to the users), and in this case they will push the threshold of simplicity upwards so as to incorporate more complex functionalities.

Maximum Manageable Complexity

The dual question deals instead with the problem of excessive variety, that is *Maximum Manageable Complexity*. The threshold for 'manageability' depends both upon the user's competence and upon the technology's or the organization's capabilities to handle the complexity.

- *What is the **maximum manageable complexity** of a procedure that a user can handle, compatible with his or her limits of rationality, attention, and time?*
- *By the same token, what is the **maximum manageable complexity** that available technology and organization can accommodate?*

In other words, how much real-life variety should be kept and embodied in the procedure without risking to overwhelm the user's capability to use it or the ICT functional capabilities, and consequently jeopardise the system's overall capability to support the circulation of agency? How much complexity can be 'safely' retained and embodied in the procedure without turning into a hindrance for the circulation of agency?

In principle, the requirement of embodying a certain degree of complexity in the online procedure to better serve a wider range of potential demands (present or future) is sound. One could for example imagine that online procedures should be able to encompass and respond to litigations that involve reasonably high values and are complex enough, but still within a maximum threshold of complexity beyond which procedures, interfaces and transactions become too complex to be handled effectively. Too much complexity may then be incompatible with the smooth and timely circulation of agency. If the maximum threshold of complexity is trespassed, agency doesn't flow smoothly or is blocked, and in order to restore circulation specific agency components must be delegated to agents that come into play to handle the complexity, like for instance expert mediators (lawyers, consultants, interpreters, etc.). But that would also increase the number of transactions needed to manage the procedure and the system, which will generate higher transaction costs. The more agency is delegated, the more principal-agent chains of delegation are set up, the larger the complexity of the system. For the users an alternative to delegation could

be to engage in learning so as to bridge the gap and handle the complexity, but even this option is problematic, as most users are unwilling to pay the learning costs. This is particularly true for EPO and ESCP since for many users it will be a once-in-a-lifetime experience, therefore the learning effort will not generate a consistent flow of future benefits.

In this connection, the expected results of the simulated experiment on the UK/Italy Small Claim procedure (see chapter 2 by Marco Mellone and chapter 8 by Gar Yein Ng) should give us further indications as to the levels of complexity involved in the European Small Claims Proceedings. One of the points highlighted by the experiment is that the procedural and semantic complexity that a pro-se litigant must face is too high in relation to the very low value of the case. This calls for the support of other actors like lawyers, translators and other officers, that take over the complexity faced by the litigant, but in turn increase the complexity of the transactions, rising the cost of the procedure – a solution that would be viable if the value of the case is substantial or the frequency of the transactions is high, which does not seem to be the case for the large majority of the European courts.

At the present stage of development the national and European case studies that have been studied in the Building Interoperability project meet the design imperative of minimal complexity compatible with function to different degrees. In general, while UK's MCOL and Slovenia's COVL strike a good balance between complexity and functionality both at the procedural and infrastructural level, Italy's TOL and Portugal's CITIUS still present a number of problems.

Both the national case studies and the simulated experiment of EPO and ESCP have been carried out within the existing architectures and the legal frameworks of the Civil Proceedings (national and European). However, the case findings and the previous discussion of sources and complexity and design criteria put us in a better position to design and assess alternative institutional architectures for European Small Claims Online. In the next section we lay out possible institutional architectures.

11. Designing alternative architectures for European Civil Proceedings Online

In this final section we propose some alternative institutional architectures or scenarios and synthetically assess to what extent each of them meets the design criteria discussed in the previous section. Each of the architectures has different implications for reducing the overall complexity of the system.

A first set of scenarios is based on the establishment of new organisational arrangements; a second set is based on the development of technological

artefacts. However, technological developments are not possible without the establishment of some organisational structure supporting their functioning. Therefore the new architectures always comprise an assemblage of organisational and technological components. Technology and organization always entertain ambiguous relationships: sometimes they elide, sometimes they reinforce each other. So, it may happen that technological artefacts inscribe and absorb critical organizational functionalities, thus curbing organizational complexity, but it may also happen that new organizational components are required in order to manage technology, thus adding to organizational complexity.

Some of the scenarios can be implemented within the current normative frameworks, while others would require legal changes at national or European level. Each one of these institutional architectures entails distinct designs for the infrastructures and the procedures. They require different institutional infrastructures and different degrees of interoperability. The architectures can be variously evaluated in terms of the infrastructures' architectural complexity, in terms of the efforts expected to assemble and engineer the infrastructure, and in terms of the complexity of the legal and administrative procedures involved.

The main goal of the architectures envisaged in the following is to keep procedural and architectural complexity below the threshold of maximum manageable complexity. As we have seen in the EPO and ESCP simulated experiment reported in section 5, in many cases the complexity to be handled by citizens or companies to file a case and carry out a procedure becomes too high (in spite of deliberate efforts at simplification). As a consequence the plaintiff may make various mistakes, like for instance filing the case to the wrong court or failing to fill the form with the correct information, or else it may incur in great difficulties in paying the court fees or in getting the Court Order. These and other obstacles of various kinds interrupt the circulation of legal agency (that is, the capacity of a plaintiff resident in one country to file a case to a court of another country, or else the capacity of a court to effectively respond to citizens of a different country). Hiring a lawyer could help to solve the problem, but EPO and ESCP have been designed for empowering citizens and business, not for making them more dependent on legal intermediaries.

Also in the case of courts the procedure may reach the upper threshold of maximum manageable complexity: for example, we observed that the court involved in the simulation did not respect what is established in the EU regulations and emphasised in the EC pamphlets promoting the legal tools to citizens and companies. If the court does not transmit the EPO to the plaintiff,

agency does not circulate and the procedure is blocked. As a further example, if the court does not contemplate the acceptance of payment by credit or debit cards or wire transfer from European citizens, again agency will not be able to circulate.

Another strategy would be to further simplify the procedure, thus lowering down the threshold of maximum feasible simplicity, but this would require some radical procedural changes and will not be discussed here.

11.1. *Development of specialised organisational units*

As it has been anticipated above, a first set of scenarios concern the development of organisational units in charge of offloading the excessive amount of complexity to be handled by external users and national courts.

11.1.1. *Unified national jurisdictions*

A first option would be to establish **unified national jurisdictions for EPO and ESCP**. In several European countries EPO and ESCP have to be handled by the “normal” court with “local” territorial jurisdiction. This institutional arrangement could be improved by identifying one (or few) specific national court with jurisdiction on trans-border cases. This solution has been successfully implemented in various countries. For instance in Slovenia a central department has been established to deal in a centralized manner with the debt recovery and enforcement procedures previously handled by 44 courts. This change in the current architecture has the effect of reducing the general level of complexity without increasing costs. It simplifies the identification of the jurisdiction, since all the EPO or ESCP must be filed at one national court and not to local courts, helping to solve one of the problems of the plaintiffs and increasing the simplicity of the system.

The greater advantage of a unified national jurisdiction is to have a specialised court handling the procedures on a regular base, thus avoiding that local courts handle a few cases per year and improving the capacity of the central court to manage complexity. Indeed, this centralised solution would ease the establishment of standard procedures, and the debugging of problems and misapplications of the regulation as those identified by the simulation. It may also make the linguistic barriers less critical since it is easier to concentrate the staff with foreign languages speaking skills in the central unit, provide multilingual documentation services and more generally support learning processes.

11.1.2. *Central service unit at the European level*

A more ambitious and radical solution would be to establish **units providing services at European central level**. Here various options can be considered:

- i. a European Agency for trans-border civil litigation,
- ii. a virtual European court,
- iii. a real European Court.

i) The mission of the **European Agency** could be the handling of selected administrative or quasi-judicial activities that could be better managed in a centralized European body. It would not provide any judicial function and the competent courts would remain those established by the legislation of each Member State. The primary function of the Agency would be to facilitate the identification of the competent court and the routing of the case to the competent court. It may also provide various kinds of support to the procedure, such as advising both case parties and local (or national) courts about the steps to be followed. The Agency could also be responsible for the maintenance of the technological system (case management or e-filing application) that supports the EPO and the ESCP and that is at present being designed by e-Codex. With such functions, the agency would absorb a relevant share of the complexity currently handled by courts, plaintiffs and defendants, enabling pro-se litigation for citizens and businesses and reducing the costs of litigation.

ii) The **Virtual European Court** is a court composed by national judges appointed and trained to deal with trans-border civil litigation such as EPO and ESCP. These judges would work in their own national courts, keeping their position, status and wage, but would operate as a European court. They would handle EPO and ESCP as part of their judicial duties, but they would work in a coordinated way with colleagues handling the same cases in other countries supported by ICT. This solution, therefore, would not amount to establish a new European court with European judges, but it would be a light organisational arrangement, network-based, intendendly designed to create a community of practices and a common standard procedure. The virtual court could be supported by the European agency described above that would operate as the registry of the virtual court. This arrangement would not lead to relevant additional costs, since judges would receive their salary by member states, and would buffer national courts from the complexity involved in handling the EPO and ESCP. A more important, and positive consequence of this organisational arrangement would be the enhancement of the capacity of organisational actors to manage the complexity associated with such procedures. In addition, effective procedural standardisation would reduce the uncertainty associated with EPO and ESCP and would therefore meet the requirement the maximum feasible simplicity more effectively.

iii) The third step in such exercise would be the establishment of a “**Real**” **European Court** for trans-border civil proceedings, with European judges and clerks handling trans-border cases. The advantages of this architectural

solution in terms of procedural simplification and capacity to manage the complexity are clear, but given the high costs associated with it and the strong political will needed to set it up, we think at present it is not a viable solution.

11.2. *Development of ICT applications*

The second set of scenarios concern the development of technological artefacts and infrastructures that may absorb some of the complexity to be handled.

11.2.1. *Open national e-justice services*

Here, a first scenario is the possibility to open the existing **national e-justice services for small claims** (such as MCOL, COVL, TOL, CITIUS) to all the European citizens, business and lawyers. This is currently allowed only by Slovenia's COVL, while the other systems are open only either to citizens or to lawyers of the respective Member States. Since these applications, in most cases, are already providing good services at the national level, the possibility to extend their accessibility should be explored. With this scenario, any EU citizen could file a case in any of the e-justice services provided by the national jurisdictions. However, since this option bypasses EPO and ESCP, it will not be discussed in detail.

11.2.2. *Web-based application supporting the European procedures*

A second option, most relevant for the purposes of the project, is to identify at general level the functions and features of a **Web-based application supporting EPO and ESCP**. In this case too we should identify a solution considering the twin design principles of maximum manageable complexity and maximum feasible simplicity.

At present this is done by the forms available in the e-Justice portal and by the information provided by the European Judicial Atlas in Civil Matters. As it was shown by the experiment, they provide inadequate support to the users; consequently the circulation of agency is hindered in various ways. For instance, it is difficult, if not impossible, to pay for the court fee, to get a copy of the payment order, or to serve the sentence to the defendant through the bailiffs of another country. At the same time, the simulation has shown that the agency circulates smoothly in critical areas as the identification of the parties (the simple hand signature is accepted without any problem even in Italy) and the transmission of the form to the court through normal postal service. Therefore, as in all the case studies, the new technological components must flexibly exploit the advantages of the smart interplay between online (or digitally enabled) agency and offline agency, and pursue the goal of letting agency circulate across national borders and across different media. Indeed, in some cases agency circulates more smoothly offline than online.

Like MCOL or COVL, the new system should work as a web-based interface for both courts (judges and clerks) and external users (plaintiffs and defendants) providing strict procedural guidance and support, as well as additional services (see below). In particular, the system should provide digital channels for communication between all the actors involved, but also support offline paper-based procedures to by-pass problems emerging in the digital domain, like for instance digital signature or digital identification.

We envision that, from a functional perspective, the system could work in this way:

- Users register their credentials into the web-application supporting EPO and ESCP, and accept the terms of use of the system;
- Once they have received username and password, users can log in to the system, and through a secure web site enter the data into a web form, similar to those already developed in the new release of the “e-justice portal”;
- The web-based system should offer strict procedural guidance, support users in critical areas like the identification of the competent court and the payment of the court fee. The solution developed by e-Curia to avoid changes to the procedural document as unique identification number and hash tag can be used also in this case;
- At this stage the form must be delivered to the competent court. If users have a digital identity acceptable by EU regulation and supported by the system currently developed by e-Codex, they should be entitled to sign the form and send it digitally to the competent court. In this case, electronic filing has to be considered adequate. Eventually, the lack of this functional requirement can be bypassed by an offline procedure. The users can print the form, sign it and deliver it to the competent court through normal post. As in the previous case, a unique ID number and the hash tag are attached to the form to grant authenticity. The data entered in the form are submitted to the competent court also in digital format, but the filing can be considered completed only at the time the court receives the paper copy. In this way, also with paper filing the court has uploaded the digital file, and can take advantage of these data for its operation. All the data are saved into a web-based system;
- In both cases, the competent court receives an alert that a case has been filed with a communication that can be sent by the official e-mail address of the court;
- The court should work using the web-based application. Therefore court users, too, should have user names and passwords. Using the web-based application should ease data entry in the forms to be completed by the court, and should allow procedural checks, like the control of the court fees. As we have seen, it is critical to provide strict procedural support to the courts to avoid mistakes;

- The system should offer the possibility to print the payment order. Following the MCOL experience the court should send not just the court order but a “claim pack” with all the data and information required to reply through the web-based application or through paper. The documentation should be served by post, but also delivered digitally for the parties that have accepted the terms of use (as in e-Curia);
- The parties could also use the web-based application as a tool to stay informed about procedural developments;
- Since the use of the forms provided by the e-justice portal is mandatory, it should be equally mandatory the use of the web-application. This would provide several advantages, such as a better and more standardised handling of the procedures, and less mistakes.

More generally the idea is to create a system that is not limited to the digital transmission of procedural data and documents but that also provides an effective procedural support to users and courts. It will provide case and workflow management functions as well as document exchange and repository facilities. This will likely increase the maximum manageable simplicity for expected users, since it requires some efforts at functional simplification, closure and reduction of alternative courses of action, and would enforce a standard procedure across European jurisdictions.

Not less important, the web-based application does not need to be interoperable with other national applications. It is simply a web-based application designed to work as a self-contained system, even if in its development the possibility to build gateways and interfaces with national systems should also be considered. The decoupling between the web-application and the national e-justice systems keeps infrastructural complexity low enough without reducing the level of service provided to users. Indeed, we guess that the threshold of maximum manageable complexity would be quickly reached if the judiciaries of the member states would have to build and maintain gateways between their own systems and the European one. The decoupling also facilitates the evolvability of the system: the web-application could evolve without imposing changes to national systems, and vice versa.

Finally this, like any other technological solution, needs the support of dedicated organisational actors as those outlined above and in particular the European agency.

12. Concluding remarks

In this chapter we have set the concept of interoperability on a new ground by connecting it to the broader issues of the design of complex systems and the cultivation of large-scale infrastructures. Our argument is that, in order to foster the circulation of judicial agency across EU Member States, systems for trans-bor-

der civil proceedings online must be designed so as to meet basic requirements of simplicity and ease of use. Circulation of agency and system interoperability must be supported by European-wide technical and institutional infrastructure that is at the same time robust and adaptable to future needs. In the chapter, first we have underlined the critical importance of infrastructures for building European interoperability, and then we have unpacked and analysed sources of complexity arising in the development of relatively simple judicial procedures as those described in the case studies. Finally we have proposed some design guidelines that should be followed to minimize complexity and enhance the circulation of legal agency in the development of European civil procedures online.

The chapter's major contributions can be summarized in the following points:

1. It develops a conceptual framework to analyse the complex issues involved in building European trans-border interoperability in the domain of Civil Justice.
2. It assesses the problem of the circulation of legal and administrative agency in European Civil Proceeding Online.
3. It reframes and reassesses the idea of 'building interoperability' within the broader field of the development and cultivation of infrastructures.
4. It focuses on the dynamics of the installed base as the crucial issue in designing complex systems for European e-justice and e-government.
5. It spells out the critical importance of building institutional interoperability and developing institutional infrastructure in order to support trans-border e-service systems and at the same time allow systems evolvability and change.
6. It provides a broader understanding of the idea and implications of interoperability for the trans-border circulation of legal agency.
7. It unpacks and analyses the major sources of complexity which may hinder the circulation of legal and administrative agency within national jurisdictions and across European trans-national borders.
8. It develops design guidelines for meeting minimal complexity requirements compatible with functionality and legal fairness.
9. Finally, based on the design criteria, it proposes and assesses alternative institutional architectures to support European interoperability and infrastructure in the domain of Civil Proceedings Online and, in general, to enhance the circulation of agency in the domain of European Justice.

The chapter draws on the findings and the lessons provided by the two European case studies and the four national case studies that have been analysed in the Building European Interoperability project. The lessons learned from experiences of e-justice can be used to design online applications supporting trans-border proceedings like the European Payment Order and the European Small Claim Procedures. Also, they provide a platform to enlarge our views about building interoperability and infrastructure in the EU.

Chapter 2

Legal Interoperability: the case of European Payment Order and of European Small Claims Procedure

Marco Mellone

1. Introduction

The European Union adopted on the 12th of December 2006 the Regulation creating an European order for payment procedure¹ – which is applicable since the 12th of December 2008 – and on the 11th July of 2007 the Regulation on the European small claims procedure² – which is applicable since the 1st of January 2009.

This Regulation, together with the Regulation on the order for payment procedure, represents one of the most significant examples of the action of the European Union in the field of civil proceedings. Indeed, for the first time the European Union legislator, not only regulated certain aspects related to civil proceedings in cross-border cases (e.g. the jurisdiction, the serving of documents, the gathering of evidences etc.), but also tried to propose an autonomous model of rules governing civil proceedings.

These Regulations generated an intense debate among European scholars and practitioners: in fact, the national jurists' comments on the new rules were skeptical, while the European voices, although acknowledging some critical aspects, highlighted the wide and effective application of the EU rules throughout the territory of the European Union.³

¹ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, in OJ L 399, 30.12.2006, p. 1-32.

² Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, in OJ L 199, 31.7.2007, p. 1-22.

³ A huge number of contributions on these Regulations has been already published. See mainly: Lopez De Tejada M, D'avout L (2007) Les non-dits de la procedure europeenne d'injonction de payer, *Revue critique de droit international prive* 96 (4): 717-748; Fiorini A (2008) Facilitating Cross-Border Debt Recovery: the European Payment Order and Small Claims Regulations, *International and Comparative Law Quarterly* 57 (2): 449-465; Tsirikas D (2010) L'injonction de payer europeenne, *Zeitschrift für Zivilprozess international: Jahrbuch des internationalen Zivilprozessrechts* 14: 221-237; Campeis G, De Pauli A (2007) Prime riflessioni sul procedimento europeo di ingunzione di pagamento (regolamento n. 1896/2006/CE), Giu-

It must be added that, at present, there are very few works or reports on the practical application of Regulations No. 861/2007 and No. 1896/2006 in Europe⁴. For this purpose, according to both Regulations, Commission shall publish an official report on the practical application of these procedures in Europe.⁵

Notwithstanding with that, many issues come out from the practical application of these procedures: one of these issues concerns the lack of a common system of legal interoperability. Indeed, both European Order for payment and Small claims procedures should be based on a narrow and intense mechanism of legal interoperability between all the subjects involved (Courts, citizens, judiciary functionaries) in order to speed up the functioning of these procedures.

It must not be forgotten that the goal of these procedures is to simplify international litigation in Europe by reducing the costs in cross-border cases and by helping citizens to autonomously file claims before a Court of another Member state. For this purpose, this paper focuses on the levels and on the mechanisms of legal interoperability that both European procedures entail.

It is based on some preliminary assumptions.

First of all, the object of this paper is limited to the levels of interoperability that both the European payment order and the European Small Claims

stizia civile p. 355 ss; Défossez M (2008) Titre exécutoire européen, injonction de payer européenne et procédure européenne de règlement des petits litiges, in Défossez M (ed) *Enforcing contracts: aspects procédurales de l'exécution des contrats transfrontaliers en droit européen et international*, Larcier, Bruxelles, pp 105-116; Guinchard E (2008) *L'Europe, la procédure civile et le créancier: l'injonction de payer européenne et la procédure européenne de règlement des petits litiges*, *Revue trimestrielle de droit commercial et de droit économique*, pp. 465-483; Kramer XE (2008) *The European Small Claims Procedure: Striking the Balance between Simplicity and Fairness in European Litigation*, *Zeitschrift für europäisches Privatrecht* 16 (2): 355-373; Mellone M, Pancaldi A (2008) *Il nuovo regolamento comunitario sulle controversie di modesta entità*, *Rivista di diritto dell'Unione Europea*, pp 281-317.

⁴ Kramer XE (2010) *Enhancing Enforcement in the European Union: the European Order for Payment Procedure and its Implementation in the Member States, particularly in Germany, The Netherlands, and England*, in van Rhee CH, Uzelac A (eds) *Enforcement and enforceability: tradition and reform*, eds: Intersentia, Anvers, pp. 17-39.

⁵ See, on the one hand, Article 28 of the Regulation No. 861/2007: "By 1 January 2014, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure, including the limit of the value of the claim referred to in Article 2(1). That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State". And, on the other, article 32 of the Regulation No. 1896/2006: "By 12 December 2013, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European order for payment procedure. That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State".

procedure entail. More precisely, this paper aims, on the one hand, to determine which are, at the moment, the mechanisms of interoperability which would be necessary for the good functioning of these European procedures; on the other, to propose the possible solutions to improve the interoperability between those actors who are involved in the application of these European procedures (European Union, Member States, national Courts, citizens).

Secondly, the analysis on the levels of interoperability necessarily entails the description of some juridical aspects. These aspects are not exhaustively described, since this is not a strictly juridical paper. On the contrary, these aspects are examined with the goal to facilitate the determination of the levels and of the mechanisms of interoperability of both the European payment order and the European Small Claims procedure.

Finally, the paper uses the term “legal interoperability” in a broad sense: it does not only refer to the legal interoperability as such, but also entails many levels of “judiciary interoperability”. For this reason, the paper uses also synonyms to the term interoperability such as “cooperation”, “coordination” or “dialogue”. All these terms make reference to the concept of “interoperability” and to the need for mechanisms of coordination between the actors of the European judiciary space.

2. Legal interoperability and the preliminary aspects of European payment order and of European Small Claims Procedure - jurisdiction, *lis pendens* and service of documents

a) Jurisdiction and lis pendens. The European payment order as well as the European small claims procedure run before the national Court which is jurisdictionally competent according to the rules of international jurisdiction established by Regulation (EC) No. 44/2001.⁶ This Regulation – which has taken the place of the former Convention of Brussels of 1968 – determines the Court which has competence to bring proceedings related to civil and commercial matters.⁷

⁶ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in OJ L 12, 16.1.2001, p. 1-23. At the moment, the Commission proposed a revision of this Regulation: see the proposal in COM/2010/748 def., 14 December 2010.

⁷ There are other Regulations which set up rules on jurisdictions in international civil claims, such as Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, in OJ L 338, 23.12.2003, p. 1-29; Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, in OJ L 7, 10.1.2009, p. 1-79; Council regulation (EC) No

These rules aim to avoid conflict of jurisdiction and, therefore, to avoid those situations in which more than one Court brings proceedings on the same issue, because that would create a waste of human and economic resources inside the European judiciary space.

Indeed, if a Court of a Member State brings civil proceedings in violation of the jurisdiction rules of Regulation no. 44/2001, it is possible that the final decision adopted by that Court can not have any legal effect in all the other Member States. That happens in case of infringement of the following rules of jurisdiction:

- Rules related to the so said exclusive *fora* (article 22 and 23 of the Regulation No. 44/2001⁸);
- Rules related to the so said protective *fora* (Section No. 3, 4 and 5 of Regulation No. 44/2001⁹).

The Courts of the Member States of the European Union are requested to unanimously and correctly apply these rules in order to avoid any conflict of jurisdiction.

However, the system of jurisdiction in civil matters set up by Regulation No. 44/2001 is not so easy to apply: it is sometimes based on quite complicated criteria of connection, whose interpretation can often differ according to the Court seized.¹⁰

1346/2000 of 29 May 2000 on insolvency proceedings, in OJ L 160, 30.6.2000, p. 1-18: however, these Regulations deal with subjects not covered by the scope of the European order for payment and of European Small Claims Procedure.

⁸ Article 22 relates with the following proceedings: a) proceedings which have as their object rights in rem in immovable property or tenancies of immovable property; b) proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs; c) proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept; d) proceedings concerned with the registration or validity of patents, trade-marks, designs, or other similar rights required to be deposited or registered. e) proceedings concerned with the enforcement of judgments; Article 23 relates with *fora* chosen by the parties.

⁹ These rules on jurisdiction refer to the “weak” parties of a civil relationship, such as consumers, employees or persons who joined an insurance agreement: in such cases, these “weak” parties can bring civil proceedings before the Court of their residence, instead of the Court of the counterparty’s residence.

¹⁰ It must be added that the European Court of Justice is competent to deal with preliminary references concerning the interpretation of these rules (starting from the Treaty of Lisbon, it is also competent for preliminary references coming from European Courts not of last instance). Case-law of the European Court of Justice is huge: just for the latest (but not less important) decisions on Regulation No. 44/2001, see: 11.03.2010, C-19/09, Wood Floor Solutions, in Rep. 2010 I-02121; 25.02.2010, C-381/08, Car Trim, in Rep. 2010 I-01255; 07.12.2010, Joined cases C-585/08 and C-144/09, Pammer and Hotel Alpenhof, not yet published; 23.04.2009, C-533/07, Falco, in Rep. 2009, I-03327; 16.07.2009, C-189/09, Zuid-Chemie, in

Moreover, this system of jurisdiction is not very well known by the Courts of the Member States.

Finally, except as for rules on exclusive *fora*, there are no duties for the Court seized to check automatically (“*ex officio*”) its competence to deal with the case. In other words, if parties do not raise any exception of jurisdiction, the Court seized can declare its competence to deal with the case, although it is not actually competent to do it.

All these circumstances show that the existence of common rules on jurisdiction does not avoid the risk that two civil proceedings on the same issue can be brought before two different European Member States’ Courts.

This is the reason why the Regulation (EC) No. 44/2001 provides for a mechanism whose aim is to avoid that two different Courts can both declare their competence to deal with the same issue on the basis of different interpretation or application of the rules of jurisdiction.

This is the *lis pendens* mechanism.

According to the Regulation No. 44/2001¹¹, if two European Courts are seized on the same issue, the second Court seized from a temporal point of view must stay the proceedings, in order for the first Court seized to assess which is the competent Court between the two Court seized. In other words, only the first Court seized from a temporal point of view is competent to exam and apply the rules on jurisdiction of the Regulation No. 44/2001 and, therefore, assess which is the competent Court to deal with the issue (this is the so called “competence on competence”).

The second Court seized, even if competent according to the common rules of jurisdiction, must always stay the proceedings, except in case its competence is based on an exclusive *forum* according article 22 of the Regulation No. 44/2001.¹²

The mechanism of *lis pendens* is fundamental for the functioning of the European judiciary space¹³: indeed, if the second Court seized does not stay

Rep. 2009, I-6917; 19 aprile 2012, C-523/10, Wintersteiger, not yet published. 17.11.2011, C-327/10, not yet published. 15.03.2012, C-292/10, G, not yet published; 12.05.2011, C-144/10, Berliner not yet published.

¹¹ See article 27 of the Regulation No. 44/2001: “Where related actions are pending in the courts of different Member States, any court other than the court first seized may stay its proceedings”.

¹² European Court of Justice, 8.12.1987, C-144/86, Gubisch; 27.09.1988, C-189/87, Athanasios; 19.05.1998, C-351/96, Drouot Assurances; 8.05.2003, C-111/01, Gantner; 9.12.2003, C-116/02, Erich Gasser GmbH; 27.04.2004, C-159/02, Turner; 14.10.2004, C-39/02, Maerks Olie; 11.10. 2007, C-98/06, Freeport.

¹³ McLachlan C (2009) *Lis pendens* in international litigation. Martinus Nijhoff; Buonaiuti FM (2010) *Lis Alibi Pendens and Related Actions in Civil and Commercial Matters Within the European Judicial Area*. Yearbook of Private International Law 11: 511-564; Bogdan M (2007) *The Brussels/Lugano Lis Pendens Rule and the “Italian Torpedo”*. Scandinavian Stud-

the proceedings and declares its competence and if the first Court seized does the same, there is the high risk that two different decisions on the same issue can be adopted. In this case, those decisions can not have any legal effect in the territory of the Member State where the other decision has been issued and, in some cases, neither in all the other Member States.¹⁴

b) Service of documents. In both the above cases, it is crucial to understand when and how the first document of the process has been served upon the counterparty.

For this purpose, the European Union adopted the Regulation (EC) No. 1393/2007¹⁵: this Regulation establishes how a document can be served upon an addressee located in an European Member State and, in specific cases, determines when the service must be considered completed.

The Regulation No. 1393/2007 is based on two main levels of interoperability, both based on the mechanism of “transmitting and receiving agencies”, which are national authorities charged to deal with the service of documents abroad: a “high level of interoperability”, in which the transmitting agency sends the document to the receiving agency which serves it upon the addressee and; a “low level of interoperability”, in which the transmitting agency serves the document directly upon the addressee by postal service.

Especially in the first level of interoperability, national authorities are requested to dialogue between them in order to correctly and speedily carry out the international service of documents.

The “dialogue” between these authorities is based on the functioning of specific standard forms provided for by Regulation No. 1393/2007: these forms contain all the elements related to the nature of the document to be served and the date of service of the document.

If this “dialogue” does not work properly, the Court seized can not receive correctly information on how and when the service has been carried out and, therefore, can not correctly assess the moment and the full validity of the seizure.

ies in Law 51: 89-97; Gallagher N (2006) Parallel Proceedings, Res judicata and Lis pendens: Problems and Possible Solutions. In: Mistelis LA, Lew JDM (eds) *Pervasive Problems in International Arbitration*, Kluwer Law International; Gebauer M (2007) Lis pendens, Negative Declaratory-Judgment Actions and the first-in-Time Principle. In: Gottschalk E (ed) *Conflict of Laws in a Globalized World*, Cambridge University Press.

¹⁴ See article 34 of Regulation No. 44/2001.

¹⁵ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10.12.2007, p. 79-120. This Regulation replaces the Regulation (EC) No. 1348/2000.

Hence, there is the risk that a national Court can consider itself as the first Court seized even if the service of the act of summons or of the other initial document of the process has not actually been served upon the defender or the service has not been correctly carried out.

2.1. *Fields of legal interoperability*

Legal interoperability can be very important in order for European order for payment and European small claims procedures to be correctly started. As described before, it is important that all the subjects involved in the initial part of these procedures can fully and efficiently cooperate, by exchanging the relevant information and data.

More precisely, it is possible to determine the following fields of interoperability:

2.1.1. *Interoperability for the exchange of information aiming at the good functioning of jurisdiction and of lis pendens mechanisms*

Seized Court for an European Small Claims procedure must determine if it is competent to deal with that case and if there is another Court which has been already seized on the same issue.

At the moment, there are no mechanisms of cooperation/interoperability between the Courts of the Member States, both at European and intergovernmental levels: therefore, a Court of a Member State can not know if actually a Court from another Member State has been seized on the same matter and, if so, when it has been exactly seized, and if the latter declared its competence to deal with the case.

It is up to the parties to raise the exceptions of *lis pendens*: in other words, parties have the duty to “warn” the Courts about the circumstance that the same claim has been already filed with another Court which is supposed to be competent to deal with the case. If parties fail to do it, then the Court seized can declare its competence, even if another Court would be competent to assess the competence and even if the latter is actually competent to deal with the case.

In light of what above, if European Courts had a direct dialogue, *lis pendens* mechanism would properly work and the risk of parallel proceedings would be avoided.

Hence, Courts should be able to transmit each other the information concerning the date of the seizure, the jurisdiction grounds of the seizure and could know if a decision on the jurisdiction has been already adopted. By acting in this way, just one European order for payment or Small Claims procedure would run on the same matter.

2.1.2. *The exchange of information and data between the European competent authorities dealing with the service of documents*

As described before, *lis pendens* and jurisdiction mechanisms depend on the good functioning of the European system related to the service of documents.

These authorities should have a constant and efficient dialogue: according to Regulation No. 1393/2007, this interoperability is ensured by the use of some specific forms which are annexed to the above Regulation.

Undoubtedly, these forms play an important role for this kind of cooperation, but at the same time a narrower and more efficient interoperability is absolutely needed. These authorities should be able to exchange information and data concerning the service of documents on a common electronic platform. That would allow single authorities – and also citizens – to check at any time which is the status of the service, if there is a problem concerning the procedure of service of documents and, therefore, to carry out a faster and more efficient service for the citizens and for the Courts.

3. Legal interoperability and the running of European Order for payment and Small Claims procedures

Both European Order for payment and Small Claims procedures entail high and intense levels of interoperability between all the actors involved in these procedures.

More precisely, in the view of the European legislator, the national seized Court plays a crucial role in both procedures, being called not only to adopt a decision on the issue (“jurisdictional function”), but also to constantly dialogue and “interoperate” with parties for the correct functioning of the procedure. Indeed, normally parties do not have a “direct dialogue” and, therefore, are not called to directly exchange documents between them, but only throughout the seized Court.

In other words, these procedures does not entail horizontal mechanisms of cooperation (between the parties), but just vertical ones (between the Court and the parties).

As we will see, this “dialogue at length” between parties and Court is based on a specific communication system: the standard forms. These standard forms represent the European codified system of judiciary communication and are drawn in all the official languages of the European Union. Their (correct) use is fundamental for the good functioning of the European interoperability mechanisms and, therefore, for the correct application of these European procedures in civil proceedings.

3.1. *The European Small Claims procedure*

The EU small claims procedure applies, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed 2 000,00 Euro.

The aim of these procedure is to allow European citizens to autonomously file a so low-value claim with a Member State Court without having to ask for legal or technical assistance or, at least, reducing the applicable costs.

In order to achieve this goal, the European Small Claims Regulation provides for a very fast and easy procedure.

Plaintiff is called to file the claim before the competent Court, by using the standard claim form A, as set out in Annex I of the European Small Claims Regulation.¹⁶ This form must be duly filled out and must be filed together with the attached documents.

The competent Court makes a first assessment on the admissibility of the claim according to the scope of the Regulation (for instance, if the value of the claim is higher than 2.000,00 Euro): if the claim is outside the scope of the Regulation, the Court informs the claimant accordingly.¹⁷

At the same time, if the claim is not clear or the information provided by the claimant are inadequate, the Court informs the claimant, by using standard form B, as set out in Annex II of the European Small Claims Regulation.¹⁸ Claimant can complete or rectify the claim within the period of time indicated by the Court.

If the claim is admissible and does not need any integration, then a copy of it, together with the attached documents, is served upon the debtor.¹⁹

¹⁶ Art. 4, n. 1: The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced.

¹⁷ Art. 4, n. 3: “Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted”.

¹⁸ Art. 4, n. 4: “Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose”.

¹⁹ Art. 5, n. 2: “A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form”.

Regulation No. 861/2007 does not clearly state whether the Court or the claimant is called to serve the claim and the attached documents upon the counterparty: however, the ratio and the goal of the Regulation should suggest that the Court must do it, being otherwise the claimant obliged to bear the costs related to the service.

Defender has 30 days starting from the service of the claim in order to prepare its response and to file it before the Court seized, by *filling in Part II of standard answer Form C – or another appropriate answer document – accompanied, where appropriate, by any relevant supporting documents.*²⁰

The defender's response must be dispatched together with the relevant documents, to the claimant: in this case, Regulation clearly says that the seized Court must do it.²¹ Moreover, if defender raises a counterclaim, then plaintiff can file its response to the counterclaim before the Court seized within 30 days from the service on the defender's response.²²

After this initial exchange of documents from both parties, Court shall assess if the final decision can be already taken or if it is necessary further judicial activities.

More precisely, the Court can demand further details from the parties or take specific evidences or *summon the parties to an oral hearing.*²³

In such a case, the Court shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment.²⁴

This final decision is served upon the parties.

The European Small Claims decision is immediately enforceable in all the European member States, since it is considered as an European enforcement order: member States can not refuse its enforcement, unless it is demonstrat-

²⁰ Art. 5 n. 3: "The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form".

²¹ Art. 5, n. 4. "Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant".

²² Art. 5, n. 6: "The claimant shall have 30 days from service to respond to any counterclaim".

²³ Article 7: "1. Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or: (a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days; (b) take evidence in accordance with Article 9; or (c) summon the parties to an oral hearing to be held within 30 days of the summons".

²⁴ Article 7. 2. "The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment".

ed that it is irreconcilable with an earlier decision given in any Member State or in a third country.²⁵

The European Small Claims judgment can be challenged before the national competent Courts: time limits for the appeal as well as all the other conditions for it shall be regulated by the national proceedings rules. However, according to Regulation No. 861/2007, the review of the European Small Claims decision shall be ensured, provided that the defender could not participate to the European procedure.²⁶

3.2. *The European order for payment*

The European order for payment applies in cross-border cases related to civil and commercial matters with no value limits. It aims to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims.

In order to achieve this goal, Regulation No. 1896/2006 sets up a fast and simple procedure essentially based on the “behavior” of the debtor.

Indeed, an European order for payment is issued by the competent Court on the exclusive basis of creditor’s statement: if this order is challenged by the debtor within a 30 days limit, then an ordinary procedure shall start. If this order is not challenged by the debtor within the above deadline, then the European payment order becomes definitive and enforceable in all the European member States.

More precisely, creditor/claimant shall file the claim using standard form A as set out in Annex I of the Regulation No. 1896/2006: this form must be properly filled out with all the information concerning the claim.²⁷ However, no documents must be attached.

²⁵ Article 22. Anyway it must be proved that: “(a) the earlier judgment involved the same cause of action and was between the same parties; (b) the earlier judgment was given in the Member State of enforcement or fulfills the conditions necessary for its recognition in the Member State of enforcement; and (c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given”.

²⁶ More precisely, according to article 18 of the Regulation, the defendant shall be entitled to apply for a review provided that: “(a) (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and (ii) service was not effected in sufficient time to enable him to arrange for his defense without any fault on his part, or (b) the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly”.

²⁷ Article 17: “1. An application for a European order for payment shall be made using standard form A as set out in Annex I. 2. The application shall state: (a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which

The Court shall immediately assess if the claim falls or not within the scope of the Regulation: if not, the Court shall immediately dismiss the claim.

Moreover, the Court shall assess if the claim is clear and complete: if not, the court shall give the claimant the opportunity to complete or rectify the application: for this purpose, the Court shall use standard form B as set out in Annex II of the Regulation.²⁸

If the claimant fails to send his reply within the time limit specified by the court or if the claim is clearly unfounded, then the Court shall reject the claim by using standard form D as set out in Annex IV.²⁹

On the contrary, if the claim is admissible, it meets all the requirements indicated by the Regulation and it is not clearly unfounded, then the Court shall issue an European order for payment, by using standard form E as set out in Annex V of the Regulation.³⁰

the application is made; (b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs; (c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin; (d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded; (e) a description of evidence supporting the claim; (f) the grounds for jurisdiction; and (g) the cross-border nature of the case within the meaning of Article 3”.

²⁸ Article 9: “1. If the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use standard form B as set out in Annex II. 2. Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may at its discretion extend that time limit”.

²⁹ Article 11: “1. The court shall reject the application if: (a) the requirements set out in Articles 2, 3, 4, 6 and 7 are not met; or (b) the claim is clearly unfounded; or (c) the claimant fails to send his reply within the time limit specified by the court under Article 9(2); or (d) the claimant fails to send his reply within the time limit specified by the court or refuses the court’s proposal, in accordance with Article 10. The claimant shall be informed of the grounds for the rejection by means of standard form D as set out in Annex IV”.

³⁰ Article 12: “1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Annex V. The 30-day period shall not include the time taken by the claimant to complete, rectify or modify the application. 2. The European order for payment shall be issued together with a copy of the application form. It shall not comprise the information provided by the claimant in Appendices 1 and 2 to form A. 3. In the European order for payment, the defendant shall be advised of his options to: (a) pay the amount indicated in the order to the claimant; or (b) oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him. 4. In the European order for payment, the defendant shall be informed that: (a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court; (b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16; (c) where a statement of oppo-

The Court can also issue an European Order for payment for a part of the credit claimed: in this case, claimant/creditor shall be informed by standard form C as set out in Annex III of the Regulation and shall be invited to accept or refuse the issuing of such an European order of payment.³¹

In case the claimant/creditor refuses an European order of payment for the amount specified by the court or does not reply within the time limit specified by the court by returning standard form C, then the Court shall reject the claim, once again by means of standard form D as set out in Annex IV of the Regulation.

The European order for payment shall be served upon the defendant together with the creditor's claim: Regulation No. 1896/2006 does not clearly state whether the Court or the claimant shall serve the European order for payment. Article 12.5 just states that "*The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15*". However, in the light of the goal of the Regulation, the Court shall serve the European order for payment upon the debtor, in order to avoid any cost or inconvenience related to the service.

The debtor/defendant has 30 days from the receipt of the European order for payment to challenge it. The opposition must be lodged before the Court issuing the European order for payment, by using standard form F as set out in Annex VI of the Regulation. As for the initial claim, no documents must be attached to the opposition.

In case of opposition, the proceedings shall continue before the courts issuing the European order for payment in accordance with its internal rules of proceedings. Accordingly, claimant shall be informed whether the defendant has lodged a statement of opposition.³²

sition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event".

³¹ Article 10: 1. If the requirements referred to in Article 8 are met for only part of the claim, the court shall inform the claimant to that effect, using standard form C as set out in Annex III. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning standard form C sent by the court within a time limit specified by the court in accordance with Article 9(2). 2. If the claimant accepts the court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law. 3. If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application for a European order for payment in its entirety".

³² Article 17: 1. "If a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State

If no opposition has been lodged within the 30 days' time-limit, then the court of origin shall declare the European order for payment enforceable using standard form G as set out in Annex VII: this standard form shall be sent to the claimant.³³

Once the 30 days' time limit is expired, the European enforcement order can not be challenged anymore, except in very few and exceptional cases: more precisely, debtor must demonstrate that he/she was prevented to lodge the opposition not for him/her fault.³⁴

The European order for payment is immediately enforceable in all the European member States, since it is considered as an European enforcement order: member States can not refuse its enforcement, unless it is demonstrated that it is irreconcilable with an earlier decision given in any Member State or in a third country.³⁵

3.3. *Fields of interoperability*

Legal interoperability can be important in order for both European Small Claims and Order for payment procedures to correctly run. As described before, these procedures are based on a constant, efficient and fast dialogue be-

of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent ordinary civil proceedings. 2. The transfer to ordinary civil proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State of origin. 3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings”.

³³ Article 18: “1. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service. 2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin. 3. The court shall send the enforceable European order for payment to the claimant”.

³⁴ Article 20: 1. “After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where: (a) (i) the order for payment was served by one of the methods provided for in Article 14, and (ii) service was not effected in sufficient time to enable him to arrange for his defense, without any fault on his part, or (b) the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly”.

³⁵ Article 22. Also in this case, it must be proved that: “(a) the earlier decision or order involved the same cause of action between the same parties; and (b) the earlier decision or order fulfills the conditions necessary for its recognition in the Member State of enforcement; and (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin”.

tween all the actors involved: for this purpose, it must be underlined that both procedures fix a very severe system of time limits. For instance, according to the European Small claims procedure, defender can file his/her response within just 30 days from the receipt of the claimant's file. In the European order for payment procedure, defendant must challenge the Court's order within and not beyond 30 days from its receipt: otherwise, Court's order becomes final and enforceable.

Time limits do not only refer to parties but also to the Court seized.

For instance, according to article 5 of European Small Claims procedure, the Court seized is called to exchange documents between parties (claimant's form to defendant and defendant's response to the claimant) in just 14 days.

Therefore, in light of what above, an efficient and fast system of cooperation/interoperability is absolutely needed.

More precisely, it is possible to determine the following fields of interoperability:

3.3.1. *The dialogue between the subjects involved in the European procedures: the standard forms*

In both European procedures, the Court should play a role of "center of deposit and transmission" of the documents lodged by the parties.

This intense "dialogue" between the seized Court and parties runs through specific standard forms which are annexed to Regulations No. 861/2007 and No. 1896/2006. The content of these forms was hardly discussed during the negotiations of the Regulations, in order to achieve an efficient exchange of information regarding the dispute.

This level of interoperability based on these forms can be undoubtedly improved.

First of all, pursuant to the European Regulations, the use of the standard forms is not always mandatory and parties are free to use all the appropriate ways to participate to the procedures: for instance, according to article 5, n. 3 of Regulation No. 861/007 "*The defendant shall submit his response in any other appropriate way not using the answer form*".

The non-binding nature of these standard forms does not facilitate the "dialogue" between parties and the Court. Parties could use unilaterally prepared claim forms whose content could differ from what provided in the standard forms set up by the European Union. On the contrary, the dialogue should be based on a common language.

Secondly, these forms are not very clear in most parts and often both citizens and Courts do not know exactly how to deal with them. Indeed, according to the spirit of the European legislator, these forms should allow European citizens to autonomously file a claim with a Member State Court without having to ask for legal or technical assistance. However, their content is sometimes very complicated and hard to be understood by the average user.

An example should clarify this statement.

As said before, both the European small claims and Order for payment procedures run before the national competent Court according to jurisdictional rules established by Regulation No. 44/2001. Standard forms of both procedures obliges claimant to indicate the jurisdictional grounds for seizing the Court of that specific Member State: in this respect, it must be remembered that the international jurisdiction is a complicated matter and it is not hard to image that the average citizen may have difficulty in interpreting and correctly applying the rules of conflict (such as “the place of performance of the obligation in question” or “the place of harmful event”, etc.) established by Regulation No. 44/2001.

For this purpose, it must be remembered that both Regulations actually oblige Member States to provide information on these issues and, more generally, on how the forms must be filled.³⁶

However, these rules did not receive an effective application in the practice: that means that Member States did not set up an actual system of information and instructions for citizens on how the forms must be filled.

In particular, member States should cooperate via the *the European Judicial Network in Civil and Commercial Matters*: the European Judicial Network in Civil and Commercial Matters is a network established in accordance with Decision 2001/470/EC³⁷ whose goal is to ensure a narrow coordination between the European Union and the Member States in matters related to the application of European Union Regulations of civil judiciary cooperation.

More particularly, the European Judicial Network in Civil and Commercial matters is based on the mechanism of the “points of contact”: the points of contacts are authorities established in each Member States which are competent to deal with the application of specific European Union instruments of judiciary cooperation.

Each point of contact has the duty to exchange information on the practical application of the specific Regulation in question with all the other points of contacts, with the goal to guarantee a more efficient application of the European Union rules.

³⁶ See article 11 of Regulation No. 861/2007: “The Member States shall ensure that the parties can receive practical assistance in filling in the forms” and article 29 of Regulation No. 1896/2006: “By 12 June 2008, Member States shall communicate to the Commission: (a) which courts have jurisdiction to issue a European order for payment; (b) the review procedure and the competent courts for the purposes of the application of Article 20; (c) the means of communication accepted for the purposes of the European order for payment procedure and available to the courts; (d) languages accepted pursuant to Article 21(2)(b)”.

³⁷ 2001/470/EC: Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, OJ L 174, 27.6.2001, p. 25-31.

However, the functioning of the Judicial Network in Civil and Commercial matters should be improved: indeed, till now it did not play an effective role in the application of these European procedures. Therefore, a more intense mechanism of dialogue should be built between Member States in order to guarantee an effective exchange of the information and data concerning the practical application of these Regulations.

This dialogue can be built both at a vertical and horizontal level: at the moment, the Judicial Network in Civil and Commercial uses mostly the vertical level (European Commission – Member States). Indeed, Member States are invited to transmit data and information to the Commission, being the latter charged to classify all the data and to disclose them to the citizens.

In the future, a more horizontal approach could be adopted. Member States should dialogue between them as much as they can, by using common platform and/or communication systems.

To sum up, there is still a “gap” between the Courts and the citizens concerning the use of the standard forms set up by Regulation No. 861/2007 and No. 1896/2006: a more effective interoperability between the Court and the citizens is absolutely needed.

As for the moment, the Commission set up the “European Judicial Atlas Civil in civil matters” which is an online database³⁸ containing some information on the practical application of the European Union Regulations on civil judiciary cooperation.

A specific section of the European Judicial Atlas Civil in civil matters focuses on both the European Small Claims and Order for payment procedure: this section provides some information concerning the application of the procedures and the content of the forms to be filled.

This system can be an example of how interoperability should run in the future, because it actually helps citizens to understand the main points of the procedure and to understand how a form must be filled. Unfortunately, not all the European citizens can take advantage of this level of interoperability: indeed, citizens not having access on internet at home should find a specific desk in the national Courts providing that kind of information and providing practical assistance in order to correctly fill the forms.

3.3.2. *The means of transmission of the documents*

A fast and efficient system of transmission of documents between the subjects involved in the both European Small Claims and Order for Payment procedures (Court and Parties) is crucial for the correct functioning of these procedures.

³⁸ See http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

Indeed, the goal of these procedures is to allow citizens to autonomously file a claim with a Court located in a member State other than the State of habitual residence or domicile.

In order to achieve this goal, the European legislator aims to overcome the need for the personal lodging of documents before the Competent Court. Indeed, the personal lodging of documents would mean an increase of the costs for both parties involved in these procedures.

National member States rules on this point highly differ.

Some member States allow lodging of claims (both coming from the national territory or outside) by post or by electronic means; on the contrary, other member States do exclusively accept the personal lodging of claims before the competent Court.

The filing of claims by means other than the personal lodging creates the juridical problem to “identify” the party who is acting.

Indeed, identification normally is ensured by physical signature of the party. By the way, in the view of these European procedures, at least one of the parties is not physically resident in the State where the Court is located. Therefore, other means of transmission of documents must be examined as, for instance, the electronic transmission of documents.

The electronic transmission of documents could actually be helpful for the good functioning of the European procedures, since it would allow parties to easily file a claim with a Court located in another member State.

According to this system of transmission, physical signature does not exist: it is replaced by an electronic signature.

However, not all the member States have implemented efficient and common systems of identification of parties.

Therefore, the European legislator adopted an intermediate approach on this point: claims can be filed with the competent Court directly or by post or by any other means of transmission of documents, including electronic ones, that are accepted according to the specific member State in which the procedure is commenced³⁹. This is the so called “Court seized approach”.

This approach still limits a broad and uniform application of these procedures among the member States: cross border cases can be facilitated only in those member States where efficient and safe systems of transmission of documents have been implemented. In the other member States, citizens are still obliged to directly file their claims with the competent Court.

³⁹ See Article 4 of Regulation No. 861/2007: “The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced” and article 7.5 of Regulation No. 1896/2006: “5. The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin”.

If a document has been transmitted to a member State which accepts this kind of transmission of documents, the latter shall also recognize the (electronic) signature incorporated in that document. In other words, member States shall mutually accept and recognize the systems of identification of parties set up in an another member State, under one condition: the electronic signature must be carried out according to the common framework for electronic signature set up by EU Directive 1999/93/EC.⁴⁰

According to the above Directive an electronic signature shall be recognized in so far as it fulfills to specific requirements such as “(a) it is uniquely linked to the signatory; (b) it is capable of identifying the signatory; (c) it is created using means that the signatory can maintain under his sole control; and (d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable”. This kind of signature is defined as “Electronic Advanced Signature”.⁴¹

The European Regulation No. 1896/2006 also goes further on this point.

The electronic signature of the document shall not be required if “the member State of origin” has set up a system which permits the identification “a priori” of the users in a secure manner.

It must be underlined that the wording “member State of origin” included in article 7.6 of the Regulation No. 1896/2006 does not refer to the member State in which the document has been issued (State of transmission), but to the member State where the proceedings are commenced (State of destination).⁴²

Therefore, taking into account that normally claimant is resident in a member State other than the State where the Court is located, it is difficult to imagine that a foreign claimant could join a non-national system of identification of users.

That would reasonably be the impact of this rule on the practical application of the European Order for payment.

Moreover, it must be underlined that any reference to electronic signatures or to the common framework set up by EC Directive 1999/93 is included in the European Small Claims Regulation. Notwithstanding with this, the same juridical principles shall apply: hence, for the purpose of this Regulation, claims should be accepted if electronically signed according to the EC Directive 1999/93. Indeed, this Directive is already binding over the European member States and already allows the recognition of documents electronically signed pursuant to those conditions set up in the Directive.

⁴⁰ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, Official Journal L 013, 19/01/2000 P. 0012-0020.

⁴¹ Article 2.2 of the Directive.

⁴² Indeed, according to article 5.4 of Regulation No. 1896/2006, “court of origin’ means the court which issues a European order for payment”.

At the moment, the issue of the electronic transmission of documents has been examined by important research projects in the European Union: in particular, it must be remembered the E-CODEX project which is a co-funded project whose aim is to improve efficiency of cross-border judicial processes through standards and solutions that ease and facilitate the cross-border case-handling activities. Fourteen member States do take part of it, plus a non-member State.⁴³

4. Legal interoperability and the issue of the language: looking for an autonomous solution

Order for payment and European Small Claims procedures are European civil proceedings running before national Courts and between different nationalities' parties.

As it has been shown before, Courts and parties need to constantly communicate between them: however, they can not use the same language.

This can entail some important problems.

Indeed, juridical language is a technical language and it deeply depends on the national law. Therefore, it can not be easily or automatically translated into a different language. Otherwise, high risks of discrepancy with the original meaning can occur.

It is not my intention to go through a very deep and complicated matter, such as the relationship between law and language. Many studies have been already carried out on this subjects.⁴⁴ I just would like to point out that, within the context of the European Regulations in the field of civil proceedings, this problem becomes more and more important.

Indeed, since its foundation, the European Union's principle is the multilingualism: this means that all the Regulations and the other documents of general application must be drafted in all the official languages of the European Union.⁴⁵

At that time, this principle did not entail high complexity since, at the time of its foundation, European Union was composed by only six Member States and the official languages were four: however, many other countries joined European Union and, therefore, the total number of the official languages is now twenty-three.

⁴³ Austria, Belgium, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Malta, The Netherlands, Portugal, Romania, Spain, Turkey.

⁴⁴ Visconti J (ed) (2010) *Lingua e diritto: livelli di analisi*. LED, Milano; Morawetz T (ed) (2000) *Law and language*. Ashgate, Dartmouth.

⁴⁵ See Regulation No. 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385-386.

All the “official languages” have the same dignity and no linguistic primacy is admitted: this means that all the national versions of the European Union documents are equally considered, as stated by the Court of Justice in many occasions.⁴⁶

Therefore, the principle of multilingualism provoked more and more complexity⁴⁷, above all when it is applied to the juridical context.

At the moment, the European Regulations in this field are internally negotiated and elaborated in all the official languages of the European Union and the adopted text is then adapted to the linguistic and juridical characteristics of all the official languages of the European Union.

For this purpose, specific meetings at the European Institutions take place in order to ensure that the different “national” versions of the text negotiated reflect the original meaning of the European legislator.

Nonetheless, it often happens that some adaptations to the national language can differ from the original meaning or, at least, can lead to different interpretations or applications.

Several examples can be given: for instance, article 4 of Regulation No. 593/2008, dealing with the applicable law in international contracts of selling, states that the applicable law to the contracts of sale of goods shall be the law of the State where the seller has its habitual residence.

This rule is so applicable to the sale of goods, being understood that the European legislator intended to apply this rule to the material goods and not to the immaterial goods.⁴⁸ However, the Italian and the French versions respectively use the wordings “beni” and “biens”, which generally include also immaterial goods, while the Spanish version, more correctly, uses the wording “mercadería”, which excludes the inclusion of immaterial goods.

Therefore, the scope and the meaning of article 4 of Regulation No. 593/2008 – which is a crucial rule within the context of the above Regulation – changes according to the different versions.

Sometimes, the adaptations to the national languages are manifestly wrong and completely modify the original meaning of the text.

Just a wrong adaptation of even one word⁴⁹ is enough to completely change the meaning and the *ratio legis* of a rule or of the entire legislative text.

⁴⁶ European Court of Justice, 20.11.2011, C-268/99; 20.11.1993, C-152/01.

⁴⁷ Sacco R (2005) Language and law. In Pozzo B (ed) Ordinary language and legal language. Giuffrè, Milano; Mercatali P (ed) (1988) Computer e linguaggi settoriali. Analisi automatica di testi giuridici e politici. Franco Angeli, Milano.

⁴⁸ See the positions of the delegations at the Council in doc. n. 14708/06 of the Council at <http://register.consilium.europa.eu>, p. 43 e p. 49.

⁴⁹ Let me mention the Nobel Prize José Saramago and his work “Historia do cerco de Lisboa” in which he describes the power of the word and how even a single word can completely change the meaning of the human history.

A simple example can demonstrate it.

Article 22 of Regulation No. 2201/2003 concerning the international jurisdiction and recognition of decisions in matrimonial matters as well as matters related to parental responsibility⁵⁰ establishes common rules on recognition and enforcement of foreign decisions in matrimonial matters. The *ratio legis* of this Regulation is that decisions coming from an European member State shall be normally executed in all the European Union territory (the principle of mutual recognition of European decisions). Few exceptions to this principle are provided: in particular, European decisions shall not be recognized “where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defense unless it is determined that the respondent has accepted the judgment unequivocally”.

The *ratio legis* is to avoid the circulation of decisions in Europe if this decision comes from a judiciary procedure which did not respect the right to a fair trial.

However, the Italian translation of this article sounds in the following way: “a judgement shall not be recognized where it was given in default of appearance or if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defense unless it is determined that the respondent has accepted the judgment unequivocally”.

The Italian translation completely change the meaning of the rule and of the *ratio legis*⁵¹: therefore, according to the Italian version, an European decision shall not be recognized each time it has given in default of appearance. However, default of appearance does not automatically mean violation of the principle of fair trial: each person is free to decide to appear or not to a process.

If he or she does not, that decision must be in any case executed in the country where it has been issued as well as all around Europe: otherwise, each

⁵⁰ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, O.J. 23.12.2003, L 338/1.

⁵¹ Article 22, lett. b of the Italian version of Regulation No. 2201/2003: “La decisione di divorzio, separazione personale o annullamento del matrimonio non è riconosciuta nei casi seguenti: (...) b) quando è resa in contumacia, ovvero la domanda giudiziale o un atto equivalente non è stato notificato o comunicato al convenuto contumace in tempo utile e in modo tale da poter presentare le proprie difese, salvo che sia stato accertato che il convenuto ha accettato inequivocabilmente la decisione”.

person shall decide not to appear in order to automatically block the execution of the final decision.

Wrongful adaptations are present also in the national versions of the European Order for Payment: for instance, in the Italian version of this Regulation, the “defender” is sometimes called “imputato” which actually is used to make reference to the defender in criminal matters (the “accused person”) and not in civil matters.

4.1. *Fields of interoperability*

As it has been described above, language plays an important role in the European Regulations in civil judiciary matters, including the European order for payment and Small Claims procedures.

Courts and parties – in other words, the actors of these procedures – need to understand each other’s communication and need to “dialogue”, as far as possible, in a common language.

In order to achieve this goal, European Union legislator set up a common linguistic platform, the European Judicial Atlas in civil matters: this platform helps parties to automatically translate the standard forms of both Order for payment and Small Claims procedures into the requested language by using a specific software.

This platform allow citizens to fill the European Small Claims forms directly in the language requested: citizens fill the forms in their own language and a specific software automatically translates the forms into the language requested.

This software is undoubtedly very helpful for European citizens aiming to access to the European civil proceedings procedures: till now, it has played an important role for the good functioning of other European instruments of civil judiciary cooperation, such as the European Regulation on service of documents, the European Regulation on taking of evidences etc.

Indeed, it can highly reduce the problem of the translation of the documents⁵² in cross boarder cases, especially if the claim has a very small value claim (such as in the European Small Claims procedure). Otherwise, this citizen can be discouraged from applying for this procedure and can be lead not to start any lawsuit due to the huge costs of translation of documents.

However, it can not solve all the problems arising from the practical application of these Regulations.

First of all, the mechanism of translation of the European Judicial Atlas is based on the fact that the forms of the European Small Claims procedure are

⁵² It must be remembered that the term “documents” in the “European meaning” makes reference to the claim and to the attached documents. See European Court of Justice, 08.05.2008, C-14/07.

“standard” or, in other words, they have the same “fixed” content for all the Member States. Therefore, the translation of the Atlas is limited to these “standard” parts of the forms: no translation is provided for the parts of the forms which must be filled by the parties. For instance, no translation is provided for the part where the claimant described the nature of the issue and the object of the claim (part 8 of the Claim form - Annex 1). Therefore, citizens are however obliged to ask for the help of a translator.

Secondly, the software of European Judicial Atlas does not provide for the translation of the attached documents, such as an invoice, an agreement, a letter of intent etc. It must be remembered that both claimant and defender are called not only to respectively file the claim and the response by using the standard forms – and therefore, translating them by the ATLAS platform – but also to file the documents related to the claim or to the response.

These documents must be translated⁵³ into the language of the seized Court or to the language of the counterparty.⁵⁴

At the moment, there are no other mechanisms – at European level – for the translation of the documents which are filed together with the claim. This is an issue which is under the competence of the Member States.

The need for translation of the documents seriously risks to jeopardize the goal of the European Small Claims procedure to reduce the costs for international disputes for small value claims.

Moreover, it must be underlined that the claimant could be obliged to translate the claim and the attached documents not only in the language of the Court but also in the language of the defender. More clearly, accordingly to the rules of jurisdiction set out in the Regulation No. 44/2001, it can occur that the European Small Claims procedure runs before a Court of a State “C”

⁵³ See the European Court of Justice, 8.11.2005, C-443/03; 09.02.2006, C-473/04; 08.05.2008, C-14/07.

⁵⁴ More precisely, article 6 states: “1. The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal. 2. If any other document received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment. 3. Where a party has refused to accept a document because it is not in either of the following languages: (a) the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or (b) a language which the addressee understands, the court or tribunal shall so inform the other party with a view to that party providing a translation of the document”. At the same time, it must be added that not all the documents must be filed with the claim. According to the case law of the European Court of Justice, citizens are required to file those documents which are necessary for the Court to understand the nature of the issue and the object of claim: see, European Court of Justice, C-14/07, 08.05.2008.

other than the State of the claimant (“State A”) and other than the State of the defender (“State B”). That happens, for instance, when the object of the claim is a right on an immovable property and the parties are domiciled in two European countries other than the country where the property is located.⁵⁵

In these cases, the claimant and the defender must bear a “double” cost of translation.

The translation of the documents is required not only for the forms and for the attached documents, but also for the European Small Claims judgment.⁵⁶

Finally, it must be not forgotten that European Judicial Atlas is an on-line mechanism of translation and as such it is not available for a (still) huge part of European citizens. Therefore, a “point of access” to the European Judicial Atlas and the necessary assistance for using it, should be provided in any Court of the European Union.

5. The legal interoperability and the taking of evidences

Taking of evidences can be a crucial point for the good functioning of the European Regulations dealing with civil proceedings, especially for the European Small Claims procedure.

Indeed, in the European Order for Payment procedure the claimant is not called to attach evidences of the credit, but only to indicate them into the form.

On the contrary, the European Small Claims is an “ordinary” procedure in which both claimant and defender must prove the respective statements.

Therefore, it is possible that Parties – or the Court – need to take an evidence which is not “physically” located within the national territory of the Court seized, but in another European State.

For instance, the hearing of an important witness who is resident in an European State other than the State of the Court seized can be important for the final decision; or, a relevant document is registered by a body or owned by a person which is physically located in such foreign State.

⁵⁵ Indeed, according to article 22 of Regulation No. 44/2001, the Court of the Member State where the immovable property is located shall be competent to deal with the case.

⁵⁶ See article 21 of the Regulation No. 861/2007: “The party seeking enforcement shall produce: (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and (b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept”.

In all these cases, the taking of evidence can entail some supplementary expenses which can strongly impact on the total amount of the foreseen costs for a cross border claim.

For this reason, the European Small Claims procedure does not entail any hearing, in so far as that would oblige the parties (and above all the claimant) and/or the witnesses to bear huge costs of transfer.

An hearing shall take place only in some exceptional cases. More precisely, an hearing shall take place if the Court considers this necessary or if a party so requests.⁵⁷ This was the compromise achieved during the negotiations of Regulation No. 861/2007: indeed, European Small Claims procedure could not provide any hearing at all, since it would have been considered not in compliance with the fair trial principle, established in article 6 of the European Convention on Human Rights as far as in article 47 of the European Charter of Fundamental Rights. Therefore, it is possible that, within an European Small Claims procedure, parties or witnesses shall participate to an hearing and, hence, shall move to the country where the proceedings are brought.

Once again, the interoperability can play an important role in order to reduce the costs and the problems for taking this kind of evidence.

5.1. *Fields of interoperability*

The issue of taking of “foreign” evidences in Europe has been already examined and faced in the past by the European Union legislator. More precisely, European Union adopted Regulation No. 1206/2001⁵⁸ which provides for an important mechanism of cooperation/interoperability between the Courts of the Member States in the taking of evidences.

More precisely, Regulation No. 1206/2001 provides for two different systems of interoperability. According to the first level of interoperability, the seized Court requests to a Court of another Member State to take the evidence, as for instance to hear a witness: this is a high level of interoperability based on the mechanism of the delegation of the taking of evidences. Courts

⁵⁷ Article 5 of Regulation No. 861/2007: “The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing”. Moreover, according article 9 n. 2 “The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment. In making its decision, the court or tribunal shall take costs into account”.

⁵⁸ Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, p. 1-24.

dialogue between them – once again through specific forms attached to the above regulation – in order to exchange information and instructions on the practical application of the requests for taking of evidences.

Moreover, the cooperation is strengthened by the presence of “central bodies” which are national Authorities charged to deal with the application of this Regulation.

The second level of interoperability is based on the direct taking of evidences: the seized Court physically moves to the other Member State and directly takes the evidence (i.e. hear a witness).

This is a lower mechanism level of interoperability, since the seized Court directly carries out the judiciary activity needed, although under the express authorization of the “hosting” State.

According to the “Study on the application of Council Regulation (EC) No 1206/2001 on the taking of evidence in civil or commercial matter”⁵⁹, this Regulation was not broadly applied in the Member States. More particularly, the study shows why and how the mechanisms of interoperability should be improved in order to guarantee a broader and more effective application to the Regulation.

European Regulation No. 1206/2001 does not “close the doors” to the use of videoconferences for hearing “foreign” parties or witnesses. However, this system of communication must be available at both the Courts involved.⁶⁰

Therefore, the practical application of these technological means actually depends on the national realities.

The same approach is adopted by the European Small Claims procedure: the Court seized can use videoconferences in order to reduce costs of transfer for the parties and/or witnesses.⁶¹

However, the European legislator did not impose on the Member States the obligation to provide for video conferences in their national Courts. It should have not been a workable solution, since these technological means are very

⁵⁹ See it at http://ec.europa.eu/civiljustice/publications/docs/final_report_ec_1206_2001_a_09032007.pdf.

⁶⁰ See article 10.4 of Regulation No. 1206/2001: “The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference. The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties. If the requested court does not comply with the requirement for one of these reasons, it shall inform the requesting court, using form E in the Annex. If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement”.

⁶¹ Article 8 of Regulation No. 861/2007 states that: “The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available”.

expensive and, at the moment, are present just in some Courts of some Member States.⁶²

Therefore, as previously described, the European legislator adopted an approach based on the single Court seized: if the Court seized is equipped of the technological means for a video conference, the oral evidence can be taken by that means. Otherwise, parties and/or witnesses are obliged to bear the costs for the transfer.⁶³

Although the hearing has a residual role in the European Small Claims procedure, the interoperability between Courts and citizens based on video conferences should be encouraged.

Indeed, that would strongly reduce the costs for European citizens to participate in the hearing before a foreign Court and, at the same time, that would allow the Court seized to personally hear the parties and/or the witnesses.

Of course, this level of interoperability can facilitate not only the small value disputes, but also all the transnational disputes: the use of video conferences could strongly improve the functioning of the European judiciary space, by reducing the costs for transnational disputes and by strengthening the right of defense of the parties. Video conferences could be used for the personal hearing of the parties and/or of the witnesses and/or of the experts.

Regulation No. 861/2007 does not make any direct reference to the Council Regulation No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

However, if the mechanisms of cooperation of Regulation No. 1206/2001 was improved, the European Small Claims procedure would undoubtedly take advantage of it. Indeed, the seized Court could request to the Court where the plaintiff is domiciled to hear the latter and/or to hear witnesses who can be useful for the final decision.

⁶² At the same time, the recital No. 20 of the Regulation No. 861/2007 states that “In the context of oral hearings and the taking of evidence, the Member States should encourage the use of modern communication technology subject to the national law of the Member State where the court or tribunal is situated. The court or tribunal should use the simplest and least costly method of taking evidence”.

⁶³ It must be added that, in some cases, parties can ask for a legal aid. Member States are obliged to grant this aid within the common framework set up by the Decision 2005/630/EC.

Chapter 3

Semantic Interoperability for European Civil Proceedings Online

Marta Poblet, Josep Suquet, Antoni Roig, Jorge González-Conejero

1. Introduction. Semantic interoperability issues for the European Small Claims Procedure (ESCP) and European Order for Payment procedure (EPO)

The European Institutions are committed with the objective enshrined by the EU Treaty of maintaining and developing an area of freedom, security and justice that ensures the free movement of persons.¹ To fulfil this objective, those institutions have adopted different legal instruments in the field of judicial cooperation in civil matters having cross-border implications.² The Regulation (EC) 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (hereinafter, ESCP) and the Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (hereinafter, EPO) are two specific measures aiming at eliminating obstacles to the good functioning of civil proceedings.

While both ESCP and EPO Regulations provide standard forms to support dialogue and avoid misunderstandings, the daily practice reveals that they are not clear enough and both parties and courts may be confused as to how to deal with them. Chapter 8 presents some of those semantic issues in a simulation for a trans-border small claim (ESCP) between the United Kingdom and Italy.³ One of these semantic issues is related to language: Article 6 of the ESCP provides that the claimant may need to translate the documents to other languages, such as the language of the defendant or the language of the

¹ An updated version of this chapter will appear with Springer editorial.

² See article 67 and ss. of the Treaty on the Functioning of the European Union. Consolidated version available at <http://eur-lex.europa.eu/en/treaties/index.htm> (last accessed 6 March 2013).

³ G Y Ng (2013) Experimenting with European Payment Order and of European Small Claims Procedure. In: F Contini and G F Lanzara (eds) Building Interoperability for European Civil Proceedings Online. Bologna, Clueb, 5 et seq.

court seized. In the European judicial cooperation area, where different languages and different harmonised legal systems coexist, legal terms remain largely a matter of a particular national system. An Italian court may assign a different meaning to what an English claimant has expressed in his claimant form. The European Legal Atlas for civil matters provides online automatic translation of the application forms, but there is no translation available for the claimant's description of the nature of the issue and the object of the claim.⁴ Thus, the translation of the facts or the description of the case has been reported as a possible problem. Likewise, the same applies to attached documents such as invoices, contracts, etc. The option to appoint human translators to fill these significant gaps is exceedingly costly, and yet, state-of-the-art automatic translators do not appear to be accurate enough. In this regard, this paper will later show that we can use XML to annotate the items of a structured text (e.g., in FORM A or FORM B) but not the content therein. XML will not be useful enough when we have to translate a list of facts. Therefore, in this case, perhaps a human translator may be required.

Another concern by lay applicants may be related to factual issues such as the determination of the addresses of the competent courts or the determination of a legal interest. Factual issues may pose difficulties to applicants if the party is not able to provide the correct address or if the applicant is not versed in calculating interest.⁵ In cases like these semantics may be of little help. An additional issue is related to the individualisation of the correct jurisdiction.⁶ Here, the European Judicial Atlas in Civil Matters may be useful since its website allows an applicant to search for a competent court.⁷

Both EPO/ESCP proceedings do not provide horizontal mechanisms of cooperation between the plaintiff and the defender but vertical ones between the seized court and the parties.⁸ Since the contending parties do not have a "direct dialogue" among them, parties will need to interact with the seized court to try to solve some of these semantic problems.

A number of European countries have already developed national e-justice systems. Notably, Money Claim Online in England and Wales⁹, CITIUS in

⁴ See Part 8 of the Claim form-Annex 1.

⁵ G Y Ng (2013) Experimenting with European Payment Order and of European Small Claims Procedure. In: F Contini and G F Lanzara, (eds), *Building Interoperability for European Civil Proceedings Online*. Bologna, Clueb, 9.

⁶ *Ibid*, 5 et seq.

⁷ http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsjurisd_en.jsp?country-Session=3&txtPostalCode=08008&txtMunicipality=#statePage1 (last accessed 6 March 2013).

⁸ See Chapter 2. M Mellone (2013) *Legal Interoperability: the case of European Payment Order and of European Small Claims Procedure*. In: F Contini and G F Lanzara (eds) *Building Interoperability for European Civil Proceedings Online*. Bologna, Clueb.

⁹ <https://www.moneyclaim.gov.uk/web/mcol/welcome> (last accessed 6 March 2013).

Portugal¹⁰ or COVL in Slovenia¹¹ aim at the same core objectives: to speed up a judicial process, to decrease pending cases and therefore to reduce the judicial backlog. Moreover, automated processes contribute to reducing costs and reassigning resources to other types of requests. However, similarly to some cross-border systems, e-justice national systems may also raise some semantic issues: (i) claimants may find it difficult to express their will within a limited number of characters; (ii) courts are likely to interpret in legal terms what it was simply conveyed in plain, non-legal language, so that claimants may need legal advice to properly draft their claims; (iii) plaintiffs may also encounter other issues such as filling in certain details that may not be known. (e.g., factual aspects such as the defendant's domicile or Postal Code).

In the pages that follow we will show some tools that may contribute to solve some of these issues and we will assess how semantic interoperability can contribute to organise and clarify distributed knowledge regarding ESCP/EPO proceedings. The approach will focus on ontologies since they have proved useful in modeling legal knowledge even though they may fall short of adequately representing complex legal or judicial decision-making as a standalone solution. To address such a task, the use of legal ontologies needs to be combined with sequential modeling of the different steps of the process. Once the successive nodes are identified and represented, then semantic tools can enrich the decision-making model. The ESCP/EPO proceedings entail heterogeneous actions such as the preliminary assessment to determine whether the court is competent, rectifying or integrating the claim, or transmitting it to the defender. In order to build a successful ontology it is advisable to transform these processes into a succession of more specific issues.

The chapter is organized as follows: Section 2 focuses on the background of Semantic Web Technologies; Section 3 addresses the Semantic Interoperability issue; Section 4 provides an overview on ontologies, including features and capabilities. Section 5 discusses the suitability of the semantic interoperability toolbox which is proposed to address some of the EPO and ESCP semantic issues. Finally, Section 6 points out some conclusions.

2. Background: Semantic web technologies

In the Scientific American foundational article of 2001, Berners-Lee, Hendler and Lassila offered their vision of the future Semantic Web as “not a separate Web but an extension of the current one, in which information is

¹⁰ <http://www.dgpj.mj.pt/sections/english-version/legislative-policy/annexes/legal-projects/citius-dematerialization/citius-electronic4155/> (last accessed 6 March 2013).

¹¹ <https://covl.sodisce.si/> (last accessed 6 March 2013).

given well-defined meaning, better enabling computers and people to work in cooperation.”¹² The Semantic Web has come a long way from there, and even if the vision it is not yet in full display, state-of-the-art Semantic Web Technologies and languages offer today a new approach to managing information and processes, the fundamental principle of which is the creation and use of semantic metadata.¹³ Since metadata tell us about the content of a document we may say that metadata are semantic tags that help to organize and find information based on meaning, not just text. By applying semantics our systems can understand where words or phrases are equivalent, or they can distinguish where the same word is used with different meanings. Moreover, semantics may improve the way information is presented and, instead of a search providing a linear list of results, the results can be clustered by meaning. In a typical pre-web 2.0, people would perform legal searches based on keywords or would make up a concept believed to convey the core meaning of what is looking for. There are also more complex searches such as the “Boolean searches” where several keywords are combined with Boolean operators (AND, OR, etc.). Certain databases allow the definition of several aspects of the search (e.g., date, type of court etc.). However, these searches do not offer solutions or help towards the interaction between symbols, terms and concepts. Here is where the Semantic Web may be of use.

By applying metadata, semantics contribute to merge information in a meaningful way, removing redundancy, and summarizing where appropriate.¹⁴ The use of semantic metadata enhances the storage, search and retrieval of information together with human-computer interaction. In this perspective, the semantic web is a prolongation of the web 2.0 enriched with meaning.

The World Wide Web consortium (WW3) has been developing interoperable technologies such as specifications, guidelines, software and tools to fully develop the promise of the Semantic Web.¹⁵ Berners-Lee famous semantic web stack represents this growing level of complexity (more complex at the top) as higher layers depend on lower layers. This overall idea was to construct something (semantic web) from the current work (web) so the work done before was still of use.

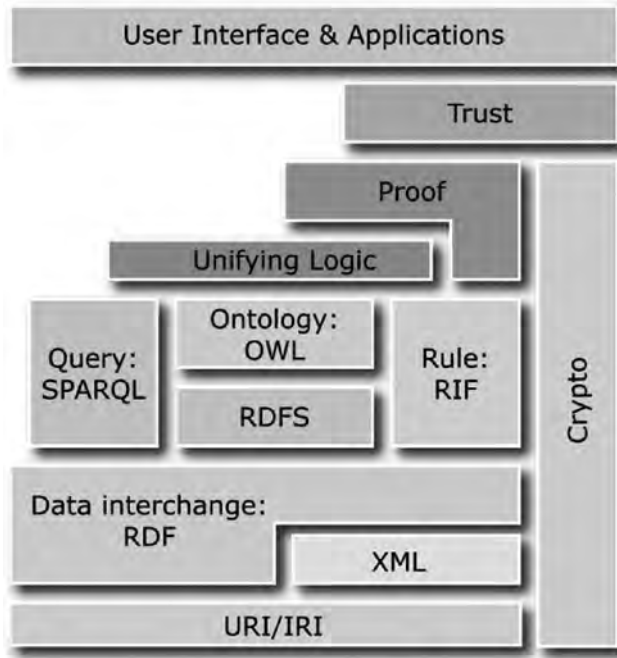
¹² T Berners-Lee, J Hendler and O Lassila (2001) The semantic web. *Scientific American* 284(5): 29-37, 29.

¹³ P Warren, R Studer and J Davies (2006) Introduction. In: J Davies, R Studer and P Warren (eds), *Semantic web technologies: Trends and research in ontology-based systems*. New York, Wiley and Sons: 1-8, 3.

¹⁴ *Ibid.*

¹⁵ <http://www.w3.org/standards/semanticweb/> (last accessed 6 March 2013).

Figure 1 - Semantic Web layer cake (T. Berners-Lee), S. Bratt version (2007). Source: W3C <http://www.w3.org/2007/03/layerCake.png> (last accessed 6 March 2013)

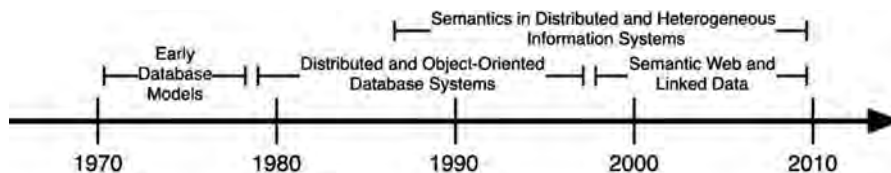


3. Semantic interoperability

Semantic Interoperability addresses the issue of knowledge representation. Alongside with other interoperability concerns, such as organizational interoperability and technical interoperability, Semantic Interoperability (SI) (also, Computable Semantic Interoperability) refers to the ability of computer systems to communicate information and have that information properly interpreted by the receiving system in the same sense as intended by the transmitting system. As Halshofer and Neuhold have recently put it, “the interoperability problem and the representation of semantics have been an active research topic for approximately four decades”.¹⁶ Figure 2 below shows the evolutionary path followed by research on semantics and interoperability from the early database models to the recent developments on Linked Data:

¹⁶ B Halshofer and E J Neuhold (2011) A retrospective on Semantics and Interoperability Research. In: D Fensel (ed), Foundations for the Web of Information and Services. A review of 20 years of Semantic Web Research. Heidelberg, Springer: 3-27, 3.

Figure 2 - Semantics and Interoperability research in Computer Science¹⁷



At the EU level, The European interoperability Framework for pan-European e-Government Services establishes that Semantic Interoperability “is concerned with ensuring that the precise meaning of exchanged information is understandable by any other application that was not initially developed for this purpose. Semantic interoperability enables systems to combine received information with other information resources and to process it in a meaningful manner”¹⁸. SI requires that any two systems will derive the same inferences from the same information. Moreover, the core objective of SI is “not only to allow information resources to be linked up but also to allow information to be automatically understandable, and, consequently, reusable by computer applications that were not involved in its creation”.¹⁹ A further distinction deals with semantic interoperability versus syntactic interoperability. The former is being understood as the meaning of data elements and the relationship between them (including vocabularies to describe data exchanges, and ensuring that data elements are understood in the same way by communicating parties). The latter is understood focusing on the exact format of the information to be exchanged in terms of grammar, format and schemas.

The European Commission has devoted a sustained effort on Semantic Interoperability policies. The Pillar II of the Digital Agenda for Europe (2010-2020) deals with Interoperability and Standards. In this regard, the European Commission recognized in 2010 that action on interoperability is essential to maximise the social and economic potential of information and communication technologies (ICT). Further on, it establishes that Semantic interoperability is jeopardised by different interpretations of the information exchanged between people, applications and administrations. Semantic Interoperability, as well as interoperability at legal, organisational, and technical level “should progressively lead to the creation of a sustainable ecosys-

¹⁷ Ibid.

¹⁸ European Commission (2004) European interoperability framework for Pan-European e-Government services version 1.0, available at: <http://ec.europa.eu/idabc/servlets/Docd552.pdf?id=19529>, 16. (last accessed 6 March 2013).

¹⁹ Ibid, 18-19.

tem (...) which would facilitate the effective and efficient creation of new European public services”.²⁰

The Semantic Interoperability Centre Europe (semic.eu)²¹ is a participatory platform and a service by the European Commission that supports the sharing of assets of interoperability to be used in public administration and eGovernment. Moreover, The Interoperability Solutions for European Public Administrations Programme (ISA Programme 2010-2015)²² – addresses this need by facilitating efficient and effective cross-border electronic collaboration between European public administrations. From the private sector, the activity of the Open Group is also devoted to Semantic Interoperability.²³

4. Information management and Ontologies

4.1. Introduction

Information management has undergone a dramatic transformation in the last decade. Moreover, the Web has become the most important channel to share multimedia contents with the whole world: music, film, television, newspapers or books have been reshaped or redefined in the digital era. Web 2.0 tools and mobile technologies have lowered the barriers not just for people to access the Internet but to create and share content.²⁴ In the social media context, “mash up”, “like”, “follow”, or “tweet” are tinged with new, widely adopted meanings. The legal domain and its huge masses of textual and multimedia contents do not remain aside from this movement.

Indeed, in the World Wide Web, there is a growing amount of unstructured legal information directly available to anyone. This is why there is an urgent need to construct conceptual structures for knowledge representation to share and manage intelligently all this information, whilst making human-machine communication and understanding possible.²⁵ As regards the legal information

²⁰ European Commission (2010) Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Towards Interoperability for European Public Services. COM (2010) 744 Final, 4.

²¹ <http://www.semic.eu/semic> (last accessed 6 March 2013).

²² http://ec.europa.eu/isa/index_en.htm (last accessed 6 March 2013).

²³ <http://www.opengroup.org> (last accessed 6 March 2013).

²⁴ M Poblet and P Casanovas (16 May 2012) Crowdsourced Crisis Mapping: how it works and why it matters. The Conversation. <http://theconversation.edu.au/crowdsourced-crisis-mapping-how-it-works-and-why-it-matters-7014> (last accessed 6 March 2013).

²⁵ N Casellas Queralt (2008) Modelling Legal Knowledge through Ontologies. OPJK: the Ontology of Professional Judicial Knowledge. Doctoral Thesis. Universitat Autònoma de Barcelona, 5.

domain, the production of legal rules has followed an inflationary path. Today, the main problems are handling the complexity and types of legal knowledge, and having reasonable ways to store, retrieve and structure a great amount of legal information.

Broadly speaking, interoperability is the ability of two or more systems or components to exchange information and to use the information that has been exchanged. It is clear that several aspects related to this topic have to be considered in a previous stage of the exchange information process. When a system is sending information, the receiver must know which type of information is receiving to allow a correct interpretation. If the information is not interpreted correctly, it becomes useless. The Semantic Web has an important application in this field. They could provide the abstraction layer needed to carry out a “negotiation” or “dialog” between the participant systems to put in common concepts, vocabulary, terms, etc. Therefore, all the participants will know the meaning (not necessarily the content) of the exchanged information. Consequently, Semantic Interoperability (SI) is able to meet requirements posed by interoperability affecting the European Payment Order (EPO) and the European Small Claims Procedure (ESCP).

An ontology describes the concepts and relationships that are important in a particular domain, providing a vocabulary for that domain as well as a computerized specification of the meaning of terms used in the vocabulary.²⁶ These applications include natural language translations, medicine, standardization of product knowledge, and electronic commerce, among others. Ontologies are specific tools to organize and provide a useful description of heterogeneous content. For humans, ontologies enable better access to information and promote shared understanding. For computers, ontologies facilitate comprehension of information and more extensive processing. In addition, there are many tools and applications to facilitate ontology management.²⁷ For instance, Protégé²⁸ is a design tool which is specifically devised to develop ontologies from many kinds of fields; and reasoning algorithms such as Pellet²⁹ provide reasoning capabilities.

²⁶ T R Gruber (1993) A translation approach to portable ontology specifications. *Knowledge Acquisition* 5(2): 199-220, 199.

²⁷ For an updated overview on languages, methodologies, and tools see i.e., M C Suárez-Figueroa, R García-Castro, B Villazón-Terrazas and A Gómez-Pérez (2011) *Essentials in ontology engineering: Methodologies, languages, and tools. Building data models: Proceedings of the 2nd workshop organised by EEB data models community*. Sophia Antipolis, Publications Office of the European Union: 9-21.

²⁸ Stanford University, Protégé, available on-line at: <http://protege.stanford.edu/> (last accessed 6 March 2013).

²⁹ E Sirin, B Parsia, B C Grau, A Kalyanpur and Y Katz (2005) *Pellet: A practical OWL-DL reasoned*. UMIACS technical report, 68.

In our scenario, we have to consider two main features that ontologies provide: i) expert knowledge acquisition; and ii) resilience to changes. The first feature is related to designers since technical skills are not necessary to develop an efficient model. So, experts in a concrete field will be able to interact directly with this tool. The second feature is related to changes that could affect ontologies over time. The world is continuously changing and ontologies, by definition, are easily adaptable tools and produce minor repercussion to the rest of the system. There are many desired extra features pointed out in Section 4.

In this report, we propose a Semantic Interoperability toolbox to deal with the legal SI issue that is concerning EPO and ESCP. This framework is composed of three different parts: i) ontologies (knowledge representation); ii) Protégé (design tool); and iii) a reasoning algorithms (provide reasoning capabilities to ontologies). The parts of this framework are described in next sections in this report.

4.2. Definitions

The term ontology has been borrowed from philosophy to be used in computer science and artificial intelligence in a technical sense. Nevertheless, there are many definitions of ontology in the computer sciences and AI domains and such definitions have changed and evolved over the years. In 1991, Neches et al. defined ontologies as a “top-level declarative abstraction hierarchies represented with enough information to lay down the ground rules for modelling a domain. An ontology defines the basic terms and relations comprising the vocabulary of a topic area as well as the rules for combining terms and relations to define extensions to the vocabulary”.³⁰ Moreover, one of the most well known definition of the AI ontology is “a explicit specification of a conceptualization”.³¹ A more complex definition establishes that “an ontology is a formal, explicit specification of a shared conceptualization. Conceptualization refers to an abstract model of some phenomenon in the world by having identified the relevant concepts of that phenomenon. Explicit means that the type of concepts used, and the constraints on their use are explicitly defined. Formal refers to the fact that the ontology should be machine-readable. Shared reflects the notion that an ontology captures consensual knowledge, that is, it is not private of some individual, but accepted by a group”.³²

³⁰ R Neches, R Fikes, T Finin, T Gruber, R Patil, T Senator and W R Swartout (1991) Enabling technology for knowledge sharing. *AI Magazine* 12(3): 36-56, 40.

³¹ Gruber, T. R. 1993. A translation approach to portable ontology specifications. *Knowledge Acquisition* 5(2): 199-220, 199.

³² R Studer, V R Benjamins and D Fensel (1998) Knowledge engineering: Principles and methods. *Data and Knowledge Engineering* 25(1-2): 161-197, 184.

One of the goals of ontologies is the construction of a catalogue of categories that exist in reality, connected with the classification and organisation of knowledge.

The four characteristics present in a general ontology are: 1) “*conceptualization*” which refers to an abstract model of some phenomenon in the world, which identifies the relevant concepts used; 2) “*explicit*” which means that the type of concepts used and constraints on their use are explicitly defined; 3) “*formal*” which refers to the fact that the ontology should be machine readable; and 4) “*shared*” which reflects the notion that an ontology captures consensual knowledge.

Ontologies can be classified, according to the issue of the conceptualization into:³³

- Representation ontologies or meta-ontologies. They capture the representation primitives used to formalize knowledge in a given knowledge representation.
- General or upper-level ontologies. They classify the different categories of entities existing in the world. Very general notions which are independent of a particular problem or domain are represented in these ontologies. The knowledge acquired is applicable across domains and includes vocabulary related to things, events, time and space.
- Domain ontologies. They are more specific ontologies. Knowledge represented is specific to a particular domain. They provide vocabularies about concepts in a domain and their relationships, or about the theories governing the domain.
- Application ontologies. They describe knowledge pieces depending both on a particular domain and task.

Further to ontologies, taxonomies represent a classification of the standardised terminology for all required and involved terms within a knowledge domain. In a taxonomy, all elements are grouped and categorised strictly hierarchical and are usually presented by a tree structure. In a taxonomy, the individual elements are required to reside in the same semantic scope, therefore all elements are semantically related with each other to a certain degree.³⁴

³³ N Guarino (1998) Formal ontology and information systems. In: N Guarino (ed) Formal ontology in information systems. Proceedings of FOIS'98, Trento, Italy, 6-8 June. Amsterdam, IOS Press: 3-15.

³⁴ See the Semic glossary at: <http://www.semic.eu/semic/view/smeta/Glossary.xhtml> (last accessed 6 March 2013).

4.3. *Ontology design tools: Protégé*

Protégé is specifically devised to develop ontologies from many kinds of fields. Due to its features and properties, it is ideal to acquire and manage knowledge in our scenarios. On the other hand, Pellet is an open source “reasoner” that also provides high features to manage knowledge.

There are several ontology languages available in the literature (like OWL or WSMO family) with different expressiveness and reasoning capabilities.³⁵ The main criteria for the selection of an ontology language are its knowledge representation mechanism and the inference support needed by an application. The high complexity required by the knowledge modelling requires a representation language with high semantic expressiveness. OWL combines the required expressiveness for ontologies and the compliance to W3C standards, which turns it as the most appropriate language.

Protégé is a suite of tools for ontology development and use developed at Stanford University.³⁶ It is the main framework used in the Institute of Law and Technology at the Universitat Autònoma de Barcelona (IDT-UAB)³⁷ in those projects implementing ontologies. Its main features are: 1) it is a free, open source platform that provides a suite of tools to construct domain models and knowledge-based applications with ontologies; 2) it also implements a rich set of knowledge-modelling structures and actions that support the creation, visualization, and manipulation of ontologies in various representation formats; 3) the framework supports two main ways of modelling ontologies via the Frames and OWL editors; and 4) ontologies can be exported into a variety of formats including RDF(S), OWL, and XML Schema.

Protégé is extensible, based on Java and provides a plug-and-play environment that makes it a flexible base for rapid prototyping and application development. In the Protégé knowledge model, terminologies and ontologies are represented using “frames” (classes, slots and facets). *Classes* are the entities and sometimes named “concepts” in terminologies. *Slots* describe properties or attributes of classes. *Facets* describe characteristics of slots. An ontology in Protégé consists of frames and axioms. Axioms specify additional constraints. An instance is a frame built from at least one class that carries particular values for the slots. A “knowledge base” includes the ontology (classes, slots, facets and axioms) as well as instances of particular classes with specific values for slots.

³⁵ See <http://www.w3.org/standards/semanticweb/> (last accessed 6 March 2013).

³⁶ <http://protege.stanford.edu> (last accessed 6 March 2013).

³⁷ <http://idt.uab.es> (last accessed 6 March 2013).

Figure 3 - Protégé Framework in a GNU/Linux Environment



4.4. Ontology applications

Ontologies are of a key importance in order to promote interoperability services. The Institute of Law and Technology (IDT-UAB) has been involved in different projects in the field of semantic interoperability, including annotation and search and retrieval, where defining and implementing one or more ontologies was a core task in all these projects. This has been the case with the IURISERVICE, INTEGRA, ONTOMEDIA, and CONSUMEDIA projects that are featured below.

4.4.1. Interoperability

The INTEGRA project (Research on Technologies for Decision Making in Immigration Policies) aims at developing intelligent systems to manage migration flows in both regulated and non-regulated EU borders, with a global perspective of the problem and an approach to a European solution.³⁸ The growing differences in the development of the first and third world have caused that migratory movements have multiplied exponentially over the last decade. Migration is one of the most important challenges that face developed countries because of the effect it has on the demographic structure of both sending and receiving countries. The European Union is composed by many different countries with different languages. Furthermore, each country

³⁸ INTEGRA (Research on Technologies for Decision Making in Immigration Policies); CDTI-Spanish Ministry of Industry, Tourism, and Commerce, Contract 15/02/2008.

has different legislations and documentation to regulate migration.³⁹ Ontologies could provide an abstract layer to represent the knowledge acquired from legislations and documentation from each country, making the exchange of information possible. Indeed, the INTEGRA Project is a good example of interoperability between different databases:

The first database taken into account within the INTEGRA Project is the Schengen Information System of second generation (SIS II).⁴⁰ SIS II has several elements: One main system (SIS II core); one national system («N. SIS II») in each Member State (the national data Systems that communicate with the central SIS II); One Communications infrastructure between the central system and the national systems that provide a SIS II network and the data share between the national services responsible (SIRENE services). Furthermore, the Visa Information System (VIS) was also taken into account in the project. The VIS system is useful for the fulfilment of the common visa policy, the Consulates cooperation and the requirements of the National institutions responsible for the Visa.⁴¹ Moreover, the EURODAC database helps in the management of the requests for Asylum. It is possible to compare the different fingerprints for the proper implementation of the Dublin Convention⁴². Member States can verify whether a person that solicits Asylum in one country has already done the requirement in another member State. There is a central unity coordinated by the European Commission, a central database, and Electronic communication devices between member States and the core institution. The fourth database taken into account was TECS. This is an information system provided by the “Europol Convention.”⁴³ The Europol Information System (TECS) has three main elements: One indexing system; One

³⁹ M Poblet and J J Vallbé (2011) Children immigration in the Catalan parliamentary debate: The empty set. *Culture, Language, and Representation* 9: 135-171.

⁴⁰ Decision 2007/533/JAI of the Council, June 12th 2007, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:205:0063:01:EN:HTML>, Regulation (CE) n° 1987/2006 of the European Parliament and of the council, of December 20th 2006, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:381:0004:01:EN:HTML>.

⁴¹ Regulation (CE) n° 767/2008 of the European Parliament and the Council, of July 9th 2008, on the Visa Information System (VIS) and the short term visa data sharing between member States (Regulation VIS). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0060:01:EN:HTML>, and Decision of the Commission 2009/377/CE, May 5th 2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:117:0003:01:EN:HTML>.

⁴² Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>.

⁴³ See the website of Europol at <https://www.europol.europa.eu/content/page/about-europol-17> (last accessed 6 March 2013).

information system: Europol Information System (EIS); One analysis System: Europol Analysis System (OASIS).

The main interest of those database structures and systems of coordination is the fact that the central structure does not substitute the National ones, but is added to them. This is perhaps similar to what can be done with EPO and EPSC, where no central procedure is considered, but rather a network and a coordination of National procedures.

The INTEGRA project produces two ontologies aimed at managing interoperability for countries within the Schengen treaty. The first one is focused on document matching to provide interoperability among different kind of documents that are used in the European Union to identify people (e.g. passports, ID cards, etc.). These documents are usually issued in the language of its country. In this situation, the ontology provides a thesaurus that is able to help border agents to identify the document that they are handling. The second one is specifically devised to provide interoperability among different Law Enforcement Agencies within Europe. The main target of this ontology is to identify the permissions granted to agents in function of their country and position within the Law Enforcement Agencies.

4.4.2. Annotation

Files carry a meaning which can be very versatile. For a human, the meaning of the message is immediate, but for a computer that is far from true. This discrepancy is commonly referred to as the *semantic gap*. Semantic annotation is the process of automatically detecting the presence of a concept in a file. Therefore, the annotation process aims at expressing the semantics of information, improving information seeking, retrieval, classification, understanding and use. With the emergence of the Semantic Web, ontology based document annotation has been the focus of many projects and applications, since the availability of annotated content is one of the key challenges to overcome in order to make the Semantic Web a reality. The ONTOMEDIA⁴⁴ projects are another example of the application of ontologies to annotate digital documents.

The ONTOMEDIA projects aim at developing an ODR web platform for users and professionals to meet in a community driven portal where contents are provided by users and annotated by the platform. The ODR Web platform is tailored in the Business-to-Consumer (B2C) domain although later on it may be extended to other domains such as family, health care, labour, envi-

⁴⁴ ONTOMEDIA (Semantic Web, Ontologies and Online Dispute Resolution); Spanish Ministry of Science and Innovation, CSO2008-005536/SOCI); ONTOMEDIA (Ontologies and web Services for Online Mediation); Spanish Ministry of Industry, Tourism and Commerce) TSI-020501-2008-131.

ronment, etc.⁴⁵ Citizens (both professionals and users of mediation services) can use any kind of devices to access the portal (computers, smart phones), and in any format suitable to their purposes (text, speech, video, pictures). Ontologies are used to annotate all kind of contents and also to help to analyze multimedia content.⁴⁶ The multimedia analysis is devoted to enhancing the information a mediator possesses during a mediation session, capturing mood changes of the parties and any other psychological information inputs that can be useful for mediators, just as if they were in a room with the users of the mediation service. All types of metadata will be automatically extracted and stored to be further used within the mediation process. ONTOMEDIA also foresees the application of mediation services as tasks within a mediation process that will be formally described by means of both process ontologies and mediation ontologies.

4.4.3. *Search and Retrieval*

In the Information Era, the amount of digital documents stored by enterprises and people has been multiplied exponentially. In this scenario, the search and retrieval of this information has become an important challenge. Usually, the search by a keyword or a concrete string is not efficient due to the heterogeneous origin of the documents. In addition, the relevance of a document could be determined by the context and not only by the keyword or the string which performs the search. The use of ontologies to overcome the limitations of keyword-based search has been put forward as one of the motivations of the Semantic Web since its emergence in the late 90's.

The IURISERVICE application was designed to provide Spanish judges in their first appointment with online access to an intelligent Frequently Asked Questions system (iFAQ), consisting of a repository of practical questions (problems that newly recruited judges were likely to face) with their corresponding answers.⁴⁷ The aim of the system was to discover the best semantic match between the users' input question in natural language and the stored

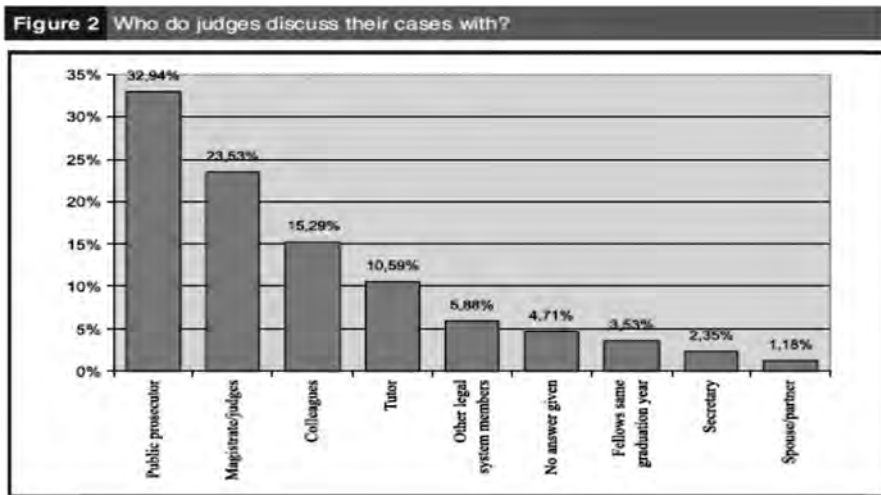
⁴⁵ M Poblet, P Casanovas, J M Lopez-Cobo, A Cabrerizo and J A Prieto (2010) The Onto-media project: ODR, relational justice, and multimedia. In: D Bourcier, P Casanovas, M D de Rosnay and C Maracke (eds) Intelligent multimedia: Managing creative works in a digital world. Florence: European Press Academic Publishing: 349-364.

⁴⁶ Ibid.

⁴⁷ IURISERVICE has been developed within the framework of different national and international research projects: SEKT (Semantically Enabled Knowledge Technologies); UE (VI Framework Program, Information Society Technologies); EU-IST 2003-506826; IURISERVICE I (Design of an online network to support newly recruited judges); Spanish Ministry of Science and Technology, FIT-150500-2002-562; IURISERVICE II (Design of an online network to support newly recruited judges); Spanish Ministry of Science and Technology; FIT-150500-2003-198.

questions. The search engine was enhanced with a legal ontology: the Ontology of Professional Judicial Knowledge (OPJK) and semantic distance calculation. The initial set of practical questions from newly recruited judges had been extracted from previous interviews with incoming judges as part of an extended fieldwork in Spanish Courts. The answers to these questions were left to senior judges from the Spanish School of the Judiciary.⁴⁸ Eventually, these pairs of questions and answers composed the initial repository of the system.

Figure 4 - Shows who do judges discuss their cases with



Secondly, this list of questions provided the input knowledge for the OPJK ontology, which ought to represent the relevant concepts related to the problems that take place during the on-call period, the knowledge contained in the list of questions. Therefore, the conceptualization process of the Ontology of Professional Judicial Knowledge was based on the previous and careful knowledge acquisition stage. This comprehended the acquisition of the list of questions and the treatment of this corpus in order to obtain relevant terminology related to practical problems faced by judges in their first appointment, through term extraction from the corpus of questions faced by judges.

⁴⁸ P Casanovas, M Poblet, N Casellas, J Contreras, R Benjamins and M Blazquez (2005) Supporting newly-appointed judges: A legal knowledge management case study. *Journal of Knowledge Management* 5(9): 7-27.

Figure 5 - Overall architecture for IurisService FAQ

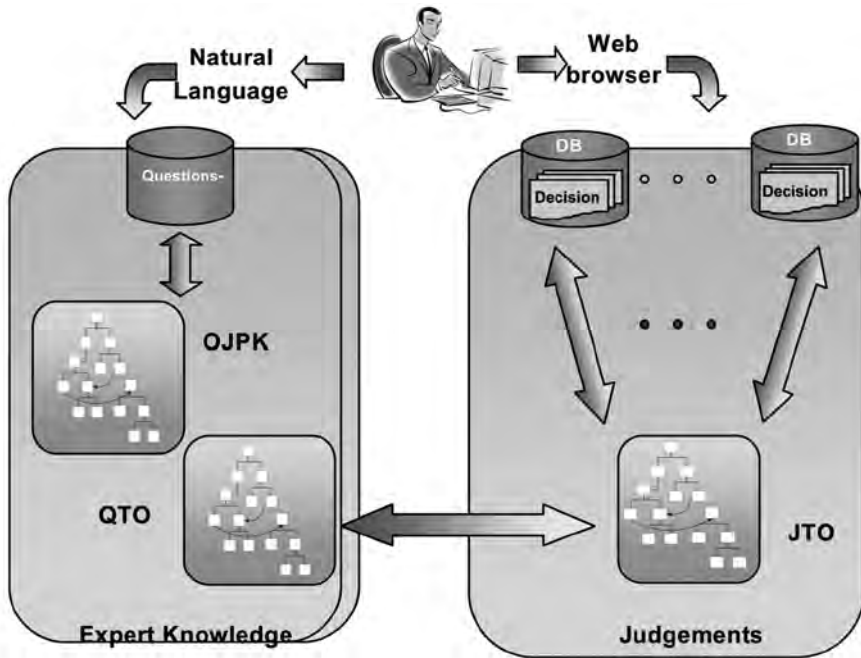
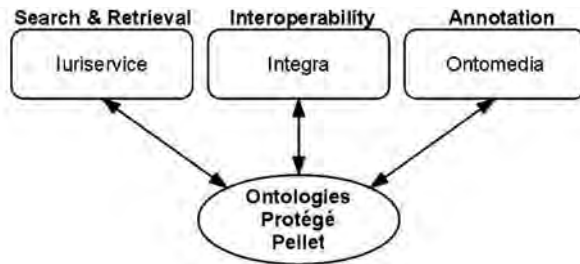


Figure 6 - Ontological applications in IDT research projects



4.5. Ontology population

The manual performance of ontology development and population is labour and cost-intensive. If population of ontologies has to be done manually by humans it cannot be taken the most out of ontologies. Therefore, it is of paramount importance to develop a maximum level of automation for those tasks. For this purpose, the identification and extraction of terms that play an

important role in the domain under consideration, is a vital first step.⁴⁹ Semi automatic knowledge acquisition has relied on the advancement of Natural Language Processing techniques (NLP). This is a field of computer science and linguistics concerned with the interactions between computers and human – natural – languages and it is aimed at identifying the relevant terms of a corpus. They are based on linguistic information, statistical methods, or on hybrid approaches.⁵⁰

Automatic term recognition (also known as term extraction) is a crucial component of many knowledge-based applications such as automatic indexing, knowledge discovery, terminology mining and monitoring, knowledge management and so on. Term recognition has been performed on the basis of various criteria. The main distinction we can make is between algorithms that only take the distributional properties of terms into account, such as frequency and extraction techniques that use the contextual information associated with terms.⁵¹

Ontology population is a crucial part of knowledge-based construction and maintenance that enables us to relate text to ontologies, providing on the one hand a customised ontology related to the data and domain with which we are concerned, and on the other hand a richer ontology which can be used for a variety of semantic web-related tasks such as knowledge management, information retrieval, question answering, semantic desktop applications, and so on. Ontology population is generally performed by means of some kind of ontology based information extraction (OBIE). This consists of identifying the key terms in the text (such as named entities and technical terms) and then relating them to concepts in the ontology. Typically, the core information extraction is carried out by linguistic pre-processing (tokenisation, POS tagging etc.), followed by a named entity recognition component, such as a gazetteer and rule-based grammar or machine learning techniques.

⁴⁹ D Maynard, Y Li and W Peters (2008) NLP techniques for term extraction and ontology population. In: P Buitelaar and P Cimiano (eds) *Ontology learning and population: Bridging the gap between text and knowledge*, Amsterdam: IOS Press: 107-127.

⁵⁰ M Fernandez-Barrera (2011) *User-generated knowledge through legal ontologies: How to bring the law into the semantic web 2.0*. Doctoral thesis. Florence, European University Institute.

⁵¹ D Maynard, Y Li and W Peters (2008) NLP techniques for term extraction and ontology population. In: P Buitelaar and P Cimiano (eds) *Ontology learning and population: Bridging the gap between text and knowledge*, Amsterdam, IOS Press: 107-127.

5. Semantic interoperability toolbox for the European Payment Order and European Small Claims Procedure

5.1. *Specific tools for the EPO and ESCP*

We have identified a set of semantic tools that could be useful for solving some of the semantic problems identified so far.

5.1.1. *Ontology for the identification of the Court (EPO and ESCP)*

One important problem indicated by the experts is the identification of the Court. The domicile indicated in the Form should be used to determine the court that is supposed to solve the claim. We can imagine, to solve this problem, an ontology that automatically matches the domicile and the court that has to deal with the case. The ontology should have a list of the cities and their correlated court. Obviously, this could be also done with a general database or with a fixed set of rules. However, to opt for an ontology can be worthwhile in this case. The advantage of using an ontology would be that it is easier to add, modify or reuse the links between domiciles and court jurisdictions. We only need to add, delete or modify the criteria. While a list of logic inferences is better for small challenges, an ontology is more useful in the case we have to deal with different national rules of court competence attribution.

5.1.2. *A FAQ for the determination of the applicable Law and practical issues (EPO and ESCP)*

Even if both ESCP and EPO procedures provide uniform procedures at the European level, in some occasions the application of the procedural law or a substantive law of a particular member State may be required.⁵² The determination of the applicable law is a difficult issue for a lay person and it is too complex to be solved by a current semantic tool that would unsuccessfully try to substitute a lawyer. A list or more Frequently Asked Questions (FAQs) could be appropriate in this case as well as other practical issues that parties may encounter during the proceedings. The goal of the FAQ system in the EPO/ESCP would be to share the professional experience of both judges and lawyers. Moreover, parties could also report and look for similar experiences. A professional Frequently Asked Questions (FAQs) based on expert knowledge is one of the user-friendly alternatives of sharing information. The FAQs can be thought in a multiple direction, covering the most common problems a user of EPO or EPSC can encounter during the procedure. Another advan-

⁵² G Y Ng (2013) Experimenting with European Payment Order and of European Small Claims Procedure. In: F Contini and G F Lanzara, (eds), Building Interoperability for European Civil Proceedings Online. Bologna, Clueb, 9.

tage is that it can be adapted to national legal systems, and take into account specific procedures. We can provide then useful information for particular situations. Moreover, the system can evolve and be upgraded to address additional issues. A FAQ can include expert knowledge and can be tailored to address practical issues. In this way, we can build a general tutorship for all users requiring quick and precise indications. We can also adapt it to new situations, or set a feedback mechanism from the users and enlarge the FAQ as necessary.

5.1.3. *Ontology for ESCP FORM A, number 4: Grounds for the court's Jurisdiction (EPO and ESCP)*

Both EPO and ESCP clarify that the rules of Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters apply. However, the application of those rules by citizens is far from being an easy matter. To solve some of these problems there are various instruments which could be taken into account. On the one hand, the European Judicial Atlas⁵³ provides a database of national courts. Here, the end-user may insert his or her domicile and the database would show which court could be competent. However, this database is not complete since further to big cities the database may not recognise a town that has not any court. Therefore, it could be interesting to enrich such database with an ontology matching different villages or towns with a particular court. Additionally, the European Judicial Network in civil and commercial matters has a glossary that could assist some users.⁵⁴ However, the technical terms composing the glossary makes this database primarily intended to experts. In any case, it is difficult to consider how a non-legal expert could answer correctly number 4 of Form A. Private International Law scholars keep on a discussing about the notions of the place of performance, the place of the harmful event and other various connecting factors.

If a user wants to fill in the cross correctly, he needs to know that a legal contract or situation is linked to a particular legal connecting factor: domicile of the defendant, domicile of the consumer, etc. Therefore, it would be advisable to formalise the expert knowledge of a Private International Law expert in a way that most common situations can be managed. Obviously, this ontology will work better for easier cases, and could not give any worthy advice for complex ones. A disclaimer clause should also have to indicate that this tool does not pretend to substitute a lawyer, but merely to offer indications that the user may have to confirm. Additionally, expert information for foreign

⁵³ Available at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm (last accessed 6 March 2013).

⁵⁴ http://ec.europa.eu/civiljustice/glossary/glossary_en.htm (last accessed 6 March 2013).

Figure 7 - Form A.4

4.	<i>On what ground do you consider the court/tribunal to have jurisdiction?</i>	
4.1.	Domicile of the defendant	<input type="checkbox"/>
4.2.	Domicile of the consumer	<input type="checkbox"/>
4.3.	Domicile of the policyholder, the insured or the beneficiary in insurance matters	<input type="checkbox"/>
4.4.	Place of performance of the obligation in question	<input type="checkbox"/>
4.5.	Place of the harmful event	<input type="checkbox"/>
4.6.	Place where the immovable property is situated	<input type="checkbox"/>
4.7.	Choice of court/tribunal agreed by the parties	
4.8.	Other (please specify): _____	

lawyers would be an asset. They could check whether the application of certain rules in different countries, ascertain whether there is a different procedural regulation on that issue, etc.

5.1.4. *Ontology for the determination of what the claim relates to (EPO, number 6)*

In case we could have a clear description of the different items of EPO's figure 6, then we can try to develop a tool to help non-experts to answer EPO's number 6. For the "additional specifications for claims relating to consumer contracts (if applicable)", we have to answer YES or NO to the following question: "If yes, the defendant is domiciled within the meaning of Article 59 of Council Regulation (EC) No 44/2001 in the Member State where the court is seized". We could also imagine a tool that gives the correct answer when indicating the domicile.

5.1.5. *An ontology of legal concepts (EPO and ESCP)*

A general legal translator is today not yet in sight, but a list of most relevant concepts could be built and interoperate for different legal systems, with its equivalent in different countries. An ontology of legal concepts could be built up with the legal equivalent of the more used legal concepts. This semantic tool could help general users, legal advisers and even help in the translation of the facts.

5.1.6. *Annotation using XML (EPO and ESCP)*

As it has been shown in this chapter, one general issue with interoperability in Europe is related to the use of multiple languages. Some legal mandates of translation are indeed provided but when there is no translation, the semantic annotation of the structure of the document may be of help. The Eu-

ropean Judicial Atlas provides for that translation for EPO/ESCP' application forms. According to this, XML permits annotating particular items of the application forms such as names, addresses, etc. After translation, the structure of the application form is being translated into another language. However, a further step may be to extend the XML annotation from the structure of the application form to the content of the same; that is, to the details the applicant writes. There is a general limit, in any case one that we cannot solve with this tool: we cannot translate all the description of the facts done by the parties. We can only say that a text is a list of facts, that's all. A real translator is needed in this case.

Moreover, the European Eurovoc multilingual thesaurus (compilation of comparative multilingual vocabulary) has also a XML version that could be useful.⁵⁵ However, it is mainly focussed on formal language and therefore a complement of natural language processing should be added to it.

This is useful for all the following items of FORM A:

Figure 8 - Form A.1

1.	<i>Before which court/tribunal are you making your claim?</i>
1.1.	Name:
1.2.	Street and number/PO box:
1.3.	City and postal code:
1.4.	Country:

Figure 9 - Form A.2

2.	<i>The claimant's details</i>
2.1.	Surname, first name/name of company or organisation:
2.2.	Street and number/PO box:
2.3.	City and postal code:
2.4.	Country:
2.5.	Telephone (*):
2.6.	E-mail (*):
2.7.	Claimant's representative, if any, and contact details (*):
2.8.	Other details (*):

⁵⁵ Accessible at <http://eurovoc.europa.eu/drupal/> (last accessed 6 March 2013).

6. Conclusions

In the shift from the current human-readable Web to the machine-readable Semantic Web the use of ontologies, the use of knowledge representation languages and tools such as ontologies is of paramount importance.⁵⁶ Precisely, in the legal field different efforts are made towards this end.⁵⁷ Ontologies and FAQs can be very useful to formalise and manage with expert knowledge in a way general users or expert users can take benefit of it.

Yet, ontologies may be improved a great deal. On the one hand, they are currently hard to design and maintain, and therefore, they can be combined with other tools. On the other hand, ontologies are today proposed by a community of experts that agree on the representation of a particular domain. Yet, the notion of emergent semantics questions the autonomy of engineered ontologies and emphasizes the value of meaning emerging from distributed communities working collaboratively through the web.⁵⁸ Since non-expert content produced by unknown producers, it lacks a conceptual harmonization. Therefore, some efforts are put towards the intelligent processing of non-expert generated content which will certainly improve the capabilities of existing tools such as in the search and retrieval area. Some literature works are focusing on a way to map formal ontologies expressed in RDF or OWL with implicit ontologies emerging from user-generated content. One of the research activities consist in making compatible ontologies (top-down metadata structures) with bottom-up tagging mechanisms such as folksonomies.⁵⁹ There are several possibilities under consideration, from transforming folksonomies into lightly formalised semantic resources to mapping folksonomy tags to the concepts and the instances of available formal ontologies. The approach to creating a new tool would be preferable bottom-up, identifying first the problem and then trying to offer a possible solution. We also believe that it might not be necessary to substitute the whole procedure, and therefore creating an e-justice procedure. This is not the case for ESCP and EPO proceedings, where national procedures are preserved.

⁵⁶ N Casellas (2011) *Legal ontology engineering: Methodologies, modelling trends, and the ontology of professional judicial knowledge*. Heidelberg, Springer.

⁵⁷ E Francesconi, S Montemagni, P Rossi and D Tiscornia (2010) *Proceedings of the 4th workshop on legal ontologies and artificial intelligence techniques*. Fiesole (Florence), European University Institute.

⁵⁸ M Fernandez-Barrera (2011) *User-generated knowledge through legal ontologies: How to bring the law into the semantic web 2.0*. Doctoral thesis. Florence, European University Institute.

⁵⁹ *Ibid.*

Semantics may help and assist both parties, even if at the current state IT does not fully substitute the general advice of an expert. Semantic tools are also evolving and can wider the range of possibilities in the near future. We have mentioned some benefits that can be obtained from semantic tools and the list can grow with problems not yet detected.

Part 2

National case studies

Chapter 4

The case of Money Claim Online and Possession Claim Online in England and Wales

Giampiero Lupo

1. Introduction

This article will principally deal with the case of Money Claim Online (MCOL, see the list of acronyms at the end of the chapter) in England and Wales. The online facility allows individuals and private organizations to issue money claim utilizing a user-friendly website. The study updated precedent studies on the topic¹ and put in evidence the most recent changes of the online facility. The study of the MCOL spin-off called Possession Claim Online (PCOL) an online service for issuing claims of possession of residential property, allowed comparing the two services. The comparative analysis, here only hinted in the final section (see section 4), allows shedding light on the differences, and their causes, between a successful ICT civil justice service as MCOL and PCOL, which presents many issues regarding in particular its performances.

The method of analysis is mixed: I combined the study of main official documents (as the Ministry of Justice reports and legislation), the analysis of previous scholars' contributions on the topic, the analysis of official statistical data and the qualitative analysis of semi-structured interviews to Court staff and ICT team managers.

In the next pages, I will introduce the institutional background of the two ICT services and the late changes that affected the Justice System in England and Wales (see section 2). In section 3, I will talk about the MCOL installed base and the strategic history of the project. In the following pages, I will introduce the actual organizational, institutional, technological and legal configuration of MCOL (section 4) and the day-to-day functioning of the system (section 5). In Section 7, I will introduce briefly PCOL, dealing with its installed base, the development history of the system, its institutional, organi-

¹ Kallinikos, J. (2008) "The Case of Money Claim Online Service in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: European studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

zational, technological and legal configuration and the day-to-day functioning of the system.

In the final pages, I will utilize the analysis of MCOL and, comparatively, the analysis of PCOL for listing several lessons that can be grasped from the experience of the two systems' development. These lessons are useful to shed light on some design principle that can be used both for the development of national e-justice services and for the design of transnational e-justice services in Europe, as well.

2. The PCOL and MCOL Institutional Background

The actual configuration of the United Kingdom and in particular of the England and Wales justice system is the result of a set of recent constitutional reforms as the Constitutional Reform Act of 2005 and the reform that constituted a Ministry of Justice for United Kingdom in 2007.

The head of the Judiciary is the recently created (2007) Ministry of Justice, the ministerial department of the UK Government responsible for the justice system headed by the Secretary of State and by Lord Chancellor. Some of its competences regard the wide United Kingdom affecting the jurisdiction of England, Wales, Scotland and Northern Ireland; in this case, it is responsible for some tribunals in the whole UK as the Special Immigration Appeals Commission and it is in charge of dealing with issues regarding freedom of information, civil liberties, and data sharing. The competences that regard the only England and Wales jurisdiction are devolved criminal justice policy, courts, prisons or probation matters.²

The Ministry of Justice comprises a set of different agencies and departments with their own staff and competences as the Administrative Justice and Tribunals Council³ and the Criminal Injuries Compensation Authority.⁴

² Lord Chief Justice (2008) "The Lord Chief Justice Review of the Administration of Justice" Judiciary of England and Wales. Other competences limited to England and Wales comprise court administration, land registration, records management, legal aid and legal services, administrative justice, devolved tribunals, the judiciary of England and Wales, public guardianship and incapacity, restricted offenders detained under the Mental Health Act 1983, civil law and justice, the family justice system, the investigation of deaths and coroners law. For more information on United Kingdom Ministry of Justice refer to its website <http://www.justice.gov.uk>.

³ The Administrative Justice and Tribunals Council keeps under review the administrative justice system as a whole with a view to making it accessible, fair and efficient; it manages the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers.

⁴ The Criminal Injuries Compensation Authority is the government body responsible for administering the Criminal Injuries Compensation Scheme in England, providing a free service and financial support to victims of violent crime.

The Ministry of Justice's agency called Her Majesty Court and Tribunals Service (HMCTS from now-on) is an executive branch of the Ministry of Justice and it is responsible for the administration of the courts of England and Wales; its functioning and competencies are important for the purposes of the article given that HMCTS is responsible for the management and revise of the two ICT civil justice services investigated. The agency was created in 2011 and it brings together Her Majesty's Courts Service and the Tribunals Service into one integrated agency that provides support for the administration of justice in courts and tribunals in United Kingdom.⁵

The HCMTS board is composed by an independent Chair working with non-executive, executive and judicial members: there are three judicial officeholders and one of whom is Senior Presiding Judge, a Chief Executive responsible for the day-to-day operations and administration of the agency which also act as the Accounting Officer for the agency. The responsibilities of the board are several: they include giving direction and communicate the aims and objectives of the Agency, ensuring the collaboration between staff and the independent judiciary, ensuring that HCMTS structure is cost-effective and efficient.⁶

The agency is accountable to the Lord Chief Justice of England and Wales and the Senior President of Tribunals and to Lord Chancellor which is in turn responsible for the accounting of its operations to the Parliament.⁷

The role of government and direction of the United Kingdom Justice System is in the hands of the Lord Chancellor and the Lord Chief Justice. Lord Chancellor, before a set of Constitutional reforms (see later in the same section) was the speaker of the House of Lords and head of the judiciary; nowadays he lost his main competences, but still maintained his prerogatives as a member of the cabinet and he is responsible of courts efficiency and independence. Moreover, Lord Chancellor should support justice efficiency and ensure that public interest is represented.⁸

The Lord Chief Justice (LCJ) is the government minister responsible to Parliament for the judiciary, the court system and prisons and probation. This used to be the role of Lord Chancellor before the Constitutional Act of 2005 and represent an enhanced institutional autonomy of the judiciary from the other branches of government.⁹ President of the Courts of England and Wales

⁵ <http://www.justice.gov.uk/about/hmcts>.

⁶ HM Courts & Tribunals Service (2011) Corporate Reports, Ministry of Justice.

⁷ *Ibidem*.

⁸ Woodhouse, D. (2007) "The Constitutional Reform Act 2005- Defending Judicial Independence the English Way", *The International Journal of Constitutional Law*, Vol. 5, 153-165.

⁹ Yein Ng (2010) "Quality Management in the Justice System in England and Wales", in *Quality Management in Courts and in the Judicial Organizations in 8 Council of Europe Member States*, CEPEJ Studies, No. 18, CEPEJ – European Commission for the Efficacy of Justice.

and of the Criminal Division of the Court of Appeal, he is responsible for representing the view of England and Wales Judiciary, maintaining the welfare, training and supervision of judges and making arrangements for the deployment of judges and allocation of cases.¹⁰ Three offices support LCJ in carrying on his functions: the Judicial Studies Board, that aids the LCJ in training members of the judiciary; the Judicial Office that provides administrative support to the LCJ; and the Judicial Communications office that is responsible of the public relations of the Judiciary.¹¹

The England and Wales court system is distributed in geographical counties that compose “circuits” which are divided in “districts” (for civil jurisdiction) and petty sections. For both civil and criminal cases there are three levels of jurisdictions: first instance, appeals, appeals to the Court of Appeals or the Supreme Court (HMCS, 2008).¹² Peculiarly, a judge is not bounded to a particular tier or court, given that judges can sit in more than one court and hear trials and appeals both in civil and criminal cases. Specifically, the courts of England and Wales apply the law relative to England and Wales jurisdiction. In United Kingdom, legal systems are separated between England and Wales, Scotland and Northern Ireland. However, in some cases as immigration matters, the Asylum and Immigration Tribunals cover the entire United Kingdom jurisdiction.

For the purpose of the article it is useful to have a look at the organization of the main courts for civil justice matters, omitting the architecture of the criminal justice’s courts. The Supreme Court is the highest court of appeal for all cases in England and Wales. It has the judicial capacity to hear appeals on points of law in all matters (civil and criminal) for England, Wales and Northern Ireland and only civil matters for Scotland.¹³

At a lower tier the civil section of the Court of Appeal hears appeals from the High Court and County Court and certain superior tribunals; the permission to appeal is required either from the lower court or from the Court of Appeal itself.¹⁴

The High Court of Justice functions both as a court of first instance for civil cases and as an appellate court for both civil and criminal matters. It includes three divisions: the Queen’s Bench, the Chancery and the Family divisions. The High Court can hear cases in administrative, criminal, civil, family and equity law. Even though the High Court is situated in London, it can hear cases in other courts through district registries.¹⁵

¹⁰ Malleon, K. (2005) *The Legal System*, Oxford University Press.

¹¹ *Ibidem*.

¹² HM Court Service Framework Document (2008) The Stationary Office.

¹³ For more information refer to <http://www.supremecourt.gov.uk/>.

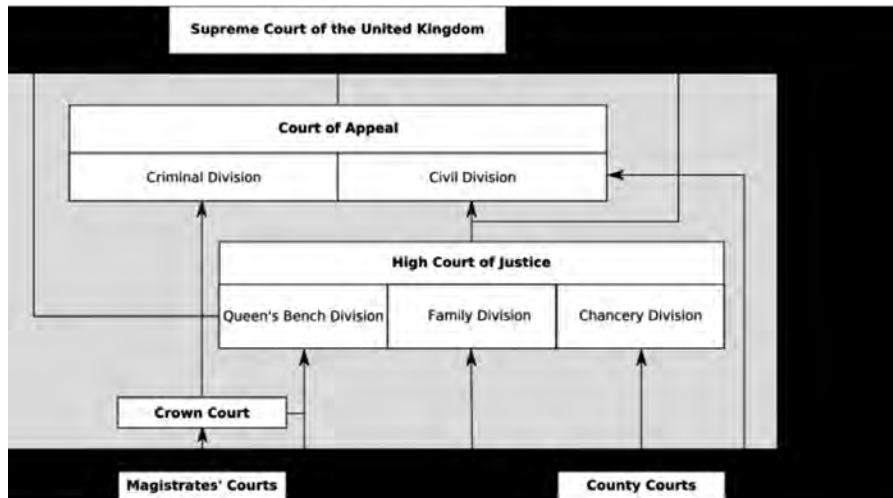
¹⁴ Reeves, A. (2004) *The Path to Justice: A Review of the County Court System in England and Wales*, Emerald Publishing, Brighton.

¹⁵ *Ibidem*.

The lowest court for civil justice cases are the County Courts, which are presided over by a District or a Circuit Judge. County Courts are specifically local courts; each one has an area of jurisdiction. However, transfer of cases is not unusual since any county court in England and Wales may hear any action and claim.¹⁶

The MCOL ICT services analyzed cover the County Courts jurisdiction for possession and money claims with the exception of the last stages of the procedure that refer to the enforcement (see section 5; the only enforcement procedure that MCOL allow is the “Warrant of Execution”). As we will see later in the following sections, the two systems and in particular MCOL contributed to relief the County Courts from routine paper works and procedures relative to possession and money claims.

Figure 1 - Courts and Tribunals in England and Wales¹⁷



2.1. Late Changes to the Justice System

MCOL and PCOL systems have been developed within an institutional context that was experiencing deep and continuous changes. The institutional background of MCOL and PCOL projects was affected by modifications of the structure and functions of the judiciary, of the civil justice system and management and of the civil procedures. When looking at the MCOL and

¹⁶ Ibidem.

¹⁷ Courts and Tribunals in England and Wales plus Supreme Court of the United Kingdom.

PCOL background it is important to shed lights on its recent evolution, given that its modification represented in some cases an influential factor of the systems' development, in other, a fundamental incentive for the two ICT services' creation.

Constitutional Act 2005. As soon as the modifications of the structure and functions of the judiciary is concerned, these consisted principally in the Constitutional Reform Act (CRA) of 2005 that brought to the creation of the Department of Constitutional Affairs (DCA) and the constitution in 2007 of the Ministry of Justice. The CRA allowed the Supreme Court of the United Kingdom to take over the existing role of the Law Lords as well as some powers of the Judicial Committee of the Privy Council¹⁸; it provided the Lord Chief Justice to replace the Lord Chancellor as head of the Judiciary and removed the functions of Speaker of the House of Lords and Head of the Judiciary of England and Wales from the office of Lord Chancellor. The new Supreme Court represents the highest court of appeal for civil and criminal cases as well as the highest court of appeal for devolution cases; twelve judges constitute it.¹⁹ The reform provided also for the creation of an ad hoc independent Judicial Appointment Commission (JAC) that retained the roles previously carried on by the Lord Chancellor. The JAC supports transparent and open procedures for the appointment and promotions of the judiciary.²⁰

The CRA represented an answer to many criticisms and pressures coming from Labours and from Europe as well, that regarded the overlapping constitutional roles of Lord Chancellor whom until 2005 was head of judiciary, speaker of the House of Lords, member²¹ of the cabinet and primary responsible for the appointment of judges. Therefore, the CRA main aim was to enhance the independence of the justice system from government policies and political criticism and judges' impartiality. Moreover, as Woodhouse has stated, CRA represents also an attempt to recognize public expectations on better and efficient delivery of public.²²

Ministry of Justice Reform, 2009. The 9th of May 2009, the Ministry of Justice was created by combining some functions of the Home Secretary with

¹⁸ The Constitutional Reform Act 2005 (Commencement No. 11), Order 2009, Statutory Instrument 2009 No. 1604.

¹⁹ The appointment of the Supreme Court Judges involves both the president of the Supreme Court and the Lord Chancellor. A selection commission headed by the President of the Supreme Court will propose one name to the Lord Chancellor who can reject that name only one time.

²⁰ Malleon, K. (2005) *The Legal System*, Oxford University Press.

²¹ Woodhouse, D. (2007) "The Constitutional Reform Act 2005- Defending Judicial Independence the English Way", *The International Journal of Constitutional Law*, Vol. 5, 153-165.

²² HM Courts & Tribunals Service (2011) *Corporate Reports*, Ministry of Justice.

the Department for Constitutional Affairs. As anticipated, its responsibilities are to reduce re-offending and protect the public, to provide access to justice, to increase confidence in the justice system, and uphold people's civil liberties; the government department deals also with court administration, administrative justice, the judiciary of England and Wales, civil law and justice.²³ The constitutional reforms of the structure and functioning of the Judiciary affected the use of ICT in civil cases because of the modification of the offices and department that dealt with the ICT projects. Before the CRA of 2005, the department that dealt with the diffusion of ICT in the civil justice management and in particular with the development of MCOL was the Court Service an executive agency of the Lord Chancellor Department (see below). In April 2005, Her Majesty Court Service was created by unifying the competences of the Magistrates Service and the Court Service with the objective of creating a single national agency responsible for the delivery of court services to users with more resources and flexibility.²⁴

In 2011, this executive hand of the Ministry of Justice has been newly updated and the Her Majesty Tribunals and Court Service (HMCTS) was created by combining Her Majesty's Courts Service and the Tribunals Service into one integrated agency.²⁵ The new agency is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and of non-devolved tribunals in Scotland and Northern Ireland; the agency employs 21,000 staff and operates from around 650 locations.

Therefore, during time different agencies and hands of the justice systems dealt with the management of MCOL and PCOL. Moreover, the timely updating of the structure that deals with Courts and Civil justice management translated also in a periodical staff turnover, so that part of the personnel that worked at the development of the MCOL and PCOL projects are no longer part of the team that deals with the management and revise of the two systems. This represented also an obstacle to our research, because it has been problematic to approach and interview the individuals that have been involved both in the development and management of the project. However, despite the organizational changes, the long story of MCOL development demonstrates the continuity of England and Wales policies regarding the employ of ICT in the management of money and possession claims.

²³ As well as records management, legal aid and legal services, land registration, devolved tribunals, public guardianship and incapacity, restricted offenders detained under the Mental Health Act 1983, the family justice system, the investigation of deaths and coroners law.

For more information please see <http://www.justice.gov.uk/about/moj>.

²⁴ HM Court Service Framework Document (2008) The Stationary Office.

²⁵ HM Courts & Tribunals Service (2011) Corporate Reports, Ministry of Justice.

Reforms of the Civil Justice System. The civil justice system and management have been affected since 90s by a long record of revisions. These changes affected the diffusion of ICT in the different branches of judiciary and incidentally the development of the money and possession claims systems.

For England and Wales's civil justice, the Lord Woolf reform represented the most important attempt to modernize management and procedures.²⁶ In 1994, because of the growing criticism regarding the inefficiencies of judiciary, Lord Woolf was asked to conduct an inquiry of the civil justice system and to formulate proposal for its innovation.²⁷ The Lord Woolf's final report called "Access to Justice"²⁸ put in evidence the most concerning issues that affected the civil justice at that time, that is delay and heterogeneity of outcomes, costs, complexity and the domination of trials by lawyers that habitually draw out processes in order to increase costs.²⁹ The reform approved in 1999 by the new Labour Party, with the White Paper "Modernising Justice"³⁰ accepted the suggestions advanced in the "Access to Justice" report. In particular, the reform aimed at associating the complexity of cases' procedures with the amount of money involved, at imposing stricter timetables for processes and the reduction of adversarial techniques, at diffusing the use of information technology, at avoiding the abuses of the right of appeal. The White Paper "Modernizing Justice" provided for the identification of "pre-action protocols that sets standards and timetables for the conduct of cases before court proceedings are started."³¹

Moreover, the reform's incentive to the use of Alternative Dispute Resolutions and the resolution of cases without hearings in Courts represents a considerable starting point for the creation of an internet based service for small civil cases as MCOL that avoid the instruction of the case in a Court.³²

In my view, the values and principles on which Lord Woolf reform is based are also worth mentioning for the purpose of this article: most of them represent the guiding principle for the development of MCOL and PCOL. The ac-

²⁶ Lord Woolf (1996) Access to Justice: Final Report to the Lord Chancellor on the civil justice system in England and Wales, Department of Constitutional Affairs.

²⁷ Timms and Woolfson, (2006) "Un successo tra molti fallimenti", in *Tecnologie per la Giustizia*, Carnevali, D., Contini, F., Fabri, M. (eds.), Giuffrè Editore, Milano.

²⁸ Lord Woolf (1996) Access to Justice: Final Report to the Lord Chancellor on the civil justice system in England and Wales, Department of Constitutional Affairs.

²⁹ Susskind, R. (2000) *Transforming the Law: Essays on Technology, Justice and the Legal marketplace*. New York: Oxford University Press.

³⁰ Court Service. (1998) *Modernising the Civil Courts. Modernizing Justice*. White paper Cm 4155, <http://www.courtservice.gov.uk>.

³¹ Government's White Paper, *Modernising Justice*, December 2008.

³² Susskind, R. (2000) *Transforming the Law: Essays on Technology, Justice and the Legal marketplace*. New York: Oxford University Press.

cess to justice for all, the comprehensibility of legislation (translated in the use of plain English for all the new civil procedure rules), the homogeneity of the results for all users, reasonable costs and speed, and effectiveness of services are at the core of the reform and of the two ICT systems' implementation and functioning as well.

At a more practical level, two main innovations of the reform affected the development and management of MCOL and PCOL. The first, the constitution of the Civil Procedure Rules³³ (CPR), a new code of procedural regulations that substituted the Rules of the Supreme Court and the County Court Rules and that had the objective of improving access to justice by making legal proceedings quicker, cheaper and easier to understand for non-lawyers.³⁴ The Civil Procedures Rules Committee was created; this institution, headed by the Master of Rolls, has the role of drawing up and updating the Civil Procedure Rules. What is most important for MCOL and PCOL development, in terms of legal interoperability, is that the rules are supplemented by detailed Practice Directions³⁵ which are supplemental protocol to rules of civil and criminal procedure in the Courts and that give practical advice on how to interpret the rules themselves.³⁶ The procedure for drafting and amend Practice Directions is simpler and more rapid comparatively to the CPR rules that need a secondary legislation procedure with the involvement of both branches of parliament. With the coming into force of the CRA 2005, the power to approve the Practice Directions fell to the Lord Chief Justice (with the approval of the Lord Chancellor in most instances)³⁷. Given that the norms that allow the use of MCOL and PCOL website for issuing money and possession claim online are included in two Practice Directions³⁸ (the PD 7E for MCOL and 55A for PCOL), the designers and the team that worked to the development of the two systems profited from a considerable advantage. As we will see later in the article (see sections 5 and 6), the processes with which the

³³ Civil Procedure Rules 1998 (SI 1998/3132) were approved on 10 December 1998 and came into force on 26 April 1999.

³⁴ Dwyer, D (2009) *The Civil Procedure Rules Ten Years On*, Oxford University Press.

³⁵ The practice directions to the Civil Procedure Rules apply to civil litigation in the Queen's Bench Division and the Chancery Division of the High Court and to litigation in the county courts other than family proceedings.

³⁶ Dwyer, D (2009) *The Civil Procedure Rules Ten Years On*, Oxford University Press.

³⁷ www.dca.gov.uk.

³⁸ At the time of MCOL Practice Direction approval, the Lord Chancellor authorised Lord Justice May to make practice directions. For county courts, the section 74A of the County Courts Act (1984) authorizes the Lord Chancellor or a person authorized to act on his behalf to make Practice Direction. At the time of PCOL Practice Direction approval, the Lord Chancellor authorised Lord Justice Dyson to make practice directions for the county courts; the CRA (2005) approval provided for the Lord Chief Justice to have the power to nominate a judicial office holder to perform his functions with regards making designated directions.

MCOL technologies have been made legal have been rapid and contemporaneous to the development of the ICT based systems. Therefore, neither the technology allowed to issue actions already disciplined in the civil procedures, neither the law allowed for the use of a particular technology already developed; instead, MCOL is based on the parallel development and put in practice on the one hand of the two systems' technology on the other hand of the norms that allow for the systems' utilization by costumers.

The second innovation of the Lord Woolf reform is the incentive of the use of information technology to improve efficiency, speed and access to justice. Even with some problems of teething³⁹, an high-quality computer system for recording and tracking the progress of cases was developed. Moreover, the reforms recognized the efficiency and usefulness of the use of new forms of communications, thus supporting the use of conference calls, by telephone or video link as a way of holding pre-trial hearing so that parties do not need to travel to courts. The commitment to utilize working ICT solutions, aside the incentive to foster mechanisms of dispute resolutions outside the court hearings and the limitation to the right of appeal that loaded the County Courts of a rise of cases managed, represented a considerable motivation for the development of the two systems for managing money and possession claims online.⁴⁰

An institutional contest in continuous evolution is the background of the MCOL project's implementation. The incentives to the use of ICT and to remove administrative work from County Courts urged the Court Service to the development of an online facility for handling money claim online.

2.2. ICT Governance

The governance of the ICT development in England and Wales is not centralized; traditionally, every office or branch of the Justice sector has developed autonomously ICT technologies and e-services.⁴¹

However at the ministerial level, the Chief Information Officer (CIO) is responsible for setting the MoJ IT strategy and the delivery of ICT services to enable business change projects and programmes. The CIO is also head of the Ministry of Justice IT profession. The IT Director of the MoJ, reports to

³⁹ Timms, P., Plotnikoff, J. and Woolfson, R. (2003) "Judicial Electronic Data Interchange in England and Wales", in Fabri, M and Contini, F. (eds.), *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*. Bologna: Scarabeo.

⁴⁰ Kallinikos, J. (2008) "The Case of Money Claim Online Ser-vice in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

⁴¹ Fabri, M and Contini, F. (eds.) (2003) *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*. Bologna: Scarabeo.

the CIO in order to suggest and enable changes within the Justice System. Moreover, the head of the OCJR (Office for Criminal Justice Reform) Modernising Technology Unit delivers the technology programs that allow to link several criminal justice organisations.

As far as the civil justice is concerned, the Ministry of Justice enables the HCMTS to conduct the development of ICT technologies. Different offices of the HMCTS as the business office, the policy office, the ICT team and private organizations cooperate to develop and implement the Ministry's ICT vision and strategy and to develop and provide ICT services.

For what regards the criminal justice, the Criminal Justice Information Technology Unit (CJITU) is the agency enabled to support the integration of the several criminal justice's technological systems.⁴² The CJITU also developed a Management Information System that manages performances' evaluations of the criminal justice system.

The Crown Prosecution Service (CPS)⁴³ has its own ICT department called Business Information Systems Directorate (BISD). This is a team of around 100 people headed by the Director of Business Information Systems that manages and develops ICT technologies for the Crown Prosecution Service. The Directorate manages the contracts with suppliers and service providers and ensures the smooth operation and performance of the ICT infrastructure. The BISD manages the ICT strategy in a very centralized fashion, so that local implementation are controlled and vetoed by the Directorate. Also in the case of the CPS ICT office, the involvement of private businesses is a constant: the Directorate outsourced the development of the case management system to LogicaCMG which, therefore, is responsible for the successful deployment of the CaseMan at a technical level.

3. The installed base and the history of the project

In this chapter, I will deal with the antecedent organizational, institutional and legal components of Money Claim Online and with the history and strategy of its development. The history in particular, will acknowledge the main conditions that made the project successful and highly performing as the strategic use of previously developed components and the parallel modification of the organizational and legal structure.

⁴² Carnevali, D., Contini F. and Fabri M. (Eds.) (2006) *Tecnologie per la giustizia. I successi e le false promesse dell'e-justice*, Giuffrè Editore: Milano.

⁴³ The Crown Prosecution Service is a UK Government Department responsible for prosecuting criminal cases investigated by the police in England and Wales. CPS is responsible for advising the police on cases for possible prosecution, reviewing cases submitted by the police, determining any charges in all but minor cases, preparing cases for court, presenting cases at court. For more information on CPS see <http://www.cps.gov.uk/about/>.

3.1. *The Project Background and the Installed Base*

One of the main strong points of the MCOL project and of the successive development of an online system for dealing with possession claims is that it relied heavily on an already well-established installed base. First, MCOL could count on organizational components, institutions and working practices previously developed and institutionalized. Second, the justice system commitment to particular interoperability frameworks and technological standards imposed choices that turned out to be functional for the system's performances in terms of accessibility, openness and adaptive evolution. Third, the recent reform of CPR that introduced the procedure for amending and drafting Practice Directions (See Section 1) represented, from the legal point of view, a facilitation to the introduction of ICT system for managing civil justice services. Therefore, the organizational, institutional, technological and legal configuration provided to the new MCOL system considerable advantages that permitted its rapid development and evolution. However, as I will show later in this section, some characteristics of the installed base brought about obstacles for change and limited and still limit rapid and inexpensive developments.

As far as the organizational framework is concerned, the team⁴⁴ that worked on MCOL implementation identified two agencies of the civil court services that were already dealing with money claims issued electronically, that is the Claim Production Centre and the Country Court Bulk Centre. The Claim Production Centre (CPC from now on) was created in 1990 (the name originally was Summons Production Centre) with the role of issuing and serving claims electronically. The CPR rule 7.10 and the practice direction 7C have been drafted in order to allow claimants to issue claims in electronic forms through CPC. The CPC⁴⁵ is an HMCTS agency based in Northampton; its main competences are managing the court fees, producing the claim, creating the court's record and then enveloping and despatching the claim to the defendant. The claims are issued in the name of the country court whose name the claimant request to be issued (on the base of the area of residence). Claims can be issued by magnetic tape, floppy disks⁴⁶, recently (after 2000) also by electronic transfer (FTP - File Transfer Protocol) and in the future also by a secure e-mail address. Claims issued through the CPC shall contain the claimant's details and the details of the defendant, the claim's data, and the court in whose name the claim shall be issued. The data file submitted to CPC

⁴⁴ The team was composed by Court Service Civil Policy Business, the ICT team and the private suppliers as EDS.

⁴⁵ For more information see <http://www.justice.gov.uk/about/hmcts/>.

⁴⁶ 3½" ms-dos formatted high-density diskette, written normally or using the pkzip compression utility.

shall respect a particular format and in particular it shall respect the requirements for ANSI standard for ASCII unlabelled files. Once submitted, CPC validates the claim verifying if data file respect the standards requested, that all necessary fields have been entered, that the fees have been correctly calculated, that the costs are within the scale allowed and that the claim numbers have not been previously used.

The County Court Bulk Centre (CCBC)⁴⁷ is an HMCTS agency created to deal with bulk money claims, that is massive claims issued by different types of organizations like banks, insurance companies or any public utility company. The Centre manages “straightforward debt collection” (HMCTS website) that is principally not defended in County Courts, thus taking away from Courts this mainly procedural and administrative work. The service is highly customer-committed thus providing to users a fast and performing package and a reduction of County Court fees as well. Differently from CPC, in order to utilize the CCBC system companies need to become members and respect a set of parameters. CCBC users submit a single data file containing the particulars of a claim, such as claim number, claimant, defendant name etc, along with an individual payment of the correct fee for each case to the CCBC, which then processes the Data files. Data Files can be transmitted as for the CPC system by magnetic tape, floppy disks⁴⁸, recently (after 2000) also by electronic transfer (FTP - File Transfer Protocol).

When MCOL was created and the Court Service had a privileged contract with EDS, claims once validated, were sent from the CCBC to the EDS Printing and Posting centre in Washington Durham County, which printed and posted the claim to the defendant. Nowadays, Logica, a multinational business and technology service based in England and Wales, detains a corporate contract with HMCTS and it deals with the technological components of CPC, CCBC and MCOL also. Therefore, claim details are electronically transferred to a Logica office in Bridgend, Wales that prints and posts the claim packs. The “core” of the CCBC system is the old EDI system developed by EDS, called CaseMan, a multi-user relational database management system⁴⁹ that substituted manual record cards. Bulk Claims issued in CCBC are recorded in the CaseMan system; CaseMan permits court staff from any court in England and Wales to login and deal with claims. Claims are issued in the name of Northampton County Court; however, CCBC role is limited to the issuing

⁴⁷ Please see <http://www.justice.gov.uk/courts/northampton-bulk-centre>.

⁴⁸ 3½" ms-dos formatted high density diskette, written normally or using the pkzip compression utility.

⁴⁹ Plotnikoff, J., Woolfson, R., and Lyons, S. (2001) “The Technological Challenge of a Fragmented Justice System: ICT in England and Wales”. In Contini, F., and Fabri, M. (eds.) *Justice and Technology in Europe: How ICT is Changing the Judicial Business*. Dodrecht: Kluwer Law International.

of electronic claims once verified by CPC, entry of judgment by acceptance, default or determination, entry of a warrant of execution or transfer to any other court for types of enforcement different from a warrant. In practical terms, CCBC deals with the procedural work that does not need the involvement of legal court staff or the organization of a hearing.

The MCOL developers exploited some of the functionalities of the two agencies for its development and subsequent functioning. As far as CPC is concerned, MCOL made use of the data files validation function of the Claim Production Center. Following the initial MCOL design (see Fig. 2) still unmodified, before the claim enters in a successive processing stage in the CCBC, an electronic identifier verifies if the claim's data file fits the specification for CPC. CPC has a set of scripts that validate the data, for instance it controls if the certain amount of data allowed for claim's details is respected. The use of the validation function of CPC for MCOL data fluxes represents a wise exploitation of a functional component of the installed base. However, the stable parameters of data interchange through CPC translates in a substantial obstacle for MCOL change. Any modification of claims submitting functions in MCOL would need a change in CPC parameters, which are considerably stable and are the same used by claimants that issue claims through magnetic tape or floppy disks.

As soon as the CCBC is concerned, MCOL made use of the already developed EDI system that manages bulk claims. Once a claim is submitted, and after CPC validation, the claim enters automatically as a data file in the CaseMan system, from which CCBC court staff can handle the claim. In practical terms, all the functions that CCBC execute for bulk users (dealing with a claim, posting the claim pack to defendants, issue a warrant of execution) can be utilized through MCOL. Money Claim Online has been developed as a front end of the CCBC back office system.⁵⁰ Or from another point of view, MCOL can be considered a bulk user of the Country Court Bulk Centre.

The technological components of the MCOL installed base refer to standards, interoperability frameworks, hardware and software at developers' disposal when the MCOL system has been implemented.

As introduced, a fundamental MCOL technological component is the CaseMan, the County Court case management system developed by EDS. In 1994, Court Service commissioned a system that can substitute Court staff's use of manual record card. The CaseMan is a "multi-user relational database management system written in Oracle on a Unix operating platform" (Plotnikoff, 2001: 242). In CaseMan court staff can manage the cases' details, war-

⁵⁰ Kallinikos, J. (2008) "The Case of Money Claim Online Service in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

rant control and the attachment of earnings. The system builds case records by creating used forms, notices and events. CaseMan is active in any England and Wales country court; moreover, court staff may log in and access to the CaseMan from any County Courts. The System comprises an electronic data exchange engine, therefore, cases may be transferred from any country courts. The data exchange engine is utilized by CCBC to transfer data to Northampton County Court and to any other county court when needed.

As soon as the standards that guided MCOL implementation in 2001 are concerned, these played a fundamental role in its development and evolution. Developers relied on the United Kingdom *e-Government Interoperability Framework* as a set of indications for choosing between multiple standards and technologies (e-Gif, 2005). The UK e-Gif provides policies and standards for accomplishing interoperability and facilitates data exchange across the public sector.⁵¹ The frameworks are based on the government's commitment on making possible exchange of data between the LCD/Court Service intranet, the Government Secure Intranet (GSI) and the Internet. Therefore, UKGIF indicates the XML language as required for rapid exchange of data in the public sector. Moreover, it indicates the use of internet browsers as users interface and the TCP/IP (internet protocol) network connectivity.

The MCOL developers followed strictly the UKGIF indications, thus utilizing the XML language, allowing the use of internet browsers and opting for the TCP/IP connectivity. The choose for a more open and accessible system that can exploit the evolution of internet, turned out to be wise and guaranteed an easier design of the website, based on existing components and infrastructure, and a rapid generation of a critical mass of users.⁵² The other side of the coin is that opting for openness and easier access in order to foster the evolvability of a technology means also being affected by security issues.⁵³ As the HMCTS chef of the IT team stated in the structured interview, most of the costs of the MCOL and PCOL implementation comes from compliance to security parameters. Data exchanged through MCOL and PCOL need to comply with IL3 data classification standards. IL3 stands for Impact Level 3 that refer to data considered "restricted". Moreover, more recently the payment engine needed to be revised in order to comply with the Payment Card Industry Security Standards (PCI). The PCI are set by the Payment Card In-

⁵¹ UK Government (2005) UK E-Government Interoperability Frameworks, Technical Standards Catalogue.

⁵² Lanzara, G.F. (2009) "Building Digital Institutions: ICT and the Rise of Assemblages in Government", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

⁵³ Kallinikos, J. (2008) "The Case of Money Claim Online Ser-vice in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

dustry Security Standards Council and include rules and parameters to be respected in order to reduce credit card frauds. Given that an external Qualified Security Assessor (QSA) does the validation annually and that Standards may be amended from time to time, the compliance to PCI standards translates in a permanent cost for HMCTS.

As anticipated, the legal configuration of the Civil Justice System at the time of the implementation of MCOL first and of PCOL subsequently, had been affected by a considerable modification with the drafting and approval of the Government's White Paper "Modernizing Justice" of 1998. The reform introduced a new code of procedural regulations that is the Civil Procedure Rules (CPR). Moreover, the CPR reform provided for the integration of the CPR rules with ad-hoc Practice Directions that can be drafted and amended by a fast procedure that only involves the Ministry of Justice. Practice Directions have been used by the former Court Service and successively by the Department of Constitutional Affairs to allow claimants to issue money and possession claims online. The PR 7E⁵⁴ "provides for a scheme in which, in the circumstances set out in the practice direction, a request for a claim form to be issued and other specified documents may be filed electronically ('Money Claim Online')".⁵⁵ The MCOL practice direction supplements the Civil Procedure Rule Part 7⁵⁶ that refers to the rules for starting and managing a civil proceeding for money claims. As soon as PCOL is concerned the PR 55B⁵⁷ allows for issuing possession claim online and it supplements the CPR part 55⁵⁸ that disciplines claims for the recovery of possession of land (including buildings or parts of buildings). The simplified and rapid procedure for PR drafting, that the reform introduced represented an advantage for the two services implementation: the adaptation of the legal system to the new online services that substituted paper-based procedures for issuing claims has been rapid and concurrent to MCOL and PCOL implementation.

Moreover, two important amendments to civil procedure are at the base of the legalization of the electronic submission of claims that is the regulation regarding the electronic signature and the one referring to the statement of truth. One year before the MCOL introduction UK parliament approved the Electronic Communication Act that legalized the use of electronic signature: "In any legal proceeding an electronic signature incorporated into or logically as-

⁵⁴ Practice Direction 7 E "Money Claim Online".

⁵⁵ Ministry of Justice UK (2011), Solving Disputes in the County Courts: Creating a Simpler, Quicker and More Proportionate System. A Consultation on Reforming Civil Justice in England and Wales, Consultation Paper CP6/2011.

⁵⁶ Civil Procedure Rule 7 "How to start proceedings - the Claim form".

⁵⁷ Practice Direction 55B "Possession Claim Online".

⁵⁸ Civil Procedure Rule Part 55 "Possession Claims".

sociated with a particular electronic communication or particular electronic data shall be admissible...” (Electronic Communication Act, 2000). This has been integrated in 2002 with the Electronic Signature Regulation (2002) that established the role of the secretary of State to keep under review the carrying on of activities of certification-service-providers.

As soon as the statement of truth is concerned, MCOL and PCOL practice directions introduced the claimants and defendants right to substitute the signature with a statement of truth that certifies that the information provided is true. Statement of truth has to be signed by the person providing the information on the document. In order to sign a statement of truth on MCOL or PCOL, a user needs to type his name and, where appropriate, his position or office if signing on behalf of a company or firm.

As the precedent argument made clear, the MCOL implementation represents an example of far-seeing exploitation of the organizational and technological installed base. The use of formerly created components, as the CCBC, and working institutions, fostered a rapid development and allowed reducing costs. The use of standards that favours the public open access allowed to stimulate the rapid creation of a critical mass of users and assured an evolutionary capability of the system.

In the following section, I will track the main events that brought to the implementation of MCOL system shedding light on the actors that participated to the project implementation, on their choices and on the pattern of the two systems’ development.

3.2. The Strategy of Development and the History of MCOL Project

Since the 70’s there has been an important interest in England and Wales for the employment of information technology in the civil justice system.⁵⁹ In 1973 the Society for Computers and Law was created with the aim of studying the potential impact of litigation support technologies. In 1985, Lord Mackay (the then Lord Chancellor) established the Information Technology and Courts Committee (ITAC) that had and still have the purpose of providing a forum in which justice system staff could meet and exchange information referring to their investments in IT and future evolvments.⁶⁰ In order to study the development of IT litigation technologies in the Offices of Referees, the Official Referees Solicitors Association (ORSA) was created in 1989.

However, despite the constant interest and the growing resources implied for the development of IT technologies in Courtrooms, the use of ICT in the

⁵⁹ Susskind, R. (2000) *Transforming the Law: Essays on Technology, Justice and the Legal marketplace*. New York: Oxford University Press.

⁶⁰ *Ibidem*.

justice system has been fragmentary due to the scarce coordination between department and agencies.⁶¹

The history of MCOL implementation and subsequent evolution is linked to the renewal that affected the Civil Justice and in general the United Kingdom justice system. These changes that refer principally to the Lord Wolf (Lord Woolf, 1996) reform (see previous section) had the objective of improving the access to justice, reduce the costs of litigation, limit the complexity of the rules and in general enhance the performances of the justice system. Wide range of the reform regarded the employment of Information Technology in the justice system. In this regard, Lord Wolf proposed the introduction of a case management system the help monitor performances, support back office administrative work, improve case tracking and planning. Another important result of the Lord Woolf reform has been the establishment of the Civil Justice IT Strategy Development Group with the aim of making recommendations for the role of IT in the civil justice system in the long term⁶² and which published a consultation paper called *civil.justice*⁶³ with a set of recommendations on how implementing the Lord Wolf reforms referring to the employment of IT in civil justice.⁶⁴

As a more practical consequence of the Lord Woolf reform and recommendation, several IT services in justice system has been recently developed aside MCOL and PCOL. In 2000, the British and Irish Legal Information System (BAILII) was launched to provide access to Irish and British legislation and case law at no cost. In 2002, “Just Ask” the website of the Community Legal Service that provides legal information and help in internet, was launched.

As soon as MCOL launch is concerned, this has been the result of the joint efforts of offices of the Department of Constitutional Affairs, and in particular of the business area and the IT team, and the private company that at the time had an overarching contract with the DCA, that is EDS. The objective was to implement a system for handling small money claims online thus removing from County-Courts the paper based administrative work relative to money claim procedures.

⁶¹ Plotnikoff, J., Woolfson, R., and Lyons, S. (2001) “The Technological Challenge of a Fragmented Justice System: ICT in England and Wales”. In Contini, F., and Fabri, M. (eds.) *Justice and Technology in Europe: How ICT is Changing the Judicial Business*. Dodrecht: Kluwer Law International.

⁶² Susskind, R. (2000) *Transforming the Law: Essays on Technology, Justice and the Legal marketplace*. New York: Oxford University Press.

⁶³ *Civil.Justice: Resolving and Avoiding Disputes in the Information Age* (Civil Justice IT Strategy Development Group, 1994).

⁶⁴ *Civil Justice IT Strategy Development Group (1994) Civil.Justice: Resolving and Avoiding Disputes in the Information Age*.

See also Court Service. (1998) *Modernising the Civil Courts. Modernizing Justice*. White paper Cm 4155, <http://www.courtservice.gov.uk>.

The DCA believed that money claims could be managed through an on-line service, given that large part of money claims act as a reminder in order to stimulate payment or a debt reduction. Therefore, usually money claims are settled without a Court hearing and translates in an administrative work for Court staff. The principal aim of DCA when implementing the MCOL project was to favour accessibility of the new system also to lay users: the approximate result that DCA wanted to obtain was a million of claims per year issued through MCOL.

As anticipated, the main strategy that the joint team decided to utilize was to exploit the organizational, institutional and technological components already in use. MCOL has been developed as a user-friendly interface⁶⁵ of the CCBC back-office and EDI system. Moreover, the CPC validation functionality has been also utilized (see section 3.1).

Initially, DCA worked in cooperation with EDS formulating a business case and a feasibility analysis. On the base of these two documents, EDS used user interface prototypes (screen mock-ups) in order to establish the MCOL requirements. Moreover, prototypes have been demonstrated in several judicial conferences in order to spread information on the project.

In order to speed up the development of the service EDS sub-contracted to EzGov, owner of the FlexFoundation Library that includes software libraries for implementing several types of websites. Ezgov provided a website form creation facility with the possibility to set validation and verification criteria, the ability to set the rules, include a multi-step process, a registration-based environment and a payment engine.⁶⁶ Moreover, EzGov provided the use cases and user-interface prototypes and when DCA approved them, coded the project. EDS worked to the integration of the system with the CCBC service; however consistent modifications were not needed.

At this stage, the agencies involved in developing the system worked in strict cooperation. EzGov analysts did not have any legal background, therefore DCA and EDS had been involved for advising the software provider when judiciary rules and procedures were not clear. At this point an important issue was the differences in terms of procedures regarding claim issuing, between the England and Wales county courts.⁶⁷ In order to provide to EzGov a single procedure to transpose to the MCOL website, DCA had to look for a common denominator between different county courts practices.

⁶⁵ Kallinikos, J. (2008) "The Case of Money Claim Online Service in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

⁶⁶ Kallinikos, J. (2008) "The Case of Money Claim Online Service in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

⁶⁷ *Ibidem*.

Another decision that DCA took in order to speed up the project's development was to utilize the already implemented FlexFoundation user-registration, login system and payment engine. At the time the Government Gateway project, which would provide accounting system and a payment engine, was about to be implemented. The Government Gateway is a website where user can register in order to have access to government's services, "enabling people to communicate and make transactions with government from a single point of entry" (Government Gateway⁶⁸ website, 2011). However, given the risk that the service would not be ready for the launch of MCOL, the DCA opted for the FlexFoundation service.

The implementation stage of MCOL highlights the strict interoperability between public and private agencies that coordinated to develop the new system. "Outsourcing" to private companies is a strategy suggested by the UK e-government interoperability framework and it offers advantages as well as problems. As the IT team chef admitted, outsourcing translates in advantages in terms of having at disposal expertise and technologies already implemented and no maintenance costs. However, from the other side, every time a change of the system is needed this translates in a request to the private company and a raise in costs. In the case of MCOL, outsourcing seemed to translate in a functional implementation of the system and speeded up the time of development.

In this regard, the UK legislation on government outsourcing to private companies is regulated by the Public Contracts Regulations 2006 as amended by the Public Contracts and Utilities Contracts (Amendment) Regulations 2007⁶⁹. The legislation is based on two basic principles: equal treatment of bidders and transparency, meaning that the authority must ensure that there is openness and clarity in the procurement process. The legislation provides for four basic procedures (Public Contract Regulation, 2007). First, the open procedure with which everyone who responds to the advertisement is entitled to participate. Second, the restricted procedure works by selecting a number of qualified candidates who will be invited to take part in the competition. Third, the negotiated procedure has been often utilized for procuring complex outsourcings because of its flexibility; it is a procedure that allows privileged negotiations between the authority and the private company; however, it is an exceptional procedure and its over-use in the UK was criticised by the European Commission. This type of procedure has been probably utilized for the outsourcing contract between DCA and EDS and successively between HM-

⁶⁸ For more information see <http://www.direct.gov.uk/en/index.htm>.

⁶⁹ The Regulations implement EC Directive 2004/18, on the procedures for the award of public works contracts, public supply contracts and public services contracts (the "Public Sector Directive").

CTS and Logica (the company that recently substituted EDS in the management of the IT part of MCOL; see below). Fourth, the competitive dialogue procedure, which is a halfway house between the restricted procedure and the negotiated procedure.

Before the formal launch, the IT team wanted to be assured about the service functioning. Therefore in the beginning, project managers opted for a soft-launch and a practical test of the system, involving the court service's staff that tried the claim submission facility. Successively, the project managers promoted MCOL with posters, in the buildings of courts, with press releases and advertised the service involving a civil services' users associations (Civil Courts Users Associations, CCUA). Nowadays, both PCOL and MCOL are advertised in the most important government's websites as Government Gateway, DirectGov and Business Link.

After the 2001 launch of the MCOL website, the Department of Constitutional Affairs approved many amendments to the service that updated it and improved its functionalities. In 2002, in order to allow for a major equality between claimant and defendant, DCA provided significant functionalities to defendants so that they can defend online to claims. Given the consistent interoperability between MCOL and its back office system, the CCBC, also the Bulk Centre needed to be updated thus including defending capabilities also for the CCBC's bulk users.

When the contract with EDS ended, the HMCTS the executive agency of the Ministry of Justice that substituted the DCA signed a new contract with Logica the ICT services provider for the public sector that won the competitive tender. Therefore, a consistent change for MCOL has been represented by the transition to Logica, that now deals with the technological components of MCOL. An important change due to this transition has been that claim packs are not printed and posted by EDS in Mitcheldin but by Logica in its office of Bridgend.

Moreover, Logica added other two functionalities to the MCOL website: the postal code look up and the synchronization of events. The postal code look up permits to control and look for the exact address of claimants or defendants. This is also allowed by the UK peculiar system of postal coding that codes not only the postcode area and the district, but also the street, part of a street or a single address. Moreover, Logica worked at the synchronization of events that allow a rapid update of claim status in the website when CCBC staff works to claims through the CaseMan system.

As anticipated, the use of payment engine based on credit cards needed the system to comply to the PCI (Payment Card Industry) Data Security Standards (DSS). Most of these standards have the goal of increasing controls around cardholder data in order to reduce frauds via card details' exposure. EzGov, which provided the payment engine, dealt with MCOL compliance to the PCI DSS standards.

Finally, a fundamental change in the MCOL service regarded its accounting engine. Initially, the FlexFoundation software dealt with accounting using debit card details. The recent MCOL update integrated the system with the Government Gateway system (May 2010), an online process that checks users' identity when they sign up to government services and provides a user ID. This change translated in a further technological interoperability between different online services. In order to ensure a rapid integration of MCOL in the Government Gateway accounting system, HMCTS worked in cooperation with Logica, Government Gateway and DirectGov. However the integration was not difficult since the Government Gateway accounting system was already developed and functioning. Probably, habitual users heard the greatest burden of MCOL update, given that they could not login in MCOL with the old codes and they had to use the accounting engine of Government Gateway. Moreover, despite the Government Gateway's aim is to integrate several online government services, the Government Gateway ID works only with one service, so users need to create another account for each service they want to utilize.

4. The Configuration of the System

MCOL is the product of the integration of different agencies, public and private, technological components and institutions. The HMCTS the executive hand of the Ministry of Justice deals with the management of the system, its updating and amendments. Logica substituted EDS in providing the main ICT technologies that support the system. Moreover, Logica deals with major issues regarding the functioning of the ICT facility. CCBC is the back-end office of the service; it deals with the administrative work regarding money claims and uses the CaseMan system to store claims' details and to update claims' status. Caseman is an important part of the system; this is a relational management database system⁷⁰ which substituted manual record cards. Caseman is distributed in each county court and in CCBC as well (every court has its own server and network). The case record is created through the creation of events and allows the electronic transfer of data. As we will see, MCOL allows users to carry on most of the operations both online or by the use of papers. For each change of status in a claim, events in Caseman are changed by CCBC staff. Moreover, CCBC staff will use Caseman to transfer claims' data to Northampton County Court for judgement or to other county courts in case a defendant issues a *defence* (see below).

⁷⁰ Plotnikoff, J., Woolfson, R., and Lyons, S. (2001) "The Technological Challenge of a Fragmented Justice System: ICT in England and Wales". In Contini, F., and Fabri, M. (eds.) *Justice and Technology in Europe: How ICT is Changing the Judicial Business*. Dodrecht: Kluwer Law International.

CCBC provides a help-desk that supports citizens for the use of MCOL and PCOL. CPC provides the validation facility for all the incoming claims (also claims submitted in electronic forms and not through MCOL website). Finally, while the Flexfoundation software supplies the payment engine, Government Gateway accounting system is utilized to control for users' identity.

In order to describe the system's architecture (see Fig. 2), it is useful to look at the iter of claims from submission to the management of claim by CCBC.

The user can utilize any Internet browser to connect to the MCOL website (www.mcol.gov.uk). In order to get an identification number, the user needs to connect to Government Gateway (www.gateway.gov.uk) the government website where citizens can register for online government services. The website allows users to communicate and make transactions with government from a single point of entry. The online process checks the user identity looking at the National Insurance number and provides a user ID that can be used only for a government service, in this case MCOL; this will be transmitted to the MCOL web server so that it can identify the user. After the user log in, MCOL provides a client number that he can use during all the process of claim submission (and also in order to be identified by the help desk office in Northampton, in case of problems).

Once claims' details are submitted, information pass to the Logica (once EDS) web server that runs the Flex Foundation software. This passage is protected by a firewall. The claim details (user account, claims, responses) are imputed into the MCOL database. The communications between the server and the database are protected by a second firewall. The database is endowed with a direct link with CCBC facilities. The direct link allows for the rapid update of claim's status both in the MCOL web server (approximately a change of status from CCBC takes 15 minutes to appear in the MCOL website) and in the CCBC CaseMan system.

The CCBC system is managed in the Northampton CCBC and CPC agency. After CPC validation (see section 3.1), Claims are retrieved and managed in the CaseMan, a case management system that allows court staff to deal with claims from any county court in England and Wales. CaseMan is utilized as well to deal with claims submitted in bulk or through the CPC via magnetic tapes or dial up connections. Once the claim is submitted CCBC transmits the claim to a Logica office that prints and posts the claim to the defendant (before the recent update, CCBC use to have a direct interface with EDS Printing and Posting facility in Washington Durham County).⁷¹

The claim submitting procedure foresees the payment of court fees. Therefore a payment engine is linked to the MCOL website. The facility is part of the Flexfoundation software and it complies with the PCI DSS standards.

⁷¹ Kallinikos, J. (2008) "The Case of Money Claim Online Ser-vice in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: European studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

The MCOL architecture comprises as well a help desk service and a support for users. Moreover, a Frequently Asked Question (FAQ) list is present in the MCOL website. The help desk is based in Northampton and deals with the majority of issues and problems that users are facing in utilizing the MCOL service. The help desk answers to users' question utilizing the claim number in order to identify the user and answer appropriately to its doubts. Requests of help may come to the CCBC help desk also by e-mail. If the answer is not known or if it regards issues or problems that are affecting the website and its facilities, questions are transmitted to Logica that will answer in due time.

At the legislative level MCOL is regulated by a practice direction, the 7E⁷² that integrates the Civil Procedure Rule Part 7. The practice direction enables claimants to "start certain types of county court claims by requesting the issue of a claim form electronically via Her Majesty's Courts Service website" (CPR Part 7). Practice Direction 7E moreover, allows claimant to utilize the MCOL website in order to advance in the claim stages, for instance, by requesting a judgment in default, a judgment on acceptance of an admission of the whole of the amount claimed, the issue of a warrant of execution. As introduced, in 2002 the DCA enlarged the MCOL facility to the use of defendant, therefore, the PD 7E was amendment in order to allow defendant to file electronically an acknowledgment of service, a part admission, a defence, a counterclaim (if filed together with a defence). The Practice Direction 7E indicates also the conditions under which a user can issue a claim utilizing MCOL facilities (PD 7E).

The Practice Direction requires that any statement of case must be verified by a Statement of truth in the form "I believe - The claimant believes- that the facts stated in this claim form are true" (CPR Part 22). Statements of Truth are regulated by the CPR part 22.⁷³ As soon as the signature is concerned, the PD 7E states "any provision of the CPR which requires a document to be signed by any person is satisfied by that person entering their name on an online form". The use of the electronic signature has been disciplined in the English legislation since 2000 with the "Electronic Communication Act" (see section 3.1).

As soon as the semantic component of MCOL is concerned, the Ministry of Justice and the HMCTS are committed since the Lord Wolf reform to using plain English as a mean to enhance accessibility of legislation. Therefore, the MCOL project managers that dealt with guidance made a great effort to make instructions easy to understand also for the lay public. Moreover, also Civil Procedure Rules and Practice Directions that discipline MCOL and PCOL are written in a very understandable language. Lord Wolf reform imposed the substitution of Latin phrases by common English words as well. For example the term "ex parte" has been replaced by "without notice".⁷⁴

⁷² Practice Direction 7E "Money Claim Online".

⁷³ Civil Procedure Rule Part 22 "Statement of Truth".

⁷⁴ Malleon, K. (2005) *The Legal System*, Oxford University Press.

In this regard, the use of Welsh language represents a considerable issue for MCOL. Money Claim Online’s jurisdiction comprises England and Wales and due to bilingualism legislation, any public act needs to be written in both English and Welsh to be valid. However, while guidance have a Welsh version as well, the claim forms in the MCOL website are only in English. This represents an issue for HMCTS that must be solved in the future, since it poses very important problems from a legal point of view. The study of MCOL architecture reveals the simplicity of the system that is composed by few (only seven) stable sub-systems organized hierarchically and in a centralized structure. The MCOL “simple” system derives also from the rapidity of the civil procedure for money claims in England and Wales that foresees few stages and a small amount of burocratic and administrative work.

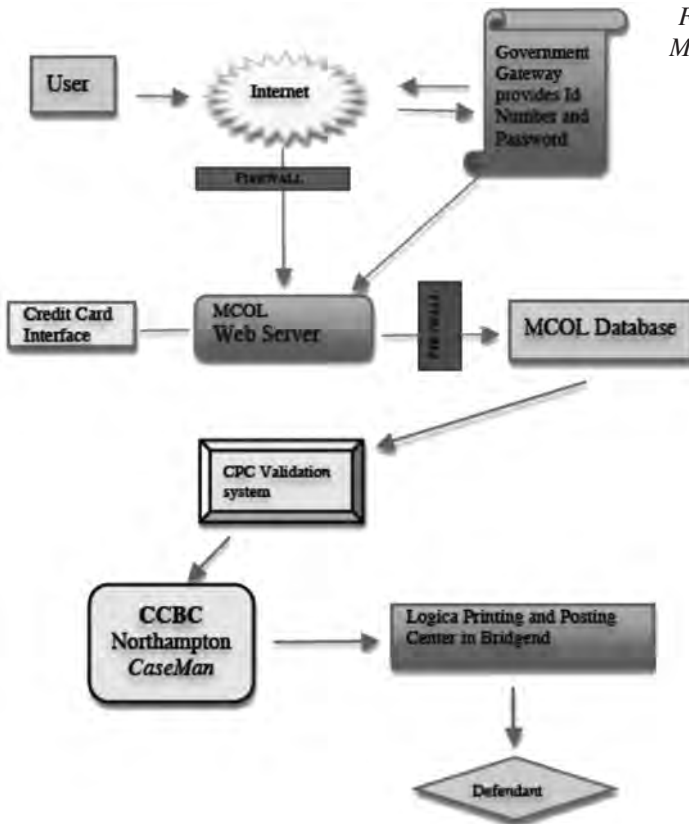


Figure 2 - Map of the MCOL organizational Architecture⁷⁵

⁷⁵ Map of The MCOL organizational Architecture. User logs in MCOL through the Internet website and after receiving ID and password in Government Gateway. ID and password are electronically communicated to MCOL. Claim goes through a firewall and then in MCOL website and database. After CPC validation are entered into CCBC CaseMan system. Claims are update and sent electronically to a Logica office that prints and posts the Claim.

5. The Day-to-day working of MCOL system

The online service called Money Claim Online allows individuals or organizations to issue claims over the Internet; it is accessible 24 hours a day, 7 days a week and claims are issued in the name of Northampton County Court. Users can utilize the website to check the status of the claim, request entry of judgment and enforce a judgment by way of a warrant of execution. In given cases, claims may be automatically transferred to a County Court.⁷⁶

The online procedure that MCOL handles, it's a slavish replication of the offline procedure: the N1 form used to issue a claim in an English or Welsh county court is reproduced in the MCOL website. However, the offline procedure is more time consuming and foresees that individuals present the claim personally in each County Court. For instance, claims for more than 5.000 Pounds are dealt by the fast or multi-track procedure and can take more than six months to complete, while by using MCOL each claim independently from the sum of money claimed are issued in a stricter time scale.

Moreover, the English Legislation imposes claimants to try to settle the dispute before going to court using the following methods: negotiating an agreement directly with the person or organisation; involving an Ombudsman who can act as an independent referee; using an arbitrator who will make a binding decision that will solve the problem. Those actions are denominated Pre-Action Protocols and disciplined in the CPR Part 56 and 57. There are specific protocols for types of cases (for instance, professional negligence, housing disrepair, construction and engineering claims) and courts may impose sanctions if claimants do not comply with pre-action protocols. MCOL that can be considered a peculiar type of alternative dispute resolution that avoid settling the case in a Court, do not impose Pre-Action protocols.

However, issuing a claim online is not possible for any kind of claim, since MCOL imposes some limitations. MCOL is a service for fixed amount of money claims (up until £ 100.000), therefore is not available for cases in which claimants do not know exactly the value of the claim, as for examples in claims for damages or compensation for loss or injury. Moreover, other restrictions apply to MCOL: claimants cannot use the service if the claim is against more than 2 people, if the case falls under the Mental Capacity Act 2008, if the address of the defendant is not in England and Wales. Finally, a clause that certainly restricts the accessibility of the service applies to individuals that are eligible for fees' exemptions: in these cases, individuals cannot utilize MCOL but need to issue the claim directly in a County Court.

⁷⁶ All this section derives from the analysis of website guidelines, precedent contributors to the topic (Plotnikof et al., 2001 note 52; Kallinikos, 2008 note 6) and interviews with Court Staff and ICT team of the CCBC and of the HMCTS. For more information see: www.mcol.org.

MCOL fees⁷⁷ stimulate the use of the online service instead of the traditional procedure that involves directly county courts. Both in county courts and MCOL, fees are calculated on the base of the amount claimed. As table 3, indicates, for each range of money claims MCOL court fees are lower than county courts fees. Higher amounts of money claimed are associated with a further reduction of MCOL fees comparatively to county courts; thus averagely, MCOL court fees are the 14.64% lower than county courts fees.

Table 1 - Fees in MCOL vs. County Courts⁷⁸

Type of Claim	County Court	Money Claim Online (MCOL)	Money saved with MCOL	
up to £300	35	25	10	
£300.01 - £500	50	35	15	
£500.01 - £1,000	70	60	10	
£1,000.01 - £1,500	80	70	10	
£1,500.01 - £3,000	95	80	15	
£3,000.01 - £5,000	120	100	20	
£5,000.01 - £15,000	245	210	35	
£15,000.01 - £50,000	395	340	55	
£50,000.01 - £100,000	685	595	90	%
Average Fee	197.22	168.33	28.89	14.65

5.1. Issuing a Claim in MCOL

In order to have access to MCOL, users are required to register for an account in the Government Gateway (GG) website. As anticipated, this procedure is an amendment to the original website where accounting was managed directly in MCOL (see section 3.2). After registration in GG, users will obtain a User ID and a password. When returning to MCOL website, users have to fill an individual enrolment form, in which they need to provide claimant details and address. The screen provides a very functional address lock up facility: when a postal code is provided a second screen in which the user can select his address between a list of addresses that refer to that postal code, appears.⁷⁹

When a user successfully enrolls to MCOL, a MCOL customer number is provided. The 2011 MCOL online survey conducted by HMCTS has shown that the registration process is sometimes problematic for users that get confused when they receive an identification number from GG and an MCOL customer number, and tend sometimes to forget one of them or both.

⁷⁷ <http://www.justice.gov.uk/courts/northampton-bulk-centre/money-claim-online>.

⁷⁸ Fees in County Courts and MCOL absolute values and average. Money saved in absolute value and average. Absolute Values in Pounds.

⁷⁹ <https://www.moneyclaim.gov.uk>.

Once logged in, users can begin a new claim or respond to a Claim. If user begins a new claim, an eight-step screen appears. The first one, that regards the Claim, provides a guidance screen with information on MCOL claim submission system, the details needed and a fee table.⁸⁰ In the successive four steps, a claimant will provide his details (Claimant Details step), a correspondence address (Correspondence Address step), defendant details with the possibility to distinguish between an individual or organization and the possibility to add up until another defendant (Defendant Details step), and the details of the claim plus the amount claimed with or without interests applied (Claim Particulars step). In the Claim Particulars screen, users need to describe the claim details in no more than 1080 characters (including spaces); if claims details cannot be included within this allowance, user can state in the particulars' section that detailed particulars will follow: this need to be sent by post within 14 days to the defendant. The following three screens provide a summary with the statement of truth (Summary step), a screen where credit/debit card details need to be submitted (Payment Details step), and a confirmation screen where user can download the claim as pdf or plain text (Confirmation step). The Claim form that claimant can download from MCOL website reproduce the N1 form that claimant need to fill in order to submit a claim directly in a County Court.⁸¹

Once the claim is submitted, it will sit in the MCOL server until 9 am and then it is moved electronically to the CCBC after the CPC validation process (claims received after 9 am are processed the next day). The claims are managed in CCBC with the use of CaseMan, the Court Service Case Management system. In CCBC, claims received are transmitted to a Logica office that prints and sends to the defendant the claim pack. Before transition to Logica, claims use to be sent to EDS printing and posting centre in Mitcheldin, from which claim packs use to be posted to defendants.

MCOL guidance indicates that the 5th day after submission the claim form is considered to be issued. Therefore, in the worst-case scenario, claims will take one day before being registered in the CCBC system and CCBC will take 4 days to issue the claim in the name of Northampton County Court and to send the claim pack to the defendant. As it happens in any county court with small money claims, CCBC do not even check the claim, but it sends it directly to defendant; moreover, the defendant do not have to sign when the claim is received, therefore there is no proof that the right person received the claim pack. If the claim pack fails to be served to the defendant, for any reason, Post Office will return it to the court: if this happens claimants will receive a non-service notice and will have the responsibility to serve the documents on the defendant within 4 months of the date of issue.

⁸⁰ <https://www.moneyclaim.gov.uk>.

⁸¹ <https://www.moneyclaim.gov.uk>.

5.2. Defendant's Options

Once the claim pack is served, defendant has 14 days to respond. Given that CCBC has no capacity of checking if claim pack is correctly received the 14 days period begins from the date of service, that is 5 days from the date the claim was issued.

In the claim pack, defendants will find a user ID, a password and a claim code; the ID and password allow the defendant to login in MCOL and respond to the claim. Defendants have different options at their disposal, from admitting and paying the claim in full to defending the claim; defendants can act utilizing the MCOL online facilities or by post/paper utilizing the forms included in the claim pack, however not all responses can be submitted using MCOL, as I will show later.

Defendants have the following responses' options at their disposal: 1, admitting and paying the claim in full directly to the claimant; 2, admitting the claim in full and asking for time to pay; 3, admitting part of the claim; 4, filing an acknowledgment of service; 5, Defending the claim; 6, Making a Counterclaim.

1. If a defendant wants to *admit a claim in full*, he needs to utilize the paper forms received with the claim pack and send it directly to the claimant within 14 days after service of the claim. In this case, the use of MCOL is not allowed. Defendants need to pay court fees, costs and any interest directly to the claimant at the address for service provided in the claim pack. When claimant receives the payment, has to communicate to MCOL that claim has been paid in full by fax, telephone or e-mail.

2. A defendant may *admit the claim in full but wish to ask for time to pay*. In this case, the defendant needs to complete admission form N9A and send it to the claimant. If the claimant accepts the proposal, may use MCOL to issue a judgement by admission. If he wants to reject the proposal, has to notify it by post to CCBC in Northampton and provide a copy of the N9A form. In this case, CCBC will settle on how defendant should pay. The usual procedure is that MCOL makes the decision if the difference between the defendant's outcome and in-come is a positive amount. In the opposite case, CCBC will transfer the case to Northampton County Court that will decide. Both parties may object Northampton County Court decision within 14 days; in this case, the court will transfer the case to the competent County Court for a hearing.

3. A defendant may want to admit part of the amount claimed; this is called a part admission. Defendants may issue a part admission either using MCOL or by filling the N9A and N9B forms and sending them directly to Northampton County Court. With a part admission, defendants may defend the disputed amount and either: a. Pay the admitted amount (payments must be sent directly to the claimant); b. Ask for time to pay the admitted amount (option

present in the part admission form both offline and online); c. Making a counterclaim to the claimant (see later in this section).

Claimants will receive from CCBC a copy of the part admission. If a claimant wants to accept the part admission, has to complete the form provided and send it to the court by post or fax. Otherwise, if the claimant does not accept the part admission, has to notify it to CCBC within 14 days. In this case, the case will be transferred to a competent County Court.

4. The defendant may want to extend the 14 days period; in this case he may issue an *acknowledgement of service* in MCOL or using the form included in the claim pack. Total time to file a response can be extended for more 14 days, for a total of 28 days. MCOL automatically extends to 28 days for defendant to respond to the claim and prevent the defendant to issue a second acknowledgement of service, given that legislation allows to extend the period to respond to a claim only once for other 14 days.

Acknowledgement of service form can be used to contest court's jurisdiction. In this case, jurisdiction cannot be contested on the ground of geographical location, but on the base of legal authority.

5. Defendant may want to dispute the claim by filing a *defence* in MCOL or completing N9B form and sending it by post to the competent court. If defendant issues a defence online, MCOL will transfer the claim to the competent court: usually if the defendant is an individual the case will be transferred to defendant's home court; if defendant is an organization, the case will be transferred to the claimant's home court.

If a defendant issues a defence declaring that the amount claimed has been already paid, MCOL will not automatically transfer the case until the claimant notifies to the court that the claim has or has not been paid.

6. If a defendant has a claim against the claimant as well, he can issue a *counterclaim*. This action is allowed only if defendant is making a defence against part of the claim or the claim in full. The counterclaim procedure foresees the payment of fees; the amount to be paid depends to the money claimed and counterclaim fees are the same as fees for submitting a claim offline or online (see Tab. 3).

Defendants can submit a counterclaim through MCOL or by completing the paper forms included in the claim pack. In the latter case, paper form should be posted directly to the court.

As the precedent arguments have shown, defendants have the possibility to take most of the action foresaw by legislation both online or offline by filing appropriate paper forms provided in the claim pack. However, it is worth mentioning that once the defendant decides to go offline in order to respond to the claim, the online procedure is completely excluded from both parties' options.

When a defendant issues a part admission (part admissions' documents are posted to the claimants), a defence or an acknowledgement of service,

they receive a receipt that indicates date and time when documents were received. MCOL will receive the part admission, defence or acknowledgement of service request, and issue them in the same day CCBC receives it. However, the online forms received after 16.00 will be processed the day after. As anticipated, MCOL prints and posts case's documents in order to transfer defended cases to the competent county courts; however, data can be retrieved electronically in each county court through CaseMan. Every operation that a defendant may choose to do, as an acknowledgement of service or a counterclaim, is registered in the CaseMan system. The CaseMan system is also utilized for electronic transfer of claims' data as in the case of a defence that foresee a transfer to another county court.

5.3. Claimants' Judgement Options

In MCOL, claimant may ask for a judgement in the absent of defendant's response (default judgement) or where claim is admitted (judgement by admission) without paying any additional fee. If a claimant fails to request a judgement within a 6 months period, the claim will automatically be stayed, and no further action may be taken. Claimants may use their MCOL ID and password to login and ask for a Judgement. MCOL website provides an eight step procedure for requesting a judgement. In the first screen Judgement Guidance provides information on how to ask for a judgement and the restrictions relative to the procedure. In the Judgement Type step, two options are allowed, a judgement by default and a judgement by admission. The former can be issued only if defendant failed to answer to the claim within the 14 days allowed (or 28 if an acknowledgement of service have been issued). The option of judgement by default will appear in MCOL only after the 14/28 days period has passed. In the Judgement Details step⁸², claimant may opt for asking the defendant to pay the claim by instalments or in one payment; moreover, claimant is entitled to claim interest from the date of issue up to the date he is requesting judgment. MCOL processes the judgement orders only after 18:00 through an overnight-automated routine.⁸³ Therefore, no one in CCBC will check the judgement orders and the procedure is totally automatic. The overnight routine allows for defences issued before 16.00 to take priority on requests for judgement.

The judgement by admission can be issued only if claimants received from defendant a signed admission (the court can ask the claimant to submit proof

⁸² <https://www.possessionclaim.gov.uk/pcol/>.

⁸³ Kallinikos, J. (2008) "The Case of Money Claim Online Ser-vice in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

of the admission at any stage). If claimant receives a part admission from defendant asking for time to pay, he should decide whether to accept or not the proposal. If claimant accepts the payment proposal can issue a judgement by admission in MCOL. Otherwise, if claimant does not accept it, should complete a paper form (the N225) and send it to the Northampton County Court with a copy of the defendant's admission form. The court will settle on the rate of payment and send the order to both parties.

As anticipated, in case of a defendant part admission, whether the claimant accepts it or not judgements cannot be requested online, but appropriate forms need to be posted to the Northampton County Court.

From the defendant point of view, the judgment is a decision of the court regarding the outcome of a claim. If the decision of the court imposes the defendant to pay, judgement will be entered on the public Register of Judgments, Orders and Fines. If the judgment has been paid in full within one calendar month of the date of the judgment, the entry in the public register can be cancelled and removed completely. Otherwise, if judgments are paid in full more than one month after the date of the judgment they can be marked as satisfied but will remain on the Register for six years. Many organizations like building societies, banks or credit companies take in consideration the information on the Register when an individual or an organization is applying for credit, in order to decide whether or not that individual or organization is trustable and will pay off the credit.

5.4. *Enforcement*

In case a defendant fails to comply with a court judgement, claimant has different enforcement options at his disposal; however, not all of them can be pursued online utilizing the MCOL website like for instance the direct deductions from earnings or the use of bailiffs to seize goods. Warrant of execution is the only method of enforcement available on MCOL. Claimant needs to be sure that the defendant has enough goods, which could be sold at auction to raise money for the judgment, or the money that the claimant is asking for on the warrant.

Warrant can be issued only after the claimant has asked and obtained a judgement. Whenever a judgement in default with immediate paying has been entered, MCOL allows applying for a warrant. This happens as well when a judgment ordered the defendant to pay by a particular date or by instalments and the defendant has failed to pay. The minimum amount a claimant can issue a warrant for is £50, or one monthly instalment, whichever is the greater amount; while the maximum amount that can be issued a warrant for is £5000 (including costs; as it happens in any other county court). If a Judgement totals more than £5000, claimant can issue additional warrants in order to recover the balance at a later stage, but the case will be transferred to the com-

petent court. When a warrant is issued, it is sent electronically to the bailiffs at the defendant’s local county court, as only the bailiffs at that court have jurisdiction to enforce the warrant. The Northampton CCBC will still have the claim in its CaseMan, however, the local court bailiff will handle the case and keep both parties and MCOL updated as to progress on the warrant.

5.5. Use of the service and users’ satisfaction

The use of Money Claim Online comparatively to paper based procedure is very ample. The 67% of money claim in the period 2009-2010 have been issued online (even though the Ministry of Justice Key Performance objective was to reach the 75% (see tab. 4).

Therefore, if from one side MCOL revealed to be a success as a civil justice ICT facility, there is still room for improvement.

An online survey administered by HMCTS in 2011 to the MCOL users revealed the diffused users’ satisfaction for the service. The survey has been prepared by HCMTS by utilizing the online service “Survey Monkey” that offers surveys’ facilities for free or at low prices (government cuts linked to the international crises affected the Ministry of Justice as well). A link to the survey has been included in the final steps, both for claimants or defendants of the MCOL website.

The observations gathered are consistent: 3008 users completed the questionnaire, thus providing to HMCTS a very useful source of information that can help the agency to improve the system in the future.

Table 2 - Civil Work Initiated Online⁸⁴

KPI 8 Increase the amount of civil work initiated online 65% of eligible possession claims to be made through Possession Claim Online (PCOL) 75% of specified money claims to be made online through Money Claims Online (MCOL) or the Claims Production Centre (CPC)			
2007-08 Performance	2008-09 Performance	2009-10 Target	2009-10 Performance
This measure was reconfigured in 2008 so comparable data not available	73%	PCOL – 65%	79%
	67%	MCOL/CPC – 75%	67%
The 2008/09 targets were 55% for PCOL and 70% for MCOL/CPC			

⁸⁴ Table gathered from the report “Her Majesty Court Service Annual Report and Account, 2009-2010.

A considerable result of the survey is that the majority of users are not professional lawyers but lay individuals (62,5%) or private companies (33,1%; see Tab. A.1 in the Appendix). The only 2,6% of respondents are solicitors representing a client (see tab A.2 in the Appendix).

Following the users survey results, the first impression that users have of MCOL is of an easy and quick service that can avoid going personally to Courts; therefore, HMCTS objective of removing from county courts the paper based administrative work of money claims seems to be reached. The 62,9% of users utilized the service because they thought that it would be quicker, the 51% because they thought it would be easier and the 20,2% because they thought it minimizes contact with the court (See tab. A.3 in the Appendix).

The survey revealed also which stages (Registration, Issuing a claim, Monitoring Claim progress, Paying the fee) of MCOL facility is easier to use. Users consider Registration (66%) and Paying the fee (74,6%) the easiest stage of the MCOL procedure (Tab. A.4 in the Appendix).

The support facilities (helpdesk, user guidance, FAQ) are a fundamental component of MCOL. Tab. A.5 in the Appendix shows the diffused use of the user guide and the high level of users' satisfaction for this facility: the 47,6% of respondents consider the user guide and FAQ a good service. Moreover, the data shows that the online help (48,6%) and the users' helpdesk (69,1%) are fairly not used by MCOL users.

Finally, the most considerable result is the users' satisfaction for the overall service. The 46,5% of respondents are very satisfied with the service while the 28,6% are fairly satisfied (see Tab. A.6 in the Appendix). moreover, the 92,7% of users that utilized MCOL facilities declared that they would use it again (see Tab. A.7 in the Appendix).

6. Possession Claim Online, a MCOL spin off

Possession Claim Online (PCOL) is the online service implemented by HM Courts and Tribunals Service to help individuals and businesses to issue or respond to claims regarding the recovering property as arrears of rent or money due under a mortgage.⁸⁵ It can be considered a spin-off of the MCOL experience, given that many characteristics of the money claim facility are present in PCOL, as the aspects of the screens, the online procedure in sev-

⁸⁵ All this section concerning PCOL, derives from the analysis of website guidelines, precedent contributors to the topic (Falletti, 2009; Cortés, 2011) and interviews with Court Staff and ICT team of the CCBC and HCMTS. For more information see: www.pcol.org. Falletti, E. (2009) E-justice: esperienze di diritto comparato, Milano, Giuffrè. Cortes, P. (2011) Online Dispute Resolution for Consumers in the European Union, Routledge, London.

eral steps and the draft of a Practice Direction that enables the PCOL technology. As I will show later however, the two online services are quite different in many aspects: these PCOL peculiarities are at the base of some of the issues that affect the service.

As MCOL, PCOL is suitable only for individuals or organizations that have an address in England or Wales. The service is available 24hrs a day, 7 days a week and it allows to make, issue, view and progress the possession claim electronically and fix a date for an hearing. The system's objective is to allow users to have access to county courts for issuing a possession claim without visiting the court and to save money (given that PCOL fees are reduced comparatively to the traditional procedure). Moreover, it removes from county courts the paper work associated to the administrative procedures of possession claims. The HMCTS data confirmed that in the 2009-2010 period the 75% of possession claims have been initiated online, thus confirming that despite the issues that are affecting the system and that refer to PCOL performances, many individuals and organizations choose the online system.

The Civil Operational Business initiated the PCOL project in 2006 in order to increase automation and provide a more efficient way for processing possession claims. As for MCOL, different offices of HMCTS and the private companies that supplied the main technology, worked in junction in order to implement the project. The principal actors involved were the Civil Operational Business that works at the civil courts' administrative operations, the HMCTS ICT team, the Ministry of Justice Policy, which looks at the overarching policy and changes in legislation and EDS the private company that provided the main technology of the online facility.

As soon as the strategy utilized for the project implementation is concerned, the development followed the HMCTS standard project methodology. This foresees first the requirements gathering that regards from one side an high level requirements signed off by the Civil Policy Business and from the other the development of low level requirements by the ICT team and the supplier. When requirements were gathered HMCTS and suppliers signed off the commercial contracts and proceeded to development, testing and deployment. As soon as the strategy is concerned, an important difference with MCOL regards the legislation that allows users to issue a Possession Claim online, that is the Practice Direction 55B. Differently from what happened with MCOL, the PD 55B have been approved before the requirements gathering and provided forced choices to ICT developers. One of the most considerable forced choices was the involvement of several county courts instead of centralizing the service in one county court as for MCOL. This choice was dictated by the PD rule that indicated the claimant home court as the competent county court for issuing the claim. Therefore, the design of the PCOL website foresees that electronic data are transferred from the web-server to the

competent county court. The website utilizes a post-code look up facility in order to retrieve the competent court.

As for MCOL, PCOL has been tested live in an environment as life like as possible, and including all interfaces and printing. More practically, Court staff tried the system by making possession claim each other. Given that the system involves local authorities, the online system have been advertised in all County Courts involved by the project with court leaflets and court guidance updates.

The PCOL structure compared to MCOL is much more decentralized. The web-server and the PCOL database is connected to the local county courts that individually manage the claim, print and post the claim documents and forms to the claimants and to the defendants. Even though the original design of the organizational structure remained quite unchanged, Logica substituted EDS in dealing with the technological components (PCOL server and database) of the system. However, an important amendment that this change brought about to the system is the integration with Direct Debit's system of payment. Direct Debit is an automated system of payment that allows citizens to pay bills with a direct deduction from a bank account. The integration with PCOL allowed possession claim bulk users to pay fees by collecting them on a monthly basis from the nominated account in Direct Debit for the transactions completed through the PCOL service.

As anticipated, at the legislative level, the then Department of Constitutional Affairs drafted a Practice Direction that allowed claimants and defendant to use an online facility to manage their possession claims. The Practice Direction 55B⁸⁶ "provides for a scheme ("Possession Claims Online") to operate in specified county courts enabling claimants and their representatives to start certain possession claims under CPR Part 55 by requesting the issue of a claim form electronically via the PCOL website; and where a claim has been started electronically, enabling the claimant or defendant and their representatives to take further steps in the claim electronically".⁸⁷ Therefore, the practice direction 55B represents an amendment to CPR Part 55 that disciplines the possession claim matter.

6.1. *Everyday use of Possession Claim Online*

A PCOL user need to register in PCOL website before utilizing the system. User can register as an individual, as a solicitor acting on behalf of a

⁸⁶ Practice Direction 55B.

⁸⁷ Plotnikoff, J., Woolfson, R., and Lyons, S. (2001) "The Technological Challenge of a Fragmented Justice System: ICT in England and Wales". In Contini, F., and Fabri, M. (eds.) *Justice and Technology in Europe: How ICT is Changing the Judicial Business*. Dodrecht: Kluwer Law International.

firm or a private organization.⁸⁸ The website enables the claimant to issue a possession claim, to check the status of the Claim or to issue a Judgment and/or a Warrant.

Any individual or organization that has an address in England and Wales and that wants to issue a claim against a defendant that also has an address for service in England and Wales can utilize the system. Differently from the offline procedure, the value of the property and the amount of any financial claim issued shouldn't be higher than £100,000. Moreover, the online service has some restrictions that resemble MCOL restrictions. Individuals under the age of 18 or patients as described in the Mental Health Act 1983 or a person forbidden by a High Court judge to issue proceedings without permission (vexatious litigant) cannot utilize the system.

In order to issue a claim, the claimant needs to follow an eight step procedure that enables to submit claimants' details (step 1); to provide a correspondence address and a post code to which the system associates the competent county court (step 2); to submit claim details and specify the types of arrears (step 3); to add defendant's details and address (step 4); to add claim particulars (step 5); to submit the history of payment and the payments due (step 6); to see a resume of the claim and sign a statement of truth (step 7); and to pay the fees (step 8).

Once the fee is paid, the possession claim is electronically transferred to the competent county court that will fix a date for a hearing and will print and post the details of the claim to the defendant. The date of the hearing will be not less than 28 days from the date of issue of the claim form (CPR Part 55⁸⁹). During this period, defendant can use the online system to issue a defence. If the defendant does not file a defence within the 28 days, he may take part in the hearing but the court may take its failure to do so into account when deciding about the case. Defendant can present a defence going offline, thus presenting it directly to the competent county court.

The possession claim online facility allows both parties to fill online forms in order to apply to court services that refer to the possession claim submitted. I already introduced the online facility for defendants that want to issue a defence before the hearing date.

Moreover, claimants can utilize PCOL to issue a warrant of possession. Warrant of possession is an official termination order to end a residential tenancy. Defendants, from the other side can go to PCOL to request a suspension of eviction. This applies when the defendant is able to make payments again and wants to ask the judge to "suspend the warrant for possession". Moreover, in the case a previous warrant has been suspended by the court and the

⁸⁸ <https://www.possessionclaim.gov.uk/pcol/>.

⁸⁹ Civil procedure Rule Part 55 "Possession Claims".

defendant has breached the terms of the suspension, the claimant can “re-issue a Possession Warrants” through PCOL. Claimants and defendants can pursue these legal actions both online through MCOL or presenting the appropriate forms to the court.

The PCOL website moreover is characterized by several interesting facilities that help claimants and defendants during the all possession claim procedure. Users can go in PCOL and ask for a hearing adjournment or to “terminate party representation”, that is to remove a party’s solicitor as acting as his representative. Finally, PCOL website provides a facility that allows user to submit direct communication to the courts, in order to assist the court in dealing with a party’s enquiry.

Even though Possession Claim Online is inspired by the MCOL successful story, it is characterized by many differences with the online facility that manages money claims. A considerable difference is that the PCOL system is not centralized but it is linked to the local county court that deals individually with each case. This peculiarity of the PCOL service is clearly influenced by the legislation that disciplines possession claims. Differently from money claims’ procedure that in its first stage is mainly procedural and involves court staff and not judges, possession claim procedure foresee that as soon as a claim is issued to the court this will set a date for an hearing in that county court. Therefore, PCOL cannot deal with the several stages that precede a court hearing, because legislation do not foresee them. The story of PCOL and MCOL legal reorganization reveals that when the technological and legal change happen at the same time and in coordination, as for MCOL, it is easier to avoid issues or bottlenecks and it is more probable a successful development of the project. Differently, when the technology tries to enable procedures already set by the legislation, many difficulties arise and the translation of offline procedures to online routines is not easy.

However, as I have shown, many options that both parties may want to use after or before the hearing, as issuing a defence or a warrant of possession, are available online. Those can be used as well by going offline. This characteristic is in common between the two online facilities and they are based on the England and Wales Justice System commitment to the accessibility of justice services.

7. Discussion: Lessons Learned

The analysis of MCOL and PCOL system allows grasping important lessons regarding the development of e-justice systems not only at the national but also at the transnational level. This is useful in the designing stage of the “Building Interoperability” project that can be based also on the suggestions that emblematic national cases as MCOL in England and Wales may provide.

Some of the lessons learned by the study of the two e-justice services confirm some theoretical arguments that several scholars that dealt with the development of ICT systems⁹⁰, with the theory of organization⁹¹ or with the study of e-justice⁹² acknowledged. Other suggestions are counterintuitive and seem to disconfirm precedent approaches (see below).

The most important lessons come from the comparison of MCOL and PCOL features and of their development history. The two services are very similar from several points of view; previously, I called PCOL an MCOL spin-off because it comes from an attempt of the HMCTS to utilize the same online system (and part of the architecture) also for possession claims. PCOL and MCOL utilize the same screen mock-ups, and Logica manages the database and the web server of both services. Moreover, both ICT services can be accessed from Internet by any user (most of the MCOL and PCOL users are not lawyers) and this facilitates the access to the service and fosters a large users' base. The open access of citizens to both services is also guaranteed by the possibility in every stage of the possession and money claims' online procedure to use an offline paper based procedure as an alternative.

Both utilized an already established and functioning installed base: MCOL the CPC and CCBC architecture and services, PCOL the several courts' ICT facilities for possession claims' data recording. Moreover, in both cases, Logica, a private company manages the ICT technology of the service. As already anticipated, the UK legislation on public sector's outsourcing to private companies incentives the relationships between public and private also thanks to several forms of tender at public administrations' disposal.⁹³ Moreover, the

⁹⁰ Hanseth, O. and Lyytinen, K. (2010) "Design Theory for Dynamic Complexity in Information Infrastructures: the Case of Building Internet", *Journal of Information Technology*, 25, 1-19. Aanestad, M and Jensen, T., B. (2011) Building Nation-Wide Information Infrastructures in Healthcare through Modular Implementation Strategies, *Journal of Strategic Information Systems*, 20: 161-176.

⁹¹ Kallinikos, J. (2008) "The Case of Money Claim Online Service in England and Wales", in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

Lane, D. (2006) *Hierarchy Complexity, Society*, Springer: Netherland.

Ciborra, C. U. and Lanzara, G. F. (1994) "Formative Contexts and Information Technology", *Accounting, Management and Information Technologies*, 4, 611-626.

⁹² Carnevali D. (ed.) (2010) *Soggetti Smarriti. Perché innovazione e giustizia non si incontrano (quasi) mai*, Giuffrè Editore, Milano. Contini, F., and Fabri, M. (eds.), (2001) *Justice and Technology in Europe: How ICT is Changing the Judicial Business*. Dordrecht: Kluwer Law International. Contini, F., and Fabri, M. (2003) *Judicial Electronic Data Interchange in Europe*, in Fabri, M and Contini, F. (eds.), *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*. Bologna: Scarabeo. Fabri, M. (ed) (2008) *ICT for the Public Prosecutor Office*, Clueb.

⁹³ Public Contracts Regulations 2006 as amended by the Public Contracts and Utilities Contracts (Amendment) Regulations 2007 (see above).

UK interoperability framework (UK e-GIF) suggests “outsourcing” to private companies as a strategy in ICT systems’ development.

In the designing stage, PCOL and MCOL saw the involvement of several agencies that participated to the draft of system requirements (as the private company that developed the system, the policy office of the HMCTS and the HMCTS ITC team). Moreover in both cases, a Practice Direction (PD 7E in the case of Money Claim Online and PD 55B in the case of Possession Claim Online) has been promulgated.

However, the two systems show also dissimilar features and, as we will see below, these have an impact on their performances and functioning. First of all, even though MCOL and PCOL are built in a modularized fashion, with several components that pursue different functions, the two systems are dissimilar in terms of architecture. MCOL architectural structure is centralized. Only one court (Northampton County Court) manages money claims online; moreover, several stages of the money claim online procedures are managed by one agency of the HMCTS that is the County Court Bulk Centre (CCBC). Differently, in the case of PCOL the structure is decentralized, since several County Courts manage the possession claims that arrive from the online website on the base of each case’s jurisdiction. Another considerable difference that affected also the two systems’ development, regards the draft of regulations that discipline the two e-justice systems. Differently from PCOL, where the legislation and civil procedure (Practice Direction 55B) indicated the path of the technological development, in MCOL the policy and the legislation (Practice Direction 7E) were modified in parallel with the implementation of the online facility.

As anticipated, the scope of this paragraph is to shed light on some lessons that we can learn from the study of the two e-justice services. At this regard, in terms of designing, MCOL developers seem to have followed to the letter some of the designing principles acknowledged by Hanseth and Lyytinen in their study of the development of Internet.⁹⁴ First, MCOL have been implemented by exploiting an already established installed base. As shown in the precedent sections, MCOL has been built as the front end of an already developed back office system that is the CCBC EDI system and the county courts’ CaseMan. Moreover, the organizational installed base is constituted by different agencies and offices that already were dealing with money claims filed electronically, that is CPC, CCBC and the Northampton County Court. Second, MCOL developers dealt with the boot-strap problem, that is to say that they put an effort for persuading the initial user by directly targeting their

⁹⁴ Hanseth, O. and Lyytinen, K. (2010) “Design Theory for Dynamic Complexity in Information Infrastructures: the Case of Building Internet”, *Journal of Information Technology*, 25, 1-19.

For an application of these principles to the analysis of an ICT service see also Aanestad and Jensen (2011) in note 2.

needs and fostered the creation of a critical mass of users. The use of the Internet, the openness of the service to lay users, the simplicity of the procedure and the advertisement of the system through Court Users associations and in County Courts, facilitated the creation of a critical mass of users. System requirements were also in some way limited and this contributed to enhance the simplicity of the system at the beginning of its use: for instance the system was only dedicated to claimants and only when a critical mass of users was reached, the possibility for defendants to utilize MCOL was added. Third, the MCOL designers developed a modularized system constituted by different “layers of infrastructure”⁹⁵ with different functions.

It is useful to underline at this point that a considerable difference between MCOL and the case analyzed by Hanseth and Lyytinen (2010) that is the development of Internet is that while Internet represents an example of bottom-up decentralized development, MCOL is rather a top-down centralized project. This MCOL feature affects considerably its functioning as we will see later in this section.

The comparison between MCOL and PCOL allows to add to the designing principles of Hanseth and Lyytinen (2010) considerable suggestions. In the following lines the main lessons learned from the study of MCOL and PCOL are listed.

Lesson 1: the MCOL case confirmed the importance of building ICT systems for justice on an already established installed base. By exploiting the existing infrastructure, a stable organizational structure, existing institutions and their functions, costs are reduced and the barrier of adoption for the user will be smaller.

The argument of “*cultivation*” of an installed base is not peculiar of the II literature.⁹⁶ In 1962, Simon acknowledged the importance of building on hierarchically structured systems constituted by stable sub-systems. Only stable sub-systems (therefore an already established installed base) can provide the basis for the evolution of a system. This happens starting from patterns of behaviour, routines and components already stable, through small changes and trial and errors.⁹⁷

Lesson 2. Connected to the discourse of the exploitation of an installed base for system developing, is the argument on modularization explained by

⁹⁵ Hanseth, O. and Lyytinen, K. (2010) “Design Theory for Dynamic Complexity in Information Infrastructures: the Case of Building Internet”, *Journal of Information Technology*, 25, 1-19.

⁹⁶ Aanestad, M and Jensen, T.,B. (2011) Building Nation-Wide Information Infrastructures in Healthcare through Modular Implementation Strategies, *Journal of Strategic Information Systems*, 20: 161-176.

⁹⁷ Simon, H.A., 1962. The architecture of complexity. *Proceedings of the American philosophical society*, 106(6), pagg. 467-482.

Hanseth and Lyytinen in their study of the Internet.⁹⁸ For the authors, it is fundamental to divide the system in different layers connected by gateways and to maintain loose couplings⁹⁹ between different components. Also Simon (1962) previously acknowledged this principle by focusing on the stability and evolvability of an architecture constituted by several sub-systems. With the example of the watchmaker, Simon (1962) put in evidence that loose-coupled and relatively independent sub-systems facilitate problem solving and the evolution of the system (if one of several pieces of the watch is broken it is easier to substitute it if the parts of the watch are built independently).¹⁰⁰

The MCOL story confirms these arguments. The MCOL architecture is constituted by several loosely coupled components therefore it is modularized. This structure facilitated the evolution of the system and problem solving. For instance, during the years some system's components changed and this did not hinder the performances of the system neither it modified its principal characteristics and functions. One of the MCOL's components that changed considerably is the private company that runs and manage the ICT elements of the system: in the beginning it was EDS and recently it is Logica (see above). Moreover, the accounting engine has changed as well. Previously it was the FlexFoundation accounting system based on credit card and now it is the Government Gateway accounting system based on citizens' fiscal code. This event that regarded the evolution of the system did not require an overarching change of the all architecture and did not hinder the system's performances.

Lesson 3. The third lesson that the experience of MCOL implementation teaches, confirms the Hanseth and Lyytinen (2004) arguments on the issue of *bootstrapping*. The authors suggested that designers initially should focus on a simple design that fosters the creation of a critical mass of users, considering that most of the evolution of the system is gathered from its large and diverse user base; moreover the system initially should target users' problems and needs but in a way that does not assume a complete solution or a large base of users; in this way, new system's requirements will be added with the enlargement of the users' base.

Initially MCOL has been designed only for the use of claimants. Designers added the functionalities for defendants successively, in order to allow an equal access to the service to both parts of the money claim. The enlargement

⁹⁸ Hanseth, O. and Lyytinen, K. (2010) "Design Theory for Dynamic Complexity in Information Infrastructures: the Case of Building Internet", *Journal of Information Technology*, 25, 1-19.

⁹⁹ Contini, F. Lanzara, G.F. (2008) (eds.) *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

¹⁰⁰ Fountain, J.E. (2001) *Building the Virtual State: Information Technology and Institutional Change*, Brookings Institution Press: Washington, D.C., pag. 473.

of the service also to the defendants fostered the evolution of the system and the enlargement of its requirements and functionalities. Moreover, MCOL designers put great efforts in fostering the creation of a critical mass of users. The system guaranteed since its first implementation the access to lay users. The simplicity of the on-line procedure (which also derives from a simple civil procedure for money claim) the use of plain English in the civil procedure regulations that discipline money claims (an heritage of the Lord Wolf reform), fostered the users' utilization of the new e-justice service. Moreover, the possibility to go off-line and switch to the classic paper-based procedure in every stage of the money claim helped to enlarge the accessibility of the system also to those that are less ICT literate and want to use MCOL only for the firsts steps of the claim.

Lesson 4. A forth lesson that could be learned from the analysis of MCOL regards the relationship between law and technological innovation. The case-study demonstrated that when norms discipline only generically the procedure that will be interested by the introduction of an ICT technology, gives to ICT designers much more space of action and does not constrain them to replicate procedures that work only in paper based form. Therefore ICT designers do not need to inscribe the law into the technology; a procedure that some cases as the Italian TOL (Trial On Line, see Carnevale and Resca article in this book) demonstrated to translate in underperforming services and bottlenecks.

Even though the performances and the diffused utilization of MCOL confirmed the utility of the designing principles discussed above, a comparative analysis of the PCOL case may shed light on other factors that may affect e-justice services' functioning. Also PCOL has been implemented on an already established installed base; its architecture can be considered modularized and constituted by several semi-independent layers; its functioning is disciplined by the same legislative instruments as MCOL that is a Civil Procedure Rule (CPR, 55) and a Practice Direction (PD 55B) with the already mentioned advantages of generic norms that do not constrain ICT designers' work; finally, also in the case of PCOL, HCMTS put great efforts in creating a critical mass of users realizing an accessible service also for lay users, that allows to switch to the paper-form procedure in any stage of the claim. However, the interviews to HMCTS staff confirmed that PCOL has shown several issues of performance mainly due to the different applications of the procedure in each County Court. Therefore, despite PCOL implementation is based on the same designing principles as MCOL, its performances are lower comparatively to the e-justice service for money claims. By looking at the differences between the two systems it is possible to discuss of a fifth and a sixth lesson.

Lesson 5. A considerable difference between MCOL and PCOL implementation regards the draft and approval of the norms that discipline the of-line and online procedure for claims. In a recent work, Mohr and Contini

(2011) acknowledged the strict entanglement between law and technology and the “unstable, unreliable relationship between norms and ICT”.¹⁰¹ Therefore, an important factor that may affect e-justice service’s performances regards the different types of relationships that may interest law and technology: it is the law that legitimate a certain technological solution or ICT developers simply inscribe the law into technology? The case of MCOL and PCOL confirms what Mohr and Contini acknowledged in their study of Australian e-justice technologies: a parallel change of legislation and technological regulation, or norms that legalize technological artefacts contribute to reduce complexity; differently, a strategy that inscribes legal procedures into ICT systems is inefficient and contributes to create more complexity, thus affecting negatively e-justice service’s performances. While in the case of MCOL the technological change went hand in hand with the policy change (the draft of a practice direction that discipline the on-line service), in the case of PCOL an already established norm constrained the developers’ work that had to opt out for a particular type of decentralized architecture. This argument introduces the sixth lesson learned.

Lesson 6. The MCOL and PCOL architectures are quite different. MCOL structure is centralized; even though different modules (HMCTS, CPC, CCBC, the Northampton County Court, Logica offices) constitute the layers of the system, the governance and the functions of the e-justice services are centralized and unique for all users in England and Wales. Differently, the PCOL architecture is decentralized. Several courts in England and Wales manage the possession claims imputed through the on-line service. This architecture is the main cause for a different implementation of the ICT innovation and of the different performances of the service provided, on the base of the County Court involved (HCMTS interviews).

This result confirms that a decentralized architecture may foster a different implementation of the same institutional innovation¹⁰² and, therefore, a difference in performances and in the quality of the service provided. In the justice sector, this issue is of great importance since quality of justice regards also the equal treatment of cases in front of the law.

¹⁰¹ Kallinikos, J. (2008) “The Case of Money Claim Online Service in England and Wales”, in Contini and Lanzara (eds.), *ICT and innovation in the public sector: european studies in the making of e-government*, Basingstoke: Palgrave Macmillan.

See also Kelsen, H. (1967) *Pure Theory of Law (Reine Rechtslehre)*, University of California Press. Lessig, L. (1999) *Code and Other Laws of Cyberspace*, New York: Basic Books.

¹⁰² Lanzara, G.F. (1998) “Self-destructive Processes in Institutions Building and Some Modest Countervailing Mechanisms”, *European Journal for Political Research*, Vol. 33: 1-39.

8. Concluding Remarks

The article dealt with the case of MCOL and comparatively with the case of PCOL, two e-justice services implemented in England and Wales. The study of the two cases allowed shedding some lights on the strategy of development and on the evolution of e-justice services. Moreover some factors that may affect the performances of the e-justice services have been acknowledged through the study of the single cases and through the comparison between them. The most important lessons learned regard the utilization of an already functioning installed base, the parallel development of the law that discipline civil procedures and the technology and the differences in the application of the same innovation between centralized and decentralized architectures. I am aware that this last point, even if confirmed in the case of MCOL and PCOL, cannot be generalized and considered a generic design principle for civil justice services; instead it is very context laden. It is not clear that an application of the same principle (centralized architecture) in other areas or contests or more practically for European transnational small claims' cases, will bring about a reduction of complexity, an equal application of the same institutional innovation and a performing service.

Aside the confirmation of already acknowledged designing principles and of new ones as well, the analysis of the England and Wales case leaves some open questions. For instance, why the evolution of the system did not affect all of its components and some of them remained unchanged as the CaseMan, the case management system utilized by CCPC for Money Claims, which has been developed in the 80s. The installed base represents an advantage or also may present some disadvantages in terms of constrains to the evolution and change of the system? In this regard, it is emblematic the case of the CPC whose stabile parameters of data interchange translate in a substantial obstacle for MCOL change. In fact, any modification of claims' submitting functions for MCOL would need a change in CPC parameters that are considerably stable and that are the same used by claimants that issue claims through magnetic tape or floppy disks (see above).

As concluding remarks, two last points are important.

First, it is fundamental to point out that if we look at MCOL and PCOL development only as the result of the exploitation of an already established installed base we have an incomplete picture of e-justice services for civil claims in England and Wales. The investigation on the MCOL antecedents, the CPC and the CCBC both based in Northampton, contributed to add to Kallinikos' (2008) argument about the installed base a considerable point regarding MCOL strategy of development. The latter should be considered the last evolution of a long-term strategy of modernization and improvement of justice services that started with the Lord Wolf report. The reform incentivized the use of ICT in courts, the creation of technological facilities as the one man-

aged by CPC and the CCBC and lately the implementation of an online website for money and possession claims' submission. Looking at the only implementation of the MCOL and PCOL websites without taking into account their antecedents do not put in evidence the clear evolvability¹⁰³ of the justice system's technological components that have been developed after the Lord Wolf reform.

Second, the possibility for PCOL and MCOL users to use both the online and offline procedure in every stage of the possession and money claim cases confirms the England and Wales Justice system commitment to the most ample accessibility of justice services. This point represents from another side a considerable paradox. If from one side, the justice system objective is to make procedures faster, easier and less costly by utilizing ICT facilities, from the other side the incomplete diffusion of ICT literacy and the commitment to the accessibility of court services limits and will limit in the future a complete translation of offline legal procedures into online facilities.

Websites

www.justice.gov.uk
<https://www.moneyclaim.gov.uk>
<https://www.possessionclaim.gov.uk>
<http://www.justice.gov.uk>
<http://www.justice.gov.uk/about/hmcts>
<http://www.supremecourt.gov.uk>
www.dca.gov.uk
<http://www.justice.gov.uk/about/moj>
<http://www.cps.gov.uk/about/>
<http://www.justice.gov.uk/about/hmcts/>
<http://www.direct.gov.uk/en/index.htm>
www.gateway.gov.uk
<http://www.justice.gov.uk/courts/northampton-bulk-centre/money-claim-online>

Legislation

Practice Direction 7 E "Money Claim Online".
 Civil Procedure Rule 7 "How to start proceedings - the Claim form".
 Practice Direction 55B "Possession Claim Online".
 Civil Procedure Rule Part 55 "Possession Claims".

¹⁰³ Hanseth, O. and Lyytinen, K. (2010) "Design Theory for Dynamic Complexity in Information Infrastructures: the Case of Building Internet", *Journal of Information Technology*, 25, 1-19.

Civil Procedure Rule Part 22 “Statement of Truth”.
Electronic Communication Act, 2000. Stationary Office.
Electronic Signature Regulation 2002. Stationary Office.
Mental Capacity Act, 2005. Stationary Office.
Public Contracts Regulations 2006 as amended by the Public Contracts and
Utilities Contracts (Amendment) Regulations, 2007. Stationary Office.
Constitutional Reform Act 2005 (Commencement No. 11), Order 2009, Statu-
tory Instrument 2009 No. 1604.

9. List of Acronyms

British and Irish Legal Information System	BAILII
Business Information Systems Directorate	BISD
Chief Information Officer	CIO
Civil Procedure Rules	CPR
Claim Production Centre	CPC
Constitutional Reform Act	CRA
County Court Bulk Center	CCBC
Criminal Justice Information Technology Unit	CJITU
Crown Prosecution Service	CPS
Data Security Standards	DSS
Department of Constitutional Affairs	DCA
trovare	EDS
File Transfer Protocol	FTP
Government Gateway	GG
Her Majesty Court and Tribunals Service	HMCTS
Her Majesty Court Service	HMCS
Judicial Appointment Commission	JAC
Lord Chief Justice	LCJ
Ministry of Justice	MoJ
Money Claim Online	MCOL
Official Referees Solicitors Association	ORSA
Payment Security Standard	PSS
Possession Claim Online	PCOL

10. Annex

HMCTS online survey on MCOL. Tables quoted in the report.

Table A.1

3. Which of the following best identifies you or whomever you represented when you used Money Claim Online (MCOL)?	Create Chart	Download
	Response Percent	Response Count
Individual	62.5%	2,075
Local Authority	0.0%	19
Private company	33.1%	1,100
Other (please specify) Show Responses	4.0%	128
	answered question	3,322
	skipped question	3

Table A.2

2. Did you use Money Claim Online (MCOL) as a solicitor representing a client?	Create Chart	Download
	Response Percent	Response Count
No	97.2%	3,230
Yes	2.8%	92
	answered question	3,322
	skipped question	3

Table A.3

8. Why did you choose to defend the claim online? (please tick all that apply)	Create Chart	Download
	Response Percent	Response Count
It seemed the obvious way to proceed	42.7%	197
I thought it would be easier	51.0%	235
I thought it would be quicker	62.9%	290
I thought it was the only way I could defend my claim	3.9%	18
I hoped to minimise visits to court	20.2%	93
I hoped to minimise contact with others involved in the case	10.2%	47
Other (please specify) Show Responses	10.4%	49
	answered question	461
	skipped question	2,064

Table A.4

11. Please rate how easy or difficult you found the following parts of the online service:							Create Chart	Download
	Very easy	Fairly easy	Neither easy nor difficult	Fairly difficult	Very difficult	Not applicable	Rating Average	Response Count
Registration	66.6% (1,861)	24.4% (689)	4.6% (130)	3.1% (86)	1.3% (38)	0.5% (14)	1.48	2,818
Issuing a claim	55.1% (1,552)	31.4% (896)	5.5% (156)	5.0% (140)	2.9% (83)	0.0% (1)	1.66	2,818
Monitoring claim progress	35.5% (999)	20.5% (578)	8.1% (227)	2.5% (71)	0.9% (26)	32.6% (917)	1.71	2,818
Paying the fee	74.6% (2,102)	19.5% (550)	2.2% (63)	1.0% (29)	1.7% (49)	0.9% (25)	1.34	2,818
						answered question		2,818
						skipped question		507

Table A.5

14. How do you rate the support facilities?					Create Chart	Download
	Good	Average	Poor	I did not use it	Rating Average	Response Count
User guide / Frequently asked questions (FAQs)	47.6% (1,549)	21.0% (684)	6.3% (204)	25.1% (816)	2.06	3,252
Online help	29.9% (973)	15.1% (492)	6.4% (207)	48.6% (1,580)	2.74	3,252
Customer helpdesk (by telephone/letter)	18.9% (614)	7.1% (232)	4.9% (158)	69.1% (2,248)	3.24	3,252
					answered question	3,252
					skipped question	73

Table A.6

15. How do you rate your satisfaction with the following aspects of the online service:							Create Chart	Download
	Very satisfied	Fairly satisfied	Neither satisfied nor dissatisfied	Fairly dissatisfied	Very dissatisfied	Not applicable	Rating Average	Response Count
Service delivered	51.9% (1,612)	23.5% (728)	7.7% (226)	1.2% (38)	1.0% (30)	15.1% (448)	1.54	
Timeliness	50.5% (1,566)	21.1% (654)	7.3% (225)	1.5% (48)	1.2% (36)	16.5% (524)	1.55	
Information provided	45.2% (1,402)	27.5% (852)	9.0% (278)	14% (438)	1.8% (56)	12.1% (377)	1.76	
Support from court staff	13.3% (413)	6.7% (212)	6.5% (203)	1.8% (54)	1.5% (45)	70.4% (2,186)	2.01	
Overall	46.5% (1,443)	28.6% (886)	8.0% (247)	2.4% (73)	1.2% (36)	13.5% (418)	1.65	
							answered question	
							skipped question	

Table A.7

18. If the need arises in the future, would you use the online service again?		Create Chart	Download
		Response Percent	Response Count
I would use it again		92.7%	2,876
I would avoid it		0.6%	24
Do not know		6.5%	203
	Please add any comments: (max 100 characters) Show Responses		159
		answered question	3,103

Chapter 5

The Central Department for Enforcement on the basis of Authentic Documents in Slovenia

Gregor Strojín

1. Introduction

Court backlogs, especially those related to the enforcement of monetary claims, were one of the acute problems of the Slovenian legal system up until 2008. Prior to that, 44 different local courts were responsible for enforcement on the basis of their territorial jurisdiction, and work involved approximately 350 employees. The procedure was paper based and computer systems were used only for basic case management but did not allow any connectivity. Average times to issue a decision on the requested enforcement often lasted more than six months, and practices among different courts varied greatly. Long procedures, inefficiency and unpredictability in this field caused a significant burden for the economy and contributed to low confidence in the judiciary.

COVL, an acronym for the Central Department for Enforcement on the Basis of Authentic Documents (see also the list of acronyms at the end of the chapter), began its operations on January 1, 2008 as part of the Local Court in Ljubljana. It was developed on the basis of a project led by the Registry Department of the Supreme Court of Slovenia that lasted from 2004 to 2008. The strategic goal of the project was to reduce judicial backlogs and improve the efficiency of courts in enforcement procedures. Authentic documents (a generic term for a number of classes of monetary claims that includes invoices, bills of exchange, cheques, etc.) were chosen. They represented three quarters of all enforcement-related backlog, and the procedure had significant automation potential because legislation clearly enumerated and defined the types and structure of the recognised authentic documents, as well as the elements of such a document. Institutional background.

2. Institutional setting and governance of the judiciary

Slovenian judiciary consists of 44 local and 11 district courts as first level trial courts. All local courts are organisational units of district courts, with

the notable exception of the largest local court in Ljubljana, which is an independent organisation. There are also 4 first level labour and social courts. There are 4 appellate or higher courts of general jurisdiction, 1 appellate labour and social court and 1 administrative court, which has the position of a higher court. The Supreme Court of the Republic of Slovenia (SC) is the highest court of general jurisdiction. All together there are 66 different organisational units with approximately 4.800 employees, including approximately 1.000 judges.

SC has a number of roles in management and administration of other courts. Court administration in Slovenia includes decision-making, knowledge management, planning, organizing, human-resources planning, communication, effects monitoring, reporting, budget management and other tasks that are required to ensure conditions for regular exercise of judicial power, regular procedural events and regular creation of judicial decisions (60 ZS), as well as monitoring and analysis of judicial efficiency in individual courts (60a ZS).

In addition to this SC prepares a common human resources plan for all courts and specifies the quantity and type of work positions for each court. It is responsible for financial planning, preparation and negotiations regarding the general judicial budget (75 ZS), and can allocate additional funding to individual courts in order to increase their productivity, if so required.

President of the SC is responsible for general supervision of court administration (67 ZS), but a number of these tasks have been delegated to specialised organisational units of the SC.

2.1. Institutional setting and governance of the ICT and the Judicial Sector

Information and communication technology (ICT) in the Slovenian judiciary has been traditionally in the domain of the Registry Department of the Supreme Court (RDSC). RDSC is a judicial department of the SC responsible for the uniformity of judicial practice at the SC as well as the entire judiciary, and has been led by SC Judge Mrs. Alenka Jelenc Puklavec since 1984.

The beginnings of ICT in the judiciary can be traced to 1986, when RDSC began digitisation of its case law collection and formation of the first data bases. At the time, majority of the ICT infrastructure was in the domain of the executive branch, primarily of the Ministry of internal affairs. This had continued well after the change of the political system from socialism to democracy in 1990, and also after declaration of Slovenia's independence from Yugoslavia in 1991. The incentive to apply modern technology to judicial procedures was on the side of the judiciary, especially individual judges who were gathered around RDSC, and a number of projects were started early on. One of these was also the support to enforcement procedures, where the

first electronic case management system (CMS) was developed and applied already in 1990.

Such development was, however, mainly reliant on the outsourced technological work and it was understood that such an approach does not fulfil all of the requirements of an independent branch of power.

Due to increasing demands for stable and consistent ICT support to various judicial procedures, judiciary began searching for long-term solutions specific to the requirements of the judicial branch. In absence of relevant support from the executive branch or the Ministry of Justice (e.g., Judicial Council, which was first formed in 1994, has primarily a role in appointment, evaluation and promotion of judges, appointment of presidents of courts, adoption of criteria on work quotas and quality of work for judges, etc.), the most important organisational development occurred in 1996, when Center for Informatics (CIF) was established by Courts' Law as a special organisational unit of the SC, operating under the RDSC and in charge of uniform technological support of courts' functioning.

Since its inception CIF has been in charge of computerisation and informatisation of the national judicial system, providing all 66 courts with technological, pedagogical and procurement support, as well as application development and optimisation of procedures. Network systems remain under the central management of the executive branch, namely of the Ministry of Public Administration (MJU), which is in charge of the HKOM communications grid (for national institutions). Local computer networks are, however, managed by CIF.

Courts' Law defines its role as providing uniform technological support to court management and legal information system of courts (70 ZS). It is led by a judge, who is in charge of the internal organisation unit for registry of judicial practice (i.e., Mrs. Alenka Jelenc Puklavec, Head of the RDSC), and managed by a professional Director (Mr. Bojan Muršec, previously Mr. Rado Brezovar). District and Appellate Courts have their own Informatics Departments. District Court Informatics Departments are usually in charge of the Local Courts as well.

Strategy of computer support development in court management is adopted by the Council of Users for computer-aided informatisation of courts on the basis of preliminary opinions by MJU and the director of CIF. All projects related to informatisation are consequently also subject to oversight and strategic guidelines defined by the Council of Users. Council of Users consists of representatives of all courts (mostly presidents of the courts) and meets at least once per year, confirms the results of the projects and votes on the proposed program of work set out for the next period.

Table 1 - CIF organisational units and their responsibilities

CIF – ORGANISATION / DEPARTMENTS and TASKS		
PRODUCTION AND MAINTENANCE	DEVELOPMENT	PUBLIC PROCUREMENT
central production environment infrastructure, including local computer networks user help desk computers hardware maintenance secure backups and data copying	planning and development of information systems (IS) systematic testing of new technologies for their use in the judicial information unified architecture and development of the information system development of universal modules for all information systems	planning and execution of public tenders inventory of equipment quality control of contractors' services preparation of financial plans

RDSC and CIF currently manage over 20 different ICT projects, either in phases of development or production.

Table 2 - RDSC / CIF projects

RDSC / CIF PROJECTS			
MAJOR PROJECTS		OTHER PROJECTS / INDEPENDENT MODULES	
PSP	Business Data Storage	IZO	Application for calculation of interests
iZK	Land Registry	EPO	Uniform IT Business Environment
I	Enforcement Case-management	DIES	Access of Courts to Base Registries (bank accounts, citizens, stocks, Land Registry, Company Registry, etc.)
PUND	Litigation, Administrative, Non-Litigious, Family Case-management	EIZ	Uniform identifier of cases
Su	Judicial Administration	EOBVEZ	Registry of e-obligations / e-payments
BPP	Free Legal Aid	EVLOŽIŠČE	E-central office
SRG	Company Registry	ESPIS	Central environment for document management
INS/St	Insolvency / Bankruptcy Case-management	EKOLEDAR	Central calendar for courts
iK	Criminal Law Case-management	OPREMA	Information system for monitoring of ICT equipment life-cycles
PRIS	Case Law Databases	EOVERITVE	E-Authentication
DS	Judicial websites		
Prs	Misdemeanours		

Approximately 95% of all cases submitted to the courts are currently managed by informatised systems.

CIF has developed strategic guidelines both for providing information support to courts' management, as well as for the development of IT solutions.

Table 3 - CIF strategic guidelines for providing information support to management of courts

STRATEGIC GUIDELINES FOLLOWED BY RDSC/CIF FOR PROVIDING INFORMATION SUPPORT TO COURT MANAGEMENT	
Uniform information solutions	Information systems of the judiciary consist of uniform elements (hardware, software, procedures and protocols) in order to follow the principle of executing the same task in the same manner anywhere in the system
Professionalism, quality, on-time	Self-explanatory
Use of open standards	CIF is encouraging the use of information solutions based on open standards that are publicly published, generally adopted and completely documented, and give the users the free option of further development of their products in line with these standards. The result is greater transparency and better comparison of particular solutions in the market, thus allowing a choice between more providers and preventing vendor lock-in.
Security	All new solutions must be tested. Level of security must be maintained and never lowered when introducing new solutions. Established security standards for information infrastructure and security and integrity of information systems' data.
Reliability	Priority for reliable functioning of the information system is given to: central production environment, central application and network connecting the courts (HKOM) local production environment of a particular court (local networks, servers) user environment (workstations, workstation applications)
Traceability	All IS must provide tracking of access to and change of data in transactions in a way that allows tracking of data by time of change up to inception
Economy	Planning of information solutions from the perspective of costs and benefits, investment protection and cost management; choice of those with the most suitable relation. Synergies between adopted solutions are also considered.
Expandability (scalability)	Consideration of adaptiveness of a particular solution due to quantitative increases.
Language support	All used solutions must provide support for Slovenian language and languages of the national minorities.
Ergonomics	Considerations apply mostly to choice of hardware (screen, keyboard, compact size, noise levels).
Ecology	Considerations apply mostly to choice of hardware (use of electricity, heat emissions, noise, recyclability, composition).
Compatibility	IT support must allow cooperation between many users from different environments. CIF is advocating standardisation of connectivity and data exchange formats between users, systems and applications from different environments. Priority is given to solutions that are based on open standards and that increase interoperability in the widest circle of users.

Table 4 - CIF strategic technological guidelines for development of IT solution

STRATEGIC TECHNOLOGICAL GUIDELINES FOLLOWED BY RDSC/CIF IN DEVELOPMENT OF IT SOLUTIONS	
Uniform architecture of information systems' development	CIF develops exclusively centralised information systems, intended for simultaneous use at all courts Three-tier architecture: user interface level: front applications, in charge of communication between the user and the system application level: where all business logic for a specific solution is found in form of a service, usually reusable in other information systems database level: tool or permanent storage and access of data in the informatisation system
Modular basis of information solutions	CIF is consistently joining all functionalities and services that can be used by more information systems, into service modules, thus shortening the development and simplifying maintenance
Reusability	Three-tier architecture and modularity are closely related to reusability of developed information solutions for new tasks and procedures.
Interoperability	Special attention is given to interoperability of the planned systems with other systems, especially regarding data formats (must allow interoperability with as many systems) and suitable conception of services (must allow simple access). CIF usually uses XML based service calls (SOAP, web services) to connect information systems in service oriented architecture
Standard formats for data exchange	XML
Standard formats for creation and saving of documents	Open Document Format (ISO/IEC 26300) PDF/A (ISO 19005-1)
Ownership of the code	Constant verification and ownership of the code written by external contractors, including copyrights for unlimited use of code for own information systems. Regular (weekly) transfers of code to the repository. Build of solutions is always at CIF.
Coding languages and coding environment	Java Java Enterprise Edition (JEE)
Vendor neutrality and independence	In order to prevent vendor lock-in each solution must consider the possibility of potential replacement of the chosen contractor and the effects of such a change (incl. economic effects) on the information system. This principle is closely connected to the principle of using open standards.

Project management at CIF typically consists of two main levels, a Working Group and a Project Group, but can be expanded by Control Points and supportive units such as Project Office or Project Coordinator.

Working group adopts strategic decisions, suggests solutions on project level and balances relations between all project components and stakeholders. It usually consists of representatives of all stakeholders in a particular project (e.g. Council of users, Ministry of Justice, Ministry of Public Administration,

director of CIF, Head of RDSC) and meets regularly every month. Working group has the role of supervision and guidance for all ongoing projects.

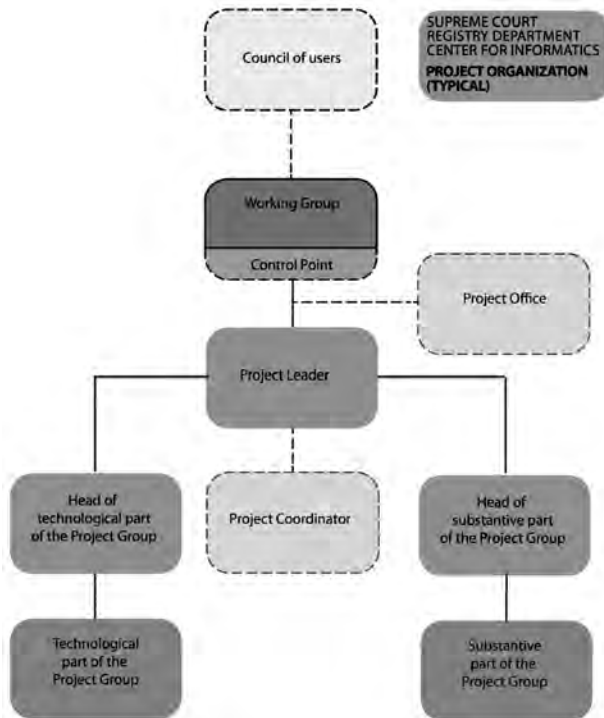
When a more intensive coordination is required for a particular project, a Control Point may be added by the working group. Control Points usually meet on a weekly basis and consist of working group representatives and project group representatives down to the level of individual parts of the project. Control Points are usually added in the period directly prior to finalisation of development of a certain project. They are often used for operational decisions linked to the implementation of a new information system into its target environments.

Project groups are usually divided into two subgroups:

- technological: deals with technological issues, prescribes standards and solutions, verifies quality of software, communicates with contractors
- substantive: deals with functional specifications, user requirements, sets of business processes, organisational and legal frameworks

Each subgroup has a leader, who is responsible for the work of her subgroup. One of them is usually also the general project group leader, who reports to the working group on behalf of the entire project group. Project leader

Figure 1 - RDSC CIF Typical project organisation



may appoint a project coordinator (usually an external contractor), who is in charge of controlling the flow of the project in line with the project methodology chosen for each specific project and also for the creation and collection of project documentation.

Tasks such as coding of individual modules are usually performed by private companies contracted on the basis of public tenders. Their work is done under substantive and technological supervision of CIF and project group's leader.

2.2. Governance of the project

COVL project was consequently drafted, designed and developed primarily under the management of the RDSC and its Enforcement Working Group, similarly to other ICT projects in the judiciary. Decision to engage in an extensive reform of enforcement procedures was partially motivated by their positive experiences gained from the projects implemented from 1996 to 2003, most notably the reforms of Land Registry and Company Registry CMSs, which created a solid project management environment.

While organisational and technological solutions to improve the functioning of enforcement were continuously developed, it was also understood that broader conditions of monetary claims and enforcement procedures need to be significantly addressed in order for other solutions to be effective.

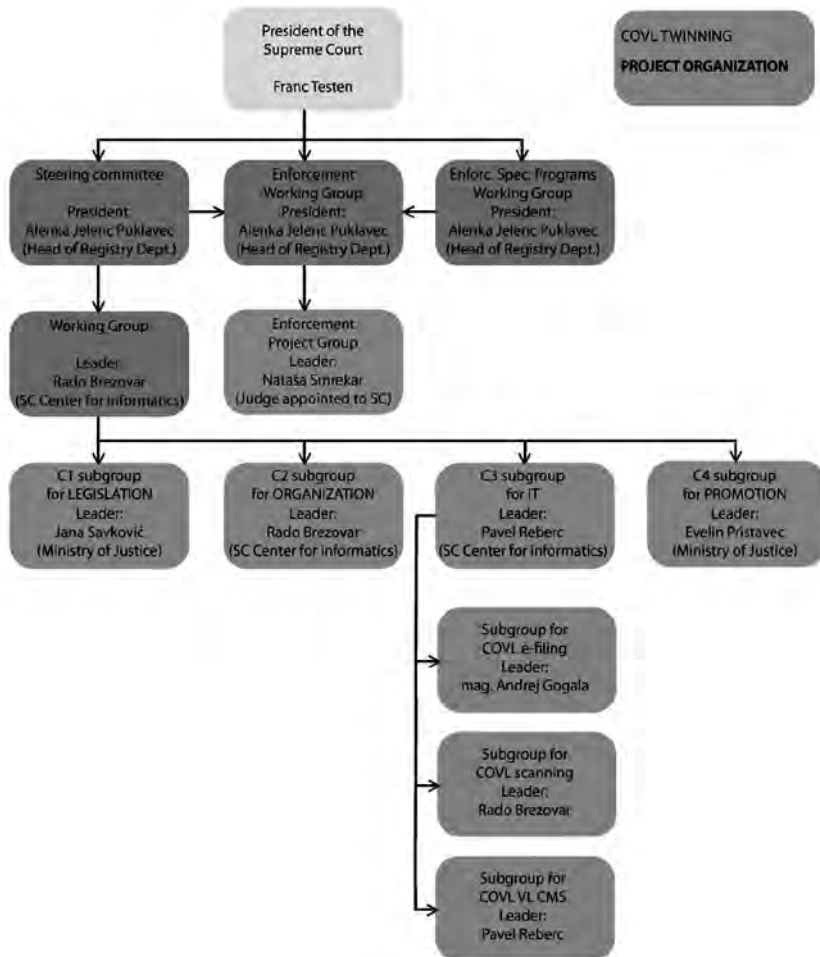
Informatisation projects in the judiciary typically started as a result of legislative changes promulgated by the other two branches, but this project actively sought and proposed some relevant systemic changes in the legislation that would allow for its optimal and effective implementation.

Its main differential characteristic from many other projects was that its development phase was managed as part of the EU Twinning project (SI2004/IB/JH-06 "Reduction of Judicial Backlog"), which involved in-depth cooperation with mainly German experts from the German Foundation for International Legal Co-operation. The project also required a more involved cooperation by the Ministry of Justice, which partially provided additional financing of the development phase and material resources for its implementation, and was responsible for the adoption of new regulation and/or changes to the existing regulation, as well as for the promotion of the changes. Consequently, structure and terminology of project management units slightly differed from the usual methodology.

The first steps in the project were done by the RDSC, which developed the initial project proposal in 2004. This case study will, however, primarily limit itself to the development during the phase of the Twinning project (2006-2007), when the basic structure of COVL was also designed.

Project was divided into four components (project groups): legislative, organisational, technological (IT) and promotion component. IT component

Figure 2 - COVL Twinning organisation



was further divided into 3 separate subgroups, each delegated with a specific task: adaptation of case management software, digitisation of paper documents and electronic filing.

Each group, as well as subgroup, had a leader. Leaders were part of the COVL Working Group, which reported both to the general Enforcement Working Group and to the Steering Committee.

Enforcement working group was operational since 1990 when the original CMS for enforcement cases was developed, and was consequently responsible for the classical concept of enforcement. In October 2007, when Twinning project was finalised, it took over the competences of COVL working group.

Members of Enforcement Special Programs working group, which was responsible for increasing the organisational efficiency of enforcement departments (e.g., work organisation, work quota specification, human resources issues at and between courts, contracts for additional work, transfer of work from judges to clerks, premises and material conditions, etc.), were also cooperating on the project.

The Steering Committee was the main controlling unit of the Twinning project. It consisted of representatives of the beneficiary (i.e., Slovenian institutions) and from the partnering member state (Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit E.V. / German Foundation for International Legal Co-operation). Partner member state was represented by Mr. Claus Vreden (as the German Project Leader) and Mr. Hans Ulrich Borchert (as Resident Twinning Advisor). It was lead by the Head of the Project, Mrs. Alenka Jelenc Puklavc.

Member state partner to provided short term experts for the first three components of the project. As Mrs. Jelenc Puklavc pointed out during the interview, this was an extremely positive cooperation, the first after many that were previously done with other foreign partners or donors, in which an equal partnership and sincere commitment to the project work could be felt.

3. Project background and the installed base

3.1. General

Court backlogs were one of the acute problems of the Slovene legal system. As noted in the “Second monitoring mission (Peer review) after closure of accession negotiations under chapter 24 in the fields of Justice & Home Affairs in Slovenia” (18. 9. 2003), backlog problem in courts was the EU mission’s main point of interest concerning the judiciary. The mission suggested a number of measures to resolve the backlog problem, and emphasized that the measures to speed up the decision-making processes in the courts should be accompanied by measures ensuring speedy enforcement of judgements as well.

As noted in the “Analysis of situation in the field of judicial enforcement in the Republic of Slovenia” (January 2004), the total number of unresolved judicial cases (569.871) consisted of 239.265 unresolved enforcement-related cases at the end of the first half of 2003 (approximately 42% of all backlogs).

The judicial system has faced a substantial backlog in the field of enforcement for quite a long period. Due to the substantial backlog in this field, it was also not possible to assure the upkeep of a basic human right of a trial in reasonable time, as stated in the Article 23 of the Constitution of the Republic of Slovenia and Article 6 of the European Convention of Human Rights, as well

as required by the European Union through the Rule of Law principle or Article 10 of the Treaty of Rome or the Basic Freedoms of the Treaty.

The majority of reforms was made through normative (legislative) processes, but it has been noted that steps that would lead to major improvements were yet to be implemented. The general observation of all reports was, that despite reformed legislation in 1998 and 2002, courts remained overburdened with work. Initially, main obstacles were considered to be limited personnel, lack of office space and of modern technical equipment.

More specific and systemic reasons for backlogs (legal, organisational and technological) were identified during the course of the project.

3.2. Legal background

The Law on Enforcement and Securing of Claims (ZIZ)¹ allowed for a large number of different legal instruments in different phases of the enforcement procedure and required the court to perform a number of activities that in comparative systems are usually left to creditors (e.g., acquisition of data from external registries). Claims were filed in traditional, paper form, and e-filing was not possible. Case parties had to submit attached documents, submissions were not uniform and consequently many were incomplete or difficult to interpret.

While legislation on electronic signatures existed, its implementation into judicial procedures was inefficient. Civil Procedure Law (ZPP),² which is used as a subsidiary of ZIZ, had a number of mandatory requirements that limited its introduction, even though it had nominally allowed for submission of claims by means of information technology (105 ZPP) if they conformed with conditions set by the Law on E-Commerce and E-signature (ZEPEP).³ Analysis showed that such change alone did not in fact offer real possibilities for e-filing because other articles relevant for the filing of claims in civil procedures remained unchanged. An example of this was a rule that multiple copies of documents had to be submitted by the case parties, otherwise the submission was to be declared incomplete and consequently dismissed, or a requirement for an inclusion of a personal signature on submissions.

Courts also had problems regarding acquisition of data from external registries because Personal Data Protection Law required a specific legal ground for access to data from various registries. Moreover, many judicial procedures

¹ Zakon o izvršbi in zavarovanju (ZIZ), Official Gazette of the Republic of Slovenia, 51/1998 (17 July 1998) and its subsequent changes.

² Zakon o pravdnem postopku (ZPP), Official Gazette of the Republic of Slovenia, 26/1999 (15 April 1999) and its subsequent changes.

³ Zakon o elektronskem poslovanju in elektronskem podpisu (ZEPEP), Official Gazette of the Republic of Slovenia, 57/2000 (23 June 2000) and its subsequent changes.

that were written prior to data protection legislation did not include explicit formulations, including both civil procedure and enforcement legislation.

3.3. *Organisational background*

Organisationally, enforcement was greatly fragmented. Claims for enforcement were filed by creditors (i.e., citizens and companies) at 44 local courts throughout the country based on the residence of the debtor that was based on the general rule of geographic jurisdiction. Information on debtors' debtors (e.g., banks, employers, etc.) and from external base registries (e.g., bank accounts, real estate, stocks, etc.) was collected individually and mostly by paper claims or inquiries to managing institutions. Identification of debtors alone was done in a similar manner, which often caused mistakes, necessitated corrections, delayed the processing time by month and consequently also resulted in relatively high levels of objections and appeals, thus additionally increasing the workload at appellate levels.

While most courts did not even have specialised enforcement departments, a disproportionately high number of court employees were responsible for the procedure. The whole system was operated by 350 court employees, and while the average time to get a decision on the claim was six months, the procedure could take years to complete. A lengthy procedure of enforcement of such documents represented a significant inhibitor for the economic environment and investments.

The practice of mid-sized and smaller courts was that judges, and consequently other employees (e.g., judicial assistants, typists, ledger managers) covered different material areas. Many courts also did not employ clerks to handle enforcement cases, so these remained a responsibility of the judges themselves. These often did not mind doing such work, as it contributed to their nominally prescribed work quota of cases. At smaller courts, only one judge was usually responsible for all enforcement cases, which not only caused disproportionate workloads, but also created significant differences in the application of law where legislation was ambiguous. Similar discrepancies and inharmonious case law were observed at appellate courts, and this further exacerbated timely judicial resolution of claims and was often exploited by larger or more frequent debtors to prolong the proceedings.

It was considered that such practice was inexcusable and contrary to modern organisational principles according to which easier decision-making should be left to lower tiers (and whose effectiveness was confirmed in the land registry procedures' reform).

The management practice of enforcement departments at local courts was neither unified nor transparent. Slovenia's courts did not gather statistical data on individual events and procedural steps regarding the enforcement of authentic documents, although these are crucial for the setting up of an efficient

organisational scheme. For example, no reliable statistics regarding the numbers of objections nor of decisions regarding these were available. It was therefore necessary to rely on relatively subjective analyses and assessments by individual clerks or typists who were doing the work at the time.

Consequently, the inefficient activities of some enforcement officers were also a big problem because there was no clear overview of cases that were concluded by the court and submitted to the enforcement officers for physical finalisation. These tended to work on the cases according to their own priority lists, often leaving indefinitely open many cases that were formally final, without the courts being aware of that.

3.4. Technological background

A decentralised information system, written in Clipper in the 1990s, was used as a basic case management tool. Although it was updated a number of times, it did not allow network connectivity and, consequently, no interoperability. Hardware was also outdated because it did not support work with the newer technological solutions.

All printing was done by individual clerks at departmental level, and printers were mostly matrix based. The appearance of printouts differed greatly.

Enforcement procedures use a number of external information sources, and many of these were available, but could not be accessed easily by judicial information systems, although this was mainly due to legislation that consequently inhibited technological development of interoperability in this field.

Electronic payment mechanisms in judiciary were limited to access to Land Registry, but allowed only for small payments by mobile phones at the time. Module for e-payments with credit cards was already developed by MJU, and it was planned that existing solutions should be used and incorporated whenever possible.

It was well understood that any major process optimisation reform required the use of a modernised IT infrastructure; otherwise it would not be economic nor rational. At the same time, technological renewal would most likely be insufficient, because enforcement faced wider legislative and organisational issues.

3.5. The problem to be faced, the rationale and the goals of the project

A decision was made at the RDSC to solve the problem of judicial backlog and efficiency of enforcement procedures by initiating a project of reforming the system through a combined implementation of custom made information technology solutions, business process modifications and changes of legislation.

The project draft initially focused broadly on a goal of creating a necessary technological tool and an efficient environment that were required as a

precondition for subsequent reduction of the backlog, but could not in itself directly solve the backlog itself. Due to a high percentage of enforcement related backlogs it was crucial that these be successfully tackled with before the process of informatisation of other judicial procedures that were still waiting in line, could accelerate.

The strategic goal of the project was to provide the users (in courts, creditors, others) with a user-friendly information and organisation environment that would enable efficient management of the judicial procedure without unnecessary delays.

Through this, it was believed, the project would increase the transparency and efficiency of the courts, make their resources available for other activities and types of procedures, and consequently improve the payment discipline in the economy.

4. Development strategy and history of the project

4.1. General

In April 2004 the SC was approached by the Ministry of Justice (MOJ) to help prepare a project fiche related to modernisation of judicial procedures that Slovenia needed to submit to the EU in order to be eligible for transition facility funds in other areas. MOJ did not have a suitable proposal, and time was running out. Twinning project proposal was written in a relatively short period of three weeks in April/May 2004, after MOJ agreed that they would co-finance and support the proposed solution. Its concept was based on the previous analyses of the state of enforcement procedures, and ideas that were discussed at the RDSC over what could and should be done in addition to the planned renewal of the enforcement CMS.

The project proposal prepared by the RDSC was confirmed by the EU in September 2004, and the search for twinning partners began in late 2004. It was initially unsuccessful due to a lack of applications by appropriate partners, and the procedures had to be repeated. Eventually, a German Foundation was selected in 2005.

The main development phase of the project started with the arrival of Mr. Hans Ulrich Borchert, the Resident Twinning Advisor (RTA) on 25.1.2006. The inception phase included several meetings between RTA, Slovene project leader and heads of components and ended with a kick-off-meeting on 10.3.2006 when a project covenant, project manual, time frame and special tasks were confirmed. The Twinning project was initially scheduled to last 12 months, but eventually ended after two prolongations on 3.10.2007 (i.e., 20 months).

According to the covenant, concrete project purposes were:

- Preparation and development of a modern and technologically suitable IT solution to support new services with the purpose of improvement of

performance, an increase in enforcement procedures, effectiveness and reduction of judicial backlog.

- Preparation of a suitable environment for legislative and organisational reform with a purpose of successful execution of backlog reduction programs in the field of enforcement of judgements.

The Twinning project was divided into four components (in order to cover these focal points that reflect the guaranteed results of the project):

1. reparation for a legislative reform in the field of enforcement
2. Preparation of a suitable environment for a successful reduction of backlog in the field of enforcement
3. IT support of the new functionalities in information system of enforcement procedure
4. Promotion of the new services/functionalities

Mandatory results were set for each component, and included benchmarks, expected sources of information and assumptions external to the project.

By side letters and addenda some additional activities to the ones originally foreseen in the components were committed during project.

Most notably, focus was soon given to enforcement of authentic documents (e.g., invoices, bills of exchange, cheques, etc.). Claims for enforcement of authentic documents represented three quarters of all enforcement-related backlog in 2004 and were increasing, as were the average times for their resolution. The procedure also had significant automation potential because legislation clearly enumerated and defined the types and structure of recognised authentic documents, as well as the elements of such a document.

In connection with this, a decision was made at a later stage of the project to optimize the organisational aspect by creating a single judicial department at one local court (i.e., Local Court in Ljubljana) that would have national jurisdiction over all enforcement cases related to authentic documents. It was to be named Central Department for Enforcement of Authentic Documents (Centralni oddelek za izvršbo na podlagi verodostojne listine), which resulted in the acronym COVL.

4.2. Legal development

Assumptions for a successful execution of Component 1 were effective cooperation and commitment of all participants in the project, appropriate expertise from the twinning partner (RTA, short term experts) and a strong commitment, involvement and support of the MOJ and the Government.

In addition to the work by regular project group members it was assumed that MOJ would also have to allocate two workers for 1-2 days/week (d/w) for the task of legislation preparation.

According to the Final Report, preparation for legislative reform in the field of enforcement lasted from 20.3.2006 till 19.9.2007.

Table 5 - Activities planned for preparation of legislative reform in the field of enforcement

LEGAL DEVELOPMENT		
1.	ACTIVITY	BENCHMARK
1.1	Research and analysis of existing legal solutions, experiences and know-how, including the field of authentic documents procedures, in other jurisdictions (EU).	The results are in conformity with the relevant EU and national legislation and have taken relevant experiences of other EU nations into consideration.
1.2	Analysis of constructional faults in national current legislation and legal order.	Acknowledgment of the relevant faults in national current legislation and organisation by SC and MOJ and identification of bottlenecks for the backlogs in current legislation and legal order.
1.3	Preparation of priority list of functionalities through time/cost/benefit analysis.	Recommendations.
1.4	Workshop with experts including political decision makers to discuss and verify founded results concerning activity 1.1, 1.2, 1.3.	Final experts' version of proposals and recommendations.
1.5	Preparation and development of draft provisions for legislative amendment of necessary legislative rules change proposals to support new models, structures and additional functionalities.	Official approval by SC and MOJ.

Table 6 - Actual activities for preparation for legislative reform

LEGAL DEVELOPMENT		
1.	ACTIVITY	TIME-FRAME
1	Research and analysis of existing legal solutions, experiences and know-how, including the field of authentic documents procedures in other jurisdictions (EU)	20.3.-24.3.2006
2	Analysis of constructional faults in national current legislation and legal order	20.3.-24.3.2006
3	Preparation of priority list of functionalities through time/cost/benefit analysis	9.5.-10.5.2006
4	Workshop with experts including political decision makers to discuss and verify founded results	9.5.-10.5.2006
5	Preparation and development of draft provisions for legislative amendment of necessary legislative rules change proposals to support new models, structures and additional functionalities	5.6.-6.6.2006
6	Proposals for elementary reform of enforcement law	16.10.-17.10.2006
7	Analysis of current working process in the field of enforcement concerning real estate	22.1.-26.1.2007
8	Reform of enforcement law concerning real estate	5.3.-6.3.2007
9	Workshop with representatives of MOJ to give advisory service in amendment of court tax law and lawyer's fee law	29.3.-30.3.2007
10	Conference with experts to discuss final draft for elementary reform of enforcement law	26.4.2007
11	Second workshop with representatives of MOJ to give final advisory service in amendment of court tax law	24.5.-25.5.2007
12	Third workshop with representatives of MOJ to discuss and give final advisory service in amendment of lawyer's fee law	18.9.-19.9.2007

Changes and amendments to primary legislation and a number of by-laws were prepared in cooperation with the MOJ (including Civil Procedure Law, Enforcement and Securing Civil Claims Law, Courts' Law, Court Fee Law, Lawyers' Fee Law, Court Rules, etc.), as well as milestones for elementary reform of Slovenian enforcement law.

It is worth noting the expansion of planned activities regarding relevant legislative reforms in light of the decision to form a centralised department as part of the organisational component.

In addition to general changes of civil procedure and enforcement legislation, this required more in-depth preparation of other suitable legal grounds for functioning of COVL.

Final report noted the general operational readiness from partners in component 1 (legislation). Teamwork was good and effective as well as most of the outcome. It was also noted, however, that on the decision level in the MOJ, sometimes things could have been managed in a more efficient and structured way. A number of proposals and recommendations that were not implemented, depended on the decisions by the MOJ, Government and Parliament. Some of them were additional changes to the new enforcement law that were perceived as indispensable in order to effectively strengthen the enforcement procedure (e.g., a centralised list of debtors and a centralised list of assets). During the project Ministry did not provide a final decision on these suggestions, and they were not part of legislative changes, which compelled the RTA to state in the Final Report: "Stronger decisions about the committed milestones of the reform and more bravery on the way to simplify over-bureaucratic procedures in the law would have been better for the progress and the results of the project. For the purpose of an efficient judiciary with the overall objective to reduce judicial backlogs and to avoid more cases against the Republic of Slovenia in Strasbourg because of violation of human rights, a good communication between Ministry of Justice and Supreme Court is a precondition. The reform of judiciary is a recurring topic which could be done only with persistence and sustainability. It should be also remarked that all reforms have to consider the independence of judiciary."

4.3. Organisational development

Assumptions for a successful execution of Component 2 were good information and strong involvement of the MOJ and other judiciary (Presidents of courts and Head of enforcement departments) and formation and functioning of a work group for the preparation of potential legislative and organisational changes (SC, MOJ).

According to the Final Report, the preparation of a suitable organisational environment for a successful reduction of backlog in the field of enforcement lasted from 13.3.2006 till 25.10.2006.

Table 7 - Activities planned for the preparation of a suitable environment for successful reduction of backlog in the field of enforcement

ORGANISATIONAL DEVELOPMENT		
2.	ACTIVITY	BENCHMARK
2.1	Study and benchmark research into different European models dealing with organisation of business process in member states (best practices).	Reports.
2.2	Analysis of current working process from the beginning to the end of the case within valid legislation with the emphasis on authentic documents procedure in four different courts on the territory of each court of appeal.	Monitoring reports and identification of the main reasons for existing backlog (obstacles in existing system).
2.3	Workshop with experts to verify founded results concerning activity 2.1 and 2.2 in preparation of activity 2.4.	Different models of specialised court organisation dealing with authentic documents procedures, and action and work plan including timetable for the necessary organisational changes.
2.4	Proposals for organisational reform within new legislative changes with the purpose of increasing effectiveness in enforcement procedure to provide better environment for judicial staff and third parties.	Official approval by SC and MOJ.

Table 8 - Actual activities for preparation of a suitable organisational environment

ORGANISATIONAL DEVELOPMENT		
2.	ACTIVITY	TIME-FRAME
1	Study and benchmark research into different European models dealing with organisation of business process in member states (best practices)	13.3.-15.3.2006
2	Analysis of current working process from the beginning to the end of the case within valid legislation with the emphasis on authentic documents procedure in four different courts in the territory of each court of appeal	22.3.-28.3.2006 3.4.-6.4.2006
3	Workshop with experts to verify founded results concerning activity 2.1 and 2.2	7.4.2006
4	Workshop with representatives of Chamber of Commerce to discuss measures in connection with the enforcement procedure	8.5.2006
5	Proposals for organisational reform within new legislative changes with the purpose of increasing effectiveness in enforcement procedures to provide better environment for judicial staff and third parties	5.6.-8.6.2006
6	Preparation of an organisational manual for a centralised court department for enforcement	18.9.-19.9.2006
7	Workshop with representatives of MoJ and CIF and visitation of building for new centralised court department to prepare a concept for offices and staff	18.7.-20.7.2006
8	Workshop to prepare organisation of the new special centralised court department for enforcement cases	10.8.-12.8.2006
9	Training course in the organisation and functioning of a centralised court by study visit of 2 working days to Germany (Local Court in Mayen)	10.10.-11.10.2006
10	Workshop with the head of the centralised court department and the head of referents to prepare organisation of central office in new department	18.10.2006
11	Training course in court management for the presidents of local courts and/or heads of enforcement departments	19.10.-25.10.2006

The main result of the organisational component was the construction of a countrywide central department at the Local Court of Ljubljana (OJLJ) that became responsible for enforcement of cases based on authentic documents (COVL). A new specialised court department replaced the prior 44 local courts and was given exclusive jurisdiction over decisions on claims for judicial enforcement of an authentic document. COVL was believed to be one of the most important and positive results of the project and a precondition to reduce and – in the future – avoid backlogs.

The idea for a centralised department was partially based on the German experience with the Order for payment procedure (Mahnverfahren), which is organised as an automated and simplified procedure for enforcement of un-negated claims. Project group conducted a study visit to a Local Court in Mayen, which has competence for all districts of federal states of Rheinland-Pfalz and Saarland. The system was (at that time) based on paper submissions (35%) and e-mail or disk submissions (65%), not on a web application. It also included some of the automated technological solutions that were deemed as crucial for streamlined functioning of COVL (e.g., scanning, centralised data capture, no merit control by the court, delegation of work from judges to clerks, automated preparation of decisions, automated postal dispatch). Some additional ideas on the organisation of the business process came from the other two study visits (explained in more details in Technological development segment of this section), and contributed to a new solution that incorporated the practices deemed as best or most suitable by the project group.

The goal of the organisational component refocused on providing material support (mainly suitable premises), organisational and human resources conditions (e.g., work processes, employment and training of selected employees) that would allow COVL to start its operations and function effectively.

Some of these included adaptation of business premises at Zaloška 59 in Ljubljana that was available and assessed as suitable for the organisation of the business process at COVL, analysis and specification of required work processes at COVL (e.g., specification of a method for archiving of paper documents) and employment and training of the new personnel.

The Final Report noted that “things became in general better and more structured, and (...) work in component 2 (organisation) developed in a good way after Slovene project leader (ed.: Mr. Rado Brezovar) overtook a leading role in the component additional to his several others.” Denomination of the head of the new centralised court department for the enforcement based on authentic documents (Mrs. Nataša Kosec, Judge at the Local Court of Ljubljana, current Head of COVL) was considered a great step forward due to her input in the project. Mrs. Jelenc Puklavec noted it was the insistence of Mrs. Kosec that eventually convinced the project management to expand the proj-

ect by including an electronic postal dispatch system, otherwise, as she claimed, her staff would not be able to produce the results due to overload of work with post.

On the other hand, experts believed that there were a lot of other recommendations on the table that could improve court organisation and court management in general, but were not accepted or feasible at the time, e.g.: simplification of all rules of procedure, implementation of judicial officers, implementation of a regular audit of courts, implementation of a kind of “court manager”, implementation of a more simple statistical system. Some of these were, however, systematically implemented in the subsequent years, independently from COVL and on a more general level (e.g., court audits, statistics, court directors).

Experts have also expressed disappointment with the participation by the Chamber of Commerce in attempts to involve them actively in developing methods and systems for avoiding debtors in advance. Reading the reports between the lines allows for an insight into various problems and dynamics that were encountered during the development project: “Twinning means to work together and to reach common results and this means also to read documents, to develop own proposals, own ideas, own documents for a fruitful discussion. This was sometimes a problem throughout all components.”

In addition to the work of the project group members, OJLJ had to commit one worker for 2-3 d/w for the duration of employment procedures and three workers for 5 days for the specification of the work processes, organisation and training. MOJ had to commit two workers for 1-2 d/w for acquisition of work premises for COVL.

4.4. *Technological development*

Assumptions for a successful execution of component 3 were implementation of the required judicial reform, primarily the adoption of changes to the existing procedural legislation by the Parliament, a national budget for financing of the technical equipment (hardware, software), finished procurement procedures for the software development and successfully finished software development activities by the contractor.

According to the Final Report preparation of IT support of new functionalities in information system of enforcement procedure lasted from 29.3.2006 till 12.1.2007.

Table 9 - Activities planned for IT support of the new functionalities in the enforcement procedure information system

TECHNOLOGICAL DEVELOPMENT		
3.	ACTIVITY	BENCHMARK
3.1	Analysis and benchmark research of current IT solutions in relevant EU countries, research into EU IT instruments and structures concerning electronic case file, electronic submission, electronic signatures, e-delivery, centralised printing and distribution, remote access to the case file.	Study visit in two EU countries (2 different models of case-management system) and reports.
3.2	According to priority list of functionalities preparation of concept of solution to implement additional services/functionalities based on existing infrastructure, application and open standards.	IT support has the following functionalities: possibility of electronic filing by the parties, remote access to the case file, electronic sign and centralised printing and distribution.
3.3	Preparation of technological specifications for tendering procedures for implementation of some of new services.	Technological specifications.
3.4	Assistance in tender/procurement procedure, especially in evaluation of proposals.	Report.

Table 10 - Actual activities for preparation of a suitable organisational environment

TECHNOLOGICAL DEVELOPMENT		
3.	ACTIVITY	TIME-FRAME
1	Workshop to prepare the benchmarking	29.3.-31.3.2006
2	Study visit to the UK and Finland	18.4.-21.4.2006 14.6.-17.6.2006
3	Workshop with representatives of Ministry of Public Administration about e-services	29.5.2006
4	Preparation of concept solution to implement additional services/functionalities based on existing infrastructure, application and open standards, according to the priority list of functionalities	5.6.2006- 12.1.2007

The final, fourth step, was considered the main result of the technological component, as it enabled the development of the required code.

The general enforcement CMS system, which was highly outdated before the start of the project, most importantly by not allowing connectivity, was renewed in line with CIF development standards and strategic guidelines in 2007 as part of the basic Enforcement Working Group operating parallel to the Twinning project. iCMS (iVpisnik case management system; “i” stands for Izvršba/Enforcement) was written in Java, was centralised and allowed for an unlimited expansion of modules and interoperability. This new development was taken into consideration by the COVL project, and the technological component for COVL was thus initially limited to three main goals:

- **digitisation** of all paper documents filed with the court, their recognition, control and verification for the purposes of data transfer into the case-management system and latter creation of the decision
- **electronic filing**, whose main goal was a creation of an information system that would allow electronic filing of enforcement proposal through a special intelligent web form, e-filing for big creditors for mass proposals, monitoring of individual phases of the procedure by the creditors and content control of data inputs through other external registries
- **adaptation of the case management application** iCMS to provide support to COVL operations

Partial modification of the existing system was required to suit the requirements of the automated procedure for processing enforcement claims of authentic documents, which substantially meant creation of an IT system for COVL department. Some of the additional functionalities in software support for COVL operations, in addition to adaptation of the existing central CMS for execution of a complete procedure based on authentic documents (*verodostojna listina*; VL), included:

- e-filing in VL cases, individual and mass (packet),
- digitisation of all paper documents through scanning and OCR already in the phase of receipt of post in central office,
- archiving of paper documents,
- electronic collection of all data relevant for decision-making process,
- automated control and acquisition of data from external base registries,
- automated control of court fee payments via Ministry of Finance,
- automated creation of decisions ordering correction of incomplete claims,
- automated creation of decisions for allowing claims in cases where material and formal conditions are met,
- a uniform identifier
- creation of an efficient monitoring and notification system for case parties regarding the phases of the proceedings

Some changes or new functionalities were also added due to the changes required by the organisational component, most notably the introduction of the electronic postal dispatch system in order to optimize and expedite printing and mailing, and that required the development of a specific standardised envelope.

As the department was developed anew, construction of the complete ICT infrastructure was required at the selected location.

Connections to a number of external base registries, databases and other information system had to be established (e.g., for identification and verification of case parties, for retrieving data on transaction accounts, real-estate, securities, etc.) and protocols for interoperability had to be standardised with each of their owners/operators. This included not only the technological as-

pects, but also establishment of proper contractual obligations to meet the requirements of personal data and other legislation.

CIF and the RDSC had to allocate one worker for 4 d/w throughout the project for project management, and one worker for 2 d/w for the duration of the project for project office management. Two workers were required for 3-4 d/w for a period of 3 weeks for preparation of technological specifications of e-filing process and case management application adaptation. One worker was required for 6-8 days for preparation of the tender procedures, two workers were required for 2 d/w during a period of 3 months for monitoring and control of IS coding by the contractors, two workers for 1-2 d/w during a period of 3 weeks for information infrastructure construction (e.g., local networks, workstations, printers, scanners,...), and one worker was required for 2-3 d/w during a period of 1 month to establish connections with external registries.

Work in component 3 (technological) was, according to the experts' reports, most demanding. Because CIF's Department for development was highly engaged on other duties parallel to this project, among these also development of enforcement case management software, necessary input on the specific requirements of the technological component couldn't be given for a very long time. Due to these reasons it was not possible to organise work on Slovene side in a way that both parties could work together in an efficient manner. Interestingly, the final report also mentioned, that "also Austrian key experts didn't fulfil expectations, because they had no real idea of the working procedure in a court, so that they didn't get the point." All experts were selected by the German partner, and the Head of the project noted that their understanding of inappropriate work by some experts and immediate reaction that resulted in their replacement, created good will and confidence among team members.

Even after the change of key IT experts, cooperation was not as it was expected, because almost all of the time was spent to finalise the implementation of a new national IT-application in enforcement courts. Because the deadline for its implementation in 2006 was missed, some time was lost for the development of necessary IT modules for COVL work flow. After taking some serious measures within the project management things became better, so that some concrete results based on the results of the workshops could have been reached. A scanning pilot was finished, e-filing software and the majority of modules within national application were developed. At the time when Final Report was written, it was expected that the finalisation of development of all three modules will be finished and final integration achieved on time.

On the other hand, as was specifically pointed out by the then-CIF Director and Project Leader Mr. Rado Brezovar during the interview, study visits to Germany, the UK and Finland proved very helpful.

Project group found the UK system interesting (Money Claims Online; Northampton Bulk Centre) primarily for its web interface that allowed authentication simply on the basis of an e-mail address due to a pragmatic position: if the user is prepared to pay the court fee and carry the legal consequences, than this is his choice. It also gave some insight into their mass filing system. At the same time they noticed that the system was developed as a proprietary solution, which caused problems to the users when additional requirements emerged, although simultaneously such pragmatic project management approach did provide long term stability and usage of the systems.

The Finnish system of process management turned out to be organised in a similar manner to the methodology that was adopted by Slovenia, and this realization strengthened project management's confidence regarding the correctness of their strategic directions and decisions, said Mr. Brezovar. Most important in terms of the project at hand were the data connections of the judiciary to various external registries and a pragmatic approach regarding e-filing procedure. Such an approach was, for example, not possible in Germany due to stronger data protection legislation, but it allowed for a faster and simpler processing of claims.

Such study visits helped clarify dilemmas and enabled project management to combine best practices and solutions of all three systems into a new working solution.

4.5. *Promotion of new services / functionalities*

Assumption for a successful execution of component 4 was a finished component 3.

Internal (courts) awareness campaign was done by the SC itself (see Semantic components segment in section Configuration) and the external campaign was the responsibility of the MOJ.

External promotion was limited to the planned activities.

Table 11 - Activities planned for the promotion of new services/functionalities

PROMOTION OF NEW SERVICES		
4.	ACTIVITY	BENCHMARK
4.1	Awareness campaign.	Media (public) campaign (press, TV, broadcast).
4.2	Elaboration of a practical guide for users.	Printout of a handbook that shows how to use new services.
4.3	Presentation of the outcome of the project on a conference with external users and clients.	Information about the process of reform in the field of improvement and effectiveness of enforcement procedures.

4.6. *After the project*

Organisational and technological component of COVL were incorporated in the Enforcement Working Group after Twinning project was formally finished in October 2007. One of its major tasks was monitoring of COVL performance in its initial phase and offering guidance and support.

Some issues emerged in later stages due to a disproportionate increase of new cases in the second year of COVL's operations. While its organisational structure was originally designed for a yearly expected quota of approximately 130.000 cases, it received over 200.000 cases a year since 2009 onwards. While COVL still managed to process all of the claims, issues regarding work premises emerged, as these have turned out to be inadequate for such numbers. Problems emerged when COVL started running out of storage capacities for archival of paper documents. These had to be stored at two additional locations, but even at the main location office space had to be sacrificed for archives. The MOJ, which is responsible for premises, has been trying to find a more suitable location for the past two years, but currently COVL is still at the initial location. With time, lack of suitable resolution may even affect the moral of the employees, which is not a negligible factor.⁴

An increase of new cases also caused an absolute increase of objections (although their relative percentage remained the same), which required OJLJ to allocate two additional judges to COVL, in addition to the previous four. It has also contributed to MOJ accepting a previous suggestion to give exclusive jurisdiction over appeals to only one appellate court.

Returns of service were initially scanned in the central office of COVL, but workload was creating bottlenecks. In 2011, scanning was outsourced to a contractor.

5. Configuration of the system

The main objective of the project was to systematically reorganise the management of the enforcement procedure up to the phase of finality of the decision on enforcement claim, in a one stop manner and with the assistance of effective information support. Case parties, primarily creditors, should get a decision on their claim in as short time as possible, and should have the capacity to track the procedure by direct web access to information from CMS of the court.

⁴ NOTE: COVL moved to a new, more suitable location on 29 February, 2012.

5.1. *Regulative components*

In order to implement business process changes, a number of normative basis had to be modified. Changes were implemented with the objective of allowing organisational and technological reforms, but at the same time they created a basis for further adaptations and development of other legal procedures.

Changes to the Civil Procedure Law (ZPP)⁵ aimed at fully enabling informatisation of civil procedures (and the proposal sent to the Parliament by the Government specifically pointed out the needs in enforcement procedures) by the introduction of electronic communication, including e-filing, e-decision and e-inspection. E-filing changed the rules related to identification of case parties, and introduced a qualified certificate as a basic identifier, but also allowed the minister to prescribe other, less secure means for specific procedures. This also allowed the submission of claims only on the basis of a valid e-mail address in connection with the paid court fee. It also allowed all e-filing through information systems designed by the SC and on e-forms confirmed by the SC. This has, in a way, formalised the convention that all changes to legislation that relate to e-justice become fully operational only after the SC validates the technological conditions. Courts can now issue and sign decisions in e-form (meaning that judges do not have to physically sign decisions when they are generated automatically), and e-serving is equivalent to paper-based serving. Other changes stipulated that courts can work on and exchange electronic case files, and that no paper receipt needs to be submitted as proof of fee payment if the fee was paid by electronic means. In addition, the general requirement that submissions need to be made in as many copies as there are case parties plus the court was relativised, allowing for a more specific definition of necessary form in a by-law.

A by-law to ZPP (Rules about the envelope for mail serving in civil procedure)⁶ specified the format and quality of the envelope required for the automated postal dispatch system.

Courts' Law (ZS)⁷ gave exclusive competence over cases related to enforcement of authentic documents and over objections regarding these, to the Local Court in Ljubljana, which enabled formation of COVL (99a ZS). Even more importantly, it created an obligation for operators of collections of per-

⁵ Zakon o spremembah in dopolnitvah Zakona o pravnem postopku (ZPP-C), Official Gazette of the Republic of Slovenia, 52/2007 (12 June 2007).

⁶ Pravilnik o ovojnici za vročanje po pošti v pravnem postopku, Official Gazette of the Republic of Slovenia, 93/2008 (30 September 2008) and its subsequent changes.

⁷ Zakon o sodiščih (ZS), Official Gazette of the Republic of Slovenia, 19/1994 (13 April 1994) and its subsequent changes; Zakon o spremembah in dopolnitvah Zakona o sodiščih (ZS-F), 127/2006 (7 December 2006).

sonal and other protected data to provide these to the courts free of charge and as quickly as possible, if they are required for determination or evaluation of fact related to judicial procedures. It also stated that the information system of the courts can establish connections with official registries and public ledgers that possess data required by the court for its procedures (13 ZS). This gave the project a legal ground to start working on technological interoperability with other data registries.

Some of these changes, especially related to e-serving, were not used directly in the COVL project, but for other projects that were developed simultaneously or subsequently (e.g., Insolvency CMS, Land Registry upgrade, etc.).

Changes to Law on Enforcement and Securing Civil Claims (ZIZ)⁸ described the exclusive competence in more details and declared COVL responsible for the identification of the means of enforcement from electronic registries for the purpose of serving decisions (40c ZIZ). It prescribed a mandatory filing on a standardised form (41 ZIZ). It changed the rule that requested submission of related documents (e.g., copies of the claimed authentic document) and required only their specification and date of maturity (41 ZIZ). It specified conditions for e-filing in enforcement procedure, defined that e-claims are filed when the information system confirms its receipt and allowed for automated processing of claims and preparation of decisions (29 ZIZ). It also introduced a unique identifier as a basis for payment of court fees in e-filing and made an exception to the rule that a claim is made when the fee is paid, stating that in e-filing these can be paid within eight days of the claim being submitted to the information system (29b ZIZ).

A by-law to ZIZ (Rules about forms, types of enforcement and practice of the automated enforcement procedure)⁹ specified the standardised structure of forms and the allowed methods for filing of claims.

The Courts' Fee Law¹⁰ allowed for the differentiation of fees filed in e-form and specified fees for various stages of COVL procedure.

Because of the relative ease of access to court proceedings, the Penal Code (KZ-1)¹¹ was also more clearly formulated, in particular, defining abuse of enforcement procedures as a crime, punishable by a fine or prison for up to two years (216 KZ-1).

⁸ Zakon o spremembah in dopolnitvah Zakona o izvršbi in zavarovanju (ZIZ-E), Official Gazette of the Republic of Slovenia, 115/2006 (10 November 2006).

⁹ Pravilnik o obrazcih, vrstah izvršb in poteku avtomatiziranega izvršilnega postopka, Official Gazette of the Republic of Slovenia, 121/2007 (27 December 2007).

¹⁰ Zakon o sodnih taksah (ZST-1), Official Gazette of the Republic of Slovenia, 37/2008 (15 April 2008).

¹¹ Kazenski zakonik (KZ-1), Official Gazette of the Republic of Slovenia, 55/2008 (4 June 2008).

5.2. Organisational components

From a statistical perspective, COVL became a new, 45th local court, and took over the competence of all other 44 local courts in the field of enforcement of authentic documents. However, ZIZ does not specifically mention COVL, as it is formally a special organisational unit of the Local Court of Ljubljana.

The role of judges at COVL is mainly limited to decisions on received objections, verification of formal conditions for the appeals and appeals over decisions rejecting requests for fee exemption.

Judicial clerks manage the majority of cases and issue decisions allowing the claims for enforcement of authentic documents according to the change in Courts' Law (53a ZS). ZIZ allows judges to delegate them the decision-making regarding objections as well (6 ZIZ).

Typists and administrators are a very important segment of the business process at COVL, especially in the phase of scanning control, data verification, verification of conditions for fee exemption, etc.

Other local courts' enforcement departments gain competence over COVL's cases only after the finality of the decision, and the COVL project did not deal with their reorganisation (this was, however, the role of the Enforcement Special Programs Working Group).

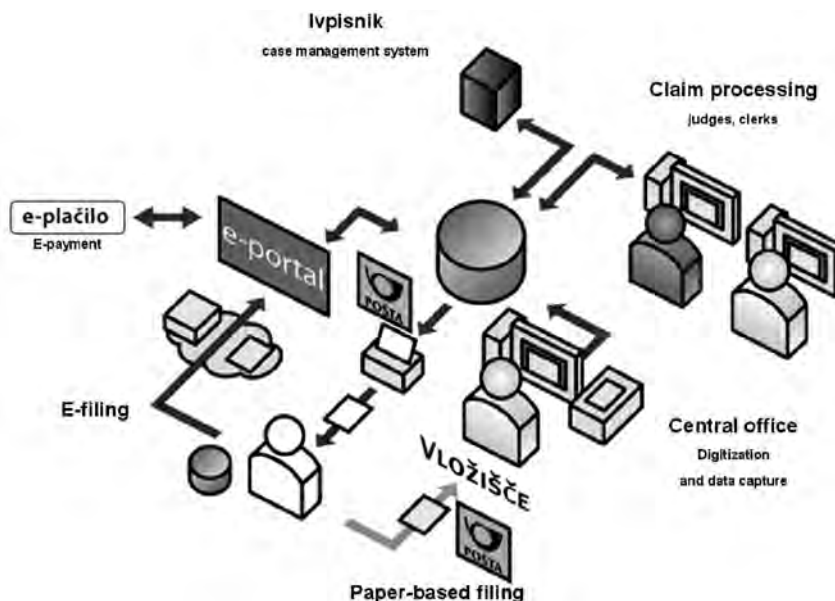
If a decision is objected to by the debtor, and the objection is sustained, the case file is sent to the competent local or district court's (depending on the claim value) litigation department.

Appeals are sent to the appellate or higher court, which decides in a senate of three judges (6 ZIZ). According to recent changes of legislation (6a ZIZ) that came into force on 1. 1. 2011, appeals' procedures for COVL have been concentrated at only one appeals' court (as opposed to previous four), thus contributing to a more harmonized case law in legal questions based on similar factual settings. This was suggested by the SC already in the development phase, but the proposal was not accepted by the MOJ.

After finality of the decision, COVL sends it to the debtor's debtor, enforcement officer, land registry, company registry or CSCC, depending on the selected means of enforcement. By this COVL participates in the enforcement of the decision itself, as it is important that a decision is realized immediately.

Only COVL, however, uses all technological components of the project. A part of them is also used by the enforcement departments of local courts (e.g., CMS, automated postal dispatch), but the others (including appellate courts) use a separate litigation CMS, into which the content of the electronic case file is transferred.

Figure 3 - A simplified presentation of the COVL business process (source: mag. Pavel Reberc, CIF, Legal Enforcement Procedure for Money Claims as E-Service presentation, 2. 6. 2008; translated and adapted by Gregor Stojin)



5.3. Technological components

The technological component was based on automation of the procedures by introduction of a number of new centralised information modules that replaced the old CMS. The new CMS is written in Java (as opposed to previous Clipper) and incorporated the new organisational methods and decision-making process that were significantly modified and automated with the intention of bridging bottlenecks in the process of determining the validity of claims and issuing decisions.

CIF's strategic guidelines and principles were applied at all levels of the project, most importantly in the three-tier architecture (lower tier – storage level, middle tier – services/business logic, upper tier – interfaces and front applications) and by the use of open standards (e.g., servers operating on LAMP, system is written in Java, Open Office incorporated for preparation of documents, PDF-A used for document exchange, XML used for communication, etc.).

The only exception to the open standards involved the development of the scanning and OCR module, where a proprietary platform (KOFAX) was adapted to the requirements of the process.

While this still gives room for the use of alternative technological stan-

dards, more importantly it allows the system to adapt quickly to new or changed requirements.

An example of this is the automated postal dispatch system that was (as planned) outsourced to a contractor who possesses the required industrialscale hardware. The contractor accepts documents from the court in e-form (pdf), prints, collects and folds them, prints data on envelopes, mechanically envelopes documents in the matching envelopes (using bar code for pairing), controls the quality of outgoing mail, creates a post ledger for all mail that is submitted to the Post Office and delivers the post to the Post Office. Such an approach makes COVL an almost paperless environment, save for the small amount of paper-based claims received directly at COVL.

The envelope, which is crucial to the effective functioning of such a system, was initially developed by CIF in connection with the first contractor. Mr. Muršec noted that it is significant that although the contractor was changed in 2010, the process did not experience any setbacks due to the change that shows the correctness of the open standard approach.

Another part of the system that is outsourced to private contractors, is the scanning of return of service slips. Both modules have since become part of a wider information infrastructure of the judiciary, as they also serve some other information systems (e.g., insolvency, land registry, etc.).

Servers are physically located at COVL (scanning and OCR), the MJU (CMS) and a third location is used for security copies.

A module for payment of court fees, E-Payments, which is used by the Public Payments Administration at the Ministry of Finance, was developed by MJU and their contractor, Banka Koper d.d. (Bank of Koper). It allows payment by credit cards and suits the requirements of the procedure. CIF established interoperability with their system. The judicial information system EOBVEZ (E-Obligations) is dedicated to control of payments and regularly controls the status of payments with the court ID numbers at E-Payments server, pairing the results of E-Payment data with data received from the COVL system. As the payment is done directly to the MF, not to the courts themselves, in the past this process could take quite some time.

Connections are also established with a number of external and internal base registries, both for identification of case parties, as well as their means and assets. Some of these include:

- Tax Registry at Tax Authority (DURS)
- Public Payments Administration (UJP)
- Central Registry of Citizens at Ministry of Internal Affairs (CRP)
- Registry of Bank Accounts at Bank of Slovenia (BS/RTRR)
- Central Securities Clearing Corporation Registry (CSCC/KDD)
- Employment Office (ZZZS)
- Land Registry at courts (EZK)
- Registry of Land Units at Surveying Authority (RPE)
- Company Registry at courts and at AJPES (PRS)

Data exchange protocols, which are based on XML structured requests and use web service calls and replies between servers over a minimum 128-bit encryption, are established with each operator individually by contract and adapted to specific technological requirements. All connections also include a request log that allows control of all requests and their pairing with actual cases, thus satisfying the requirements of the Data Protection legislation.

Figure 4 - Connections with external information systems



5.4. Semantic components

COVL internal users (i.e., employees) received training for the use of the system prior to the start of operations. All employees from the courts' enforcement department, including COVL, are invited to annual dedicated seminars (that take place over 2-3 days and are usually organised for 2 separate groups of approximately 150 attendees per group in order to allow for normal functioning of the system and also more feasible execution of the seminars) in which the system is presented to them in details, possible changes to CMS are explained, possible explanations over different legal interpretations are given to the clerks by judges and best practices in case management are pointed out.

Internal system users also maintain a user forum on the judicial intranet.

User guidelines for submission of a claim, either in paper or electronic form, as well as an explanation of court fee structure, are published online in separate pdf documents, which can be found in the menu of the web portal used for filing claims. FAQs are regularly updated and the help desk is available via e-mail covl@sodisce.si.

Smart web form guides the users during the process of claim preparation and also notifies the user where errors or omissions occur in the input data.

An important segment was also related to specialised and general media. During the course of the project, its members wrote several articles for the national legal magazines, aimed at informing the professional public over the coming changes.

No special promotion activities were, however, implemented to attract the users. As the use of the form and of the procedure was mandatory, more focus was given to clarification of potential misunderstandings at a later stage. This was done mostly by regular communication with the media when they published or planned to publish stories regarding COVL or enforcement. After four years of operations, this seems to have been a correct approach, as the users discovered the system's practicality over the course of the first year by themselves.

6. Functioning of the system

6.1. *Getting ready to file a case: Identification and access (Web portal and the form)*

Claims for enforcement can be submitted only via a smart electronic form or on the strictly defined paper forms, which are available at the local courts.

A web portal (<https://covl.sodisce.si>) was developed for registration of individual users, filing of claims and status tracking.¹²

Individual users (mostly creditors or their attorneys) can register online to receive a password to their e-mail account. No additional authentication is required, but a name and a valid e-mail address.

A B2G interface was also developed for bulk filing of claims by large creditors and the description of the XML scheme was published online which allowed them to implement it in their proprietary systems (e.g., accounting software) or buy it from other developers.

Bulk (also referred to as mass or package) filing is suitable for creditors who require filing of many simultaneous claims. Users must first receive a qualified digital certificate (available from private and public providers) and a permission by the MOJ. CIF then provides them with a test digital confirmation, which allows them to test file a package of claims and verify XML compatibility of their system. Accuracy of the testing results is confirmed by CIF. After this, creditor sends a request for inclusion in the production environment, in which they state their username, number and issuer of the digital certificate. There are currently approximately 25 users of the bulk filing system.

Registration and submission of claims are available also to non-national users from other countries, and claims can also be submitted against debtors from oth-


¹² On 1 March, 2012, web portal for enforcement was added to a wider platform, which also allows e-filing in land registry and insolvency cases: <https://evlozisce.sodisce.si/esodstvo/index.html>. As many functionalities were changed or added to the system, this chapter describes the functioning of the web interface prior to this date.

er countries, on the condition that the means of enforcement are located in Slovenia. Existence of such means is verified by COVL immediately after the receipt of a claim during the first data control, because COVL would otherwise have no jurisdiction over the subject matter, and represents an exception to the general rule where this is checked only after the finality of the decision.

All forms have data fields that are connected to the XML scheme. Each form has a unique identifying number (paper forms use a preprinted ID, e-


Figure 5 - First page of the form COVL-1A; red numbers are indicators for the XML scheme and are not a part of the form itself

COVL-1A 1/8



REPUBLIKA SLOVENIJA
OKOLJNO SOGOVORJE V LJUBLJANI
Centralni urad za varstvo pravic
1000 Ljubljana, Slovenija

**PREDLOG ZA DOVOLITEV IZVRŠBE
NA PODLAGI VERODOSTOJNE LISTINE**



Postati na naslov:
Otroško mostišča v Ljubljani
Centralni oddelček za varstvo pravic
Zalozna 56, 1000 Ljubljana

Dopolnitev predloga Opravilna številka **V L**

REFERENCA

Številka številka

VLAGATELJ

Ime **7**

Primek **8**

UPNIK Meš upnikov (obrazec COVL-2) **12**

14 fizična oseba **14p**

Naziv **17**

Mat. št. **18** Dav. št. **19**

Država **20** Druga **20**

22 fizična oseba

Ime **25** Primek **26**

Dav. št. **29** EMŠO **28**

Raj. občina **27** Država **30** Druga **30**

Naslov

Ulica **34** n.št. **35**

Polša **36** Kraj **37**

Država **38** Druga **38**

Zakoniti zastopnik

Položaj **42** družbovoda **42a** Oče **42b** mati **42c** skrbnik **42d** Drugo **43**

Ime **49** Primek **50**

Dav. št. **53** EMŠO **52**

Raj. občina **51** Država **54** Druga **54**

COVL-1 Predlog na dolžnikovo izvršbo na podlagi verodostojne listine 2004/2007 stran 1/8

form IDs are generated), which enables users to pay the required court fees by using the ID as a reference number.

Only claims for enforcements can be submitted in electronic form. All other submissions (e.g., withdrawals, requests for court fee refund, objections, complaints, etc.) must be sent in paper form.

Claims can be submitted online only during working days (Mon-Fri) from 8.00 to 20.00.

6.2. Preparation of the claim (*Filling out the claim form*)

Paper form COVL-1 allows the input of data for only one creditor, one debtor, or one authentic document, but these can all be expanded by annexes. If a claim is filed by many creditors, the appropriate field must be ticked on COVL-1 and as many forms COVL-2 filled out and annexed to the claim as necessary. The same can be done when there are many debtors (COVL-3). If there are multiple authentic documents, each separate COVL-4 annex form makes possible the addition of data for up to five additional authentic documents.

The web form allows for the additional expansion of fields regarding multiple creditors, debtors or authentic documents by a simple click (“Add additional ...”).

The user can claim enforcement for an unlimited number of claimed documents related to a specific debtor and must specify the claimed amount (base claim, interests, etc.).

No documents need be submitted together with the claim. The submitter is responsible for the veracity of the claims relating to the existence of an authentic document. In practice, control of this is also done by the debtor, who can object to the decision and claim that no such document exists, or that it had already been paid, etc.

The creditor must only identify the type of the authentic document (on the basis of a catalogue) and its reference to allow its identification by the debtor. Dates of issuance and maturity must be stated, as well as the amount and currency (on the basis of a catalogue of abbreviations used by the Bank of Slovenia).

Statutory default interests can be calculated by the user by using an application developed by RDSC (<http://izo.sodisce.si>). For filing the claim they only need to state the interest rate, the calculation period for contractual interests and their initial date; they do not need to state the claimed amount of interest because it is calculated by the court. Creditors can also claim their expenses related to the specific enforcement, including postage, court fee and other expenses, such as attorney’s fee according to the Court Fees Law (ZST) rate.

The creditor has an option to specify the means for enforcement, or to leave the identification of available means to the court. At least one of the means must be specified, but claimants often chose two or more, depending on their assessment of the debtor’s assets.

Table 12 - Means of enforcement for authentic documents 2011 by usage

MEANS OF ENFORCEMENT (ATTACHMENT) for AUTHENTIC DOCUMENTS			
JUDICIAL STATISTICS FOR 2011 (VL LEDGER)			
RANK	MEANS (ATTACHMENT, GARNISHMENT, ETC.)	NO. OF CASES	%
1	Monetary means at an organisation for payment transactions	247795	47.990
2	Salary and other regular monetary income	140581	27.226
3	Movable assets	97303	18.844
4	Securities (registered with Central Securities Clearing Corporation Ljubljana (CSCC))	19080	3.695
5	Real-estate registered with Land Registry	8617	1.669
6	Other property or material rights	921	0.178
7	Company share	731	0.142
8	Other monetary claims	722	0.140
9	Real-estate not registered with Land Registry	576	0.112
10	Building right	15	0.003
11	Other	8	0.002
	TOTAL	516349	100.00%

Types of information that need to be submitted regarding each specific means of enforcement are defined by ZIZ and its by-law.

If the creditor chooses movable assets, real-estate that is not registered with Land Registry, other property or material rights, or securities that are not traded at the Stock Exchange, they must also name a selected enforcement officer.

The creditor must submit his personal information (an individual must submit his name, surname, address, country of residence and one of the following options: either tax number, personal ID number, or date of birth), information on his legal representative or agent and information about the account where enforced means are to be transferred.

The creditor must submit debtor's basic identification data: name, surname, address and country of residence and either date of birth, tax number or any other suitable identifier; or company name and address and registry or tax number.

Claim forms must be completed fully and a smart web form prevents incomplete claims from being filed. It also automatically verifies most of the data fields, including the accuracy of data inputs regarding the most important identifiers. Mandatory fields must be completed. Automatic control is performed by requests to external connections (see Figure 4):

- accuracy of numerical data (e.g., citizen's ID number (CRP), bank account number (BS), reference (MJU))

- existence of street and house number in the registry of real estate units (EZK, PRE)
- existence of name and surname (CRP)
- existence of currency and country (BS)
- existence of company name and registry number (PRS)
- existence of a registered security (CSCC)
- existence of a date

If the system detects an error in the claim form data, it informs the user via a two-colour warning scheme. Absolutely erroneous fields have a red text with the description of the error, and potentially erroneous fields have a yellow text (e.g., names are verified in the citizens' or companies' register, but there can be exceptions or variations in spelling). If the users believe that yellow warnings are immaterial to their claim, they can also submit the form by clicking on "Submit form despite warnings" ("Oddaj obrazec kljub opozorilom").

6.3. *Submitting the claim and paying the fee*

Although forms can be pre-filled and printed out from the web portal and then mailed to the court by post, their multiplication is not allowed because it would create a multiplicity of claim IDs. Users are cautioned to make sure that printed forms are equivalent in appearance to the outlook of the web form (e.g., field borders must be visible), otherwise COVL will consider such a claim to be submitted on an improper form and call upon the creditor to correct it by sending a prescribed form. Printed forms are also available free of charge at all local courts.

No signature is required on electronic forms, but they are required on paper forms.

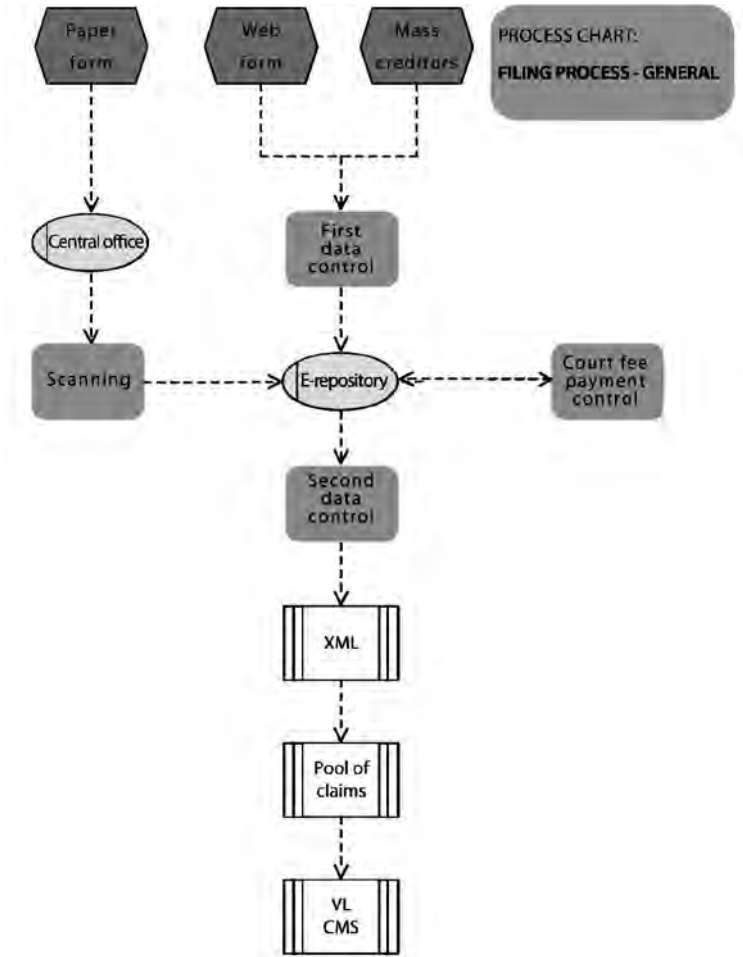
After a claim is submitted online, users receive a reference number and the amount required for the payment of the court fee (they can also view the ID numbers of their claims by following the link "My Claims" ("Moji predlogi")).

Users can choose to pay the court fee either through their own (or their bank's) payment system, or by continuing to the link "Payment" ("Plačilo"), which allows payment by credit cards directly to the Ministry of Finance. Fee must be paid within eight days of submitting the claim, otherwise it is deemed that the claim had been withdrawn.

Users can also request exemption from court fee payment, which needs to be submitted in paper. Creditors who are exempted from court fee payment by law can register with COVL by sending a paper claim with their company register number. Afterwards the system automatically recognises their exemption when a claim with their identification is submitted.

If a court fee is not paid or if an insufficient amount is paid, the system notifies the user by email (if the user chose so in their settings); users can also

Figure 6 - Filing of the claim – simplified presentation of the process (source: COVL filing; in Specifications of additional functionalities of VL ledger, p. 16, version 2.1, authors: CIF, Rado Brezovar et al., 17.5.2007; translated and adapted by Gregor Strojín)



track the status of their claim through My Claims. If the system does not detect payment (or detects insufficient payment) within 10 days of submission, the claim is returned.

Court fees are approximately 20% lower for the users of the electronic form and depend on the number of specified means of enforcement.

Fees for claims specifying only one means of enforcement, which are sent by paper, are 45 euro and those sent by electronic form cost 36 euro. Any additional means of enforcement (e.g., enforcement on movable AND immov-

able property) cost 5 euro for each additional means. If a claim is withdrawn or dismissed, one third of the fee must still be paid.

6.4. *Court activity (Claim processing, preparation and sending of decisions)*

Claims are processed and validated through an automated information system. Some of the information is verified during input.

Paper-form claims are digitised (scanning + OCR) and additionally validated by eye when and where errors are reported by the system. Verification of paper-based claims' content is done during the scanning phase by the typists. Currently, approximately 30% of paper-based claims still need human verification in some respect.

Case management system for authentic documents (VL CMS) uses all the collected information to create a complete electronic case file, which enables an automated preparation of the final decision.

On average, decisions are generated within two working days after submission.

All decisions are equipped with a digital facsimile of the court's stamp, a signature is not required.

All decisions, orders and other mail are printed, packed, labelled and sent from one central automated postal dispatch system, which makes the "inner" COVL working environment mostly paperless.

The decision is sent to the creditor and the debtor, who have 8 days to respond.

An external contractor receives return-of-service information from the Post Office. Previously this was done by COVL, but the work was creating bottlenecks and an industrial scale facility was required. All returns of service slips are scanned and information on date of service is added to the case file.

6.5. *Receiving the decision and replying*

After receiving the decision, the debtor can decide either to pay the debt, default (wait for enforcement) or to object to the decision.

A creditor can also appeal the decision (if the claim was denied), withdraw or partially withdraw the claim. If the creditor withdraws the claim before its finality, he must still pay one third of the fee.

The fee for an objection is 40 euro and an appeal against decision regarding the objection is 100 EUR.

Such submissions cannot be sent by electronic means, but only by paper to COVL.

Objections (by debtors; approximately 11% of all claims) are decided on by a judge at COVL, and the procedure is completely paper based.

If the objection is successful, the case is transferred to a competent litigation court (local or district, depending on the amount).

Creditor's appeals (by creditors; approximately 1,5% of all claims) are forwarded to the appellate court. Fee for an appeal against the decision is 80 EUR.

Initially, all four higher courts served as appellate courts, depending on the geographic jurisdiction of the debtor, consistently with the previous system, despite the project proposal that also decision-making on the appellate level should be centralised to prevent differences in interpretation of law. This suggestion was, however, accepted in 2010, and the rule was changed. Since 1. 1. 2011 only one appellate court (the Appellate Court in Ljubljana) has competence over the appealed cases.

In all cases, the complete electronic case file is available to the competent judge handling the objection, appeal or litigation and is usually printed out for the trial/appeal phase. Because the type of procedure changes from enforcement to litigation, the file is also transferred from enforcement CMS to litigation CMS (PUND).

6.6. *Sentence and enforcement (Determination of finality)*

Date of finality is determined on the basis of returns of service. These are scanned and archived, and the date of the receipt by case parties is automatically added to the electronic case file.

Until the finality of a decision, COVL has competence regarding all additional means of enforcement, deferments, withdrawals or partial withdrawals and other submissions, and they have to be sent in paper. Correction of an electronic claim by electronic means is not possible, except if the court fee has not yet been paid (i.e., by simply resending the claim).

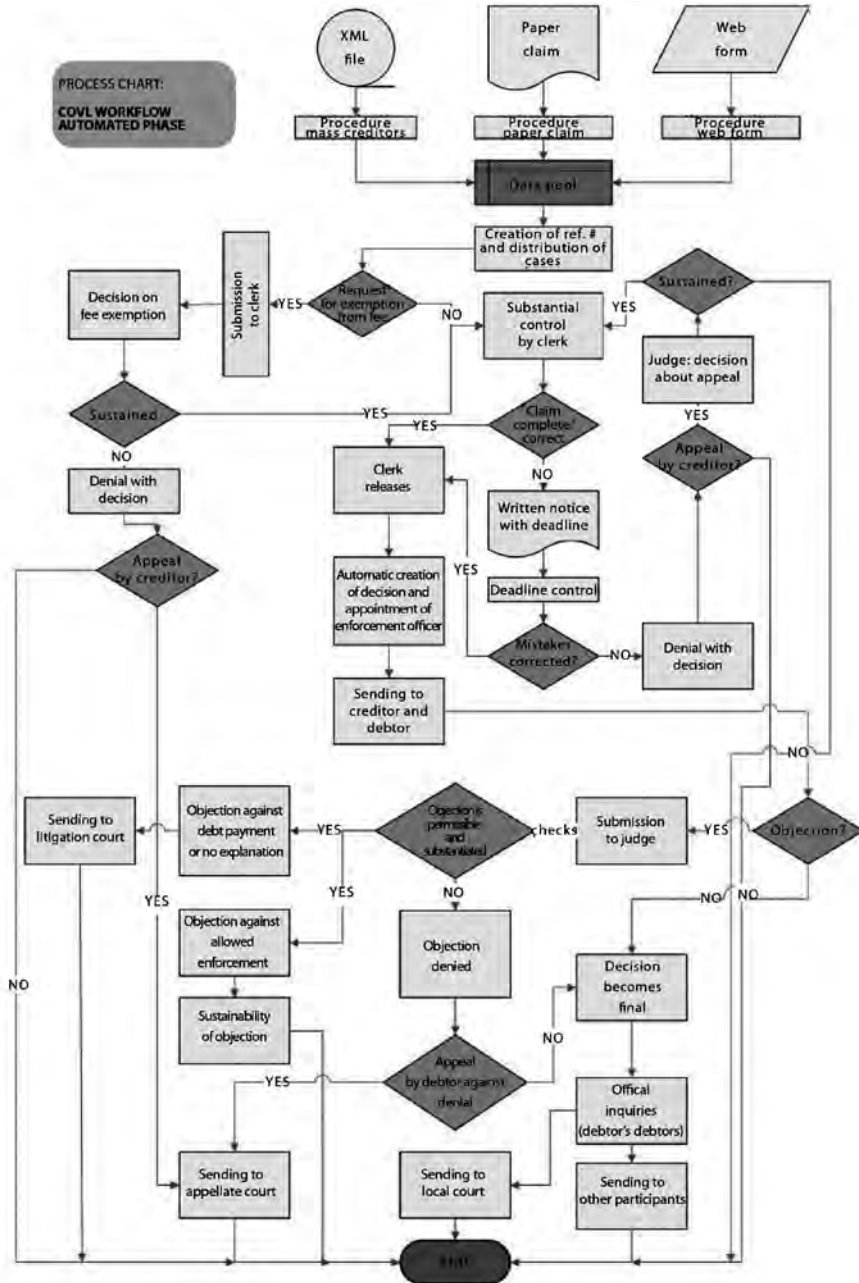
Additional means of enforcement cost 12 euro if only one was requested initially, or 6 euro for each additional if two or more were already requested initially.

After the finality of the decision all available information on the debtor's financial means (e.g., bank accounts, securities, land property, company shares, employer data, other assets, etc.) is automatically collected from official databases and registries by COVL, if the user so chooses, by not entering specific details regarding the requested means.

After finality is reached COVL sends the decision to the debtor's debtor (e.g., bank, employer, etc.), enforcement officer, Land Registry, Company Registry and/or CSCC, depending on the requested means of enforcement.

Competence is then also transferred to a local court (which is specified in the decision), which is primarily based on debtor's residence, for realization of the decision on real estate or movable assets. The electronic case file also allows other courts to access its contents.

Figure 7 Detailed work-flow of the automated phase at COVL (source: Workflow Phase 2 – automated work – Stand: 21. 09. 2006 Peter Werle; in Specifications of additional functionalities of VL ledger, version 2.1, p. 45, authors: CIF, Rado Brezovar et al., 17.5.2007; translated and adapted by Gregor Strojín)



If it is established (after finality) that no means for enforcement exist, the competent local court calls upon the creditor to request within 15 days a new means of enforcement or the creation of a list of debtor's assets. If the creditor fails to do so, the case is closed.

6.7. Functioning in numbers

The main goal of the project was to increase the efficiency of enforcement procedures that were a major contributor to judicial backlogs due to exponential increases in new claims. The objectives were to decrease the number of pending enforcement claims and to shorten the decision-making time.

The work, which was previously done by approximately 350 court employees and judges at 44 different courts, is now concentrated at a specialised court with only six judges and 62 support personnel (two judges were added to the initial four in 2011 to help COVL deal with increasing numbers of claims). This has enabled other local courts to reassign their resources to other types of claims, thus additionally contributing to their backlog reduction. Introduction of an automated postal dispatch system alone (which has processed more than 1 million postal parcels in 2009) saved approximately 60-70 people/year.

In 2008 COVL received 131.167 claims, in 2009 the number was 208.302 (an increase of 60% in one year) and rose only slightly in 2010 (213.886). It is estimated that total number of received claims in 2011 might be again slightly higher (218.779).¹³

New cases at COVL represented 81% of all new enforcement cases in 2010 (other local courts received 20.340 claims in other types of enforcement).

The first objective, a decrease in pending cases, was achieved, as COVL relieved local courts and allowed them to focus on other types of enforcement with greater intensity. Until 2007, the number of pending cases was increasing each year. At the end of 2007, there were 305.321 pending enforcement cases at local courts. Introduction of COVL (on 1 January 2008) helped to lower the number of pending enforcement cases by 6,6% in 2008 (to 285.043 by the end of 2008), by an additional 5,6% in 2009 (to 269.072) and by 7,3% in 2010 (249.465). While there will always be unresolved cases due to a daily inflow of new ones, it is important to recognise the reduction in numbers

¹³ Data on the number of cases is based on annual Judicial Statistics (Sodna statistika) reports of the Ministry of Justice, available on: http://www.mpju.gov.si/si/storitve_in_mnenja_mpju/uporabni_seznami_imeniki_in_evidence/sodna_statistika/. Other data is based on various reports of the Enforcement Working Group and RDSC.

because they represent faster resolution times, especially in light of a general increase in quantity of new cases.

The second objective, of shortening the decision-making time, was achieved despite a significant and unexpected increase in claims, which shows that the system can efficiently cope even with an overload. The optimum business goal was set at two days per decision. Decision-making time has been lowered from an average of six months to less than five working days for over 90% of the claims. In 2009 a decision was sent within two working days of the receipt of a claim in 66% of all cases, but the rate fell a bit in 2010 to 54,9%. It reached 65% again in 2011, most likely as a consequence of organisational measures aimed at decreasing the workload of the employees by outsourcing parts of the works and by adding two judges for the task of working on objections.

Although one contributory factor to the significant increase in new claims in 2009 may have been the general financial crisis, the shortening of the time period between the due date for payment and the date of claim-filing (the average in 2010 was 69 days) suggests that another reason may have been greater awareness on the part of creditors to the available court procedure. Rather than wait and spend resources on notices to debtors, creditors seemed to decide earlier on submitting a claim for enforcement.

Enforcement claims at COVL were used for 876.012 authentic documents (2010), which shows that creditors usually claimed on average four due authentic documents on each claim. This suggests that creditors preferred to wait in order to have more authentic documents against a specific debtor and only then decided on submitting a claim. One of the reasons for this is, naturally, the court fee, which is paid only once, regardless of the number of claimed documents.

The amount of all enforced claims (not including statutory default interests or contractual interests) in 2010 was 1.215.870.990,49 euro or on average 1.387,96 euro per authentic document and 5.693,64 euro per claim.

In the majority of cases garnishment of funds available at the organisations for payment transactions is proposed as the primary means of enforcement. Data for 2011 show that garnishment is used in 47,99% of the cases, followed by attachment of salary (27,23%) and movable assets (18,84%). The absolute numbers are higher than the number of claims because many different means may be requested for each claim.

Approximately 10% of claims are withdrawn by creditors before the finality of the decision at COVL, and an additional 20% before enforcement takes place through the competent local court, which often signifies the debtors' immediate voluntary fulfilment of the obligation after receipt of the decision. An increased awareness of potential additional costs incurred by the debtors (e.g., fees, interests, etc.) seems to play a part of the incentive.

Although the percentage of objections and appeals was expected to be at 20-30% during the design phase of the project, it has remained consistently low at an average of 11% of objections and 1,5% of appeals (2009).

Objections were submitted in 23.058 cases in 2010 (more objections are possible in a single case) and 13.376 cases (58,01%) were forwarded to litigation courts, while the others (41,99%) were dismissed.

There were 6.055 appeals in 2010, and appellate courts' data (for 2010) shows that initial decisions are upheld in 64,1%, annulled in 19,8% and changed in 16,1% of appeals.

Of all claims in 2009, 94% were in e-form (62% individual, 32% bulk) and only 6% in paper form. That year, 98% of e-claims and 72% of paper-based claims were completed fully and correctly (i.e., all fields required for processing were fully and correctly completed). By 2011, the percentage of paper submissions had fallen to 2,6%, while the rate of fully correct claims rose. In 2011, creditors were asked to correct their claims in 16,27% of paper-based claims and only in 1,54% of e-claims.

The automated dispatch system processed 1.109.649 exit mailings in 2010, which consisted of 9.444.600 pages (or 4,26 sheets per mailing). COVL sent 223 packages of mailings to the subcontractor in 2010, with an average of 4.976 mailings and 42.352 pages per package.

In 2010, around 10 million euro of court fees were collected by COVL and almost 11 million in 2011. According to Mr. Muršec the entire cost of the system development before 2008 was around 3,2 million EUR. Annual operation costs of COVL are around 5,5 to 6 million EUR. Ms. Kosec broke down this figure into 3,5 million euro for mail, 0,5 million euro for external contractors (printing, scanning), 1,2 million euro for salaries and only 0,2 million euro for material expenses and overhead. The amount received through court fees thus surpasses the budget required for its functioning almost double. The investment had been fully returned already in the second year of COVL's operation. Court fees go directly into the national budget, however, and not to COVL or the judiciary, which may pose issues in regard to maintenance of the project in the future.

In November 2009, a user survey asked "What mark (1-5) would you give to the new system of enforcement in comparison to the old one?", and got an average of 4,13. In 2010, the scheme "Automated system for enforcement of authentic documents (COVL)" was awarded a Crystal Scales of Justice special mention.

The speed and efficiency of the procedure suggests that the new approach could even have a positive effect on voluntary and regular payments of monetary obligations in society. This will only be evident in the long run, however, through a significant decrease in new claims.

Table 13 - Functioning of COVL in numbers

	2007	2008	2009	2010	2011
New cases	114903	131167	208302	213886	218779
Solved cases	105346	88498	204665	206298	225890
Courts	44	1	1	1	1
Employees	approximately 50 judges + 300 clerks/ administration	4 judges + 62 clerks/ administration	4 judges + 62 clerks/ administration	4 judges + 62 clerks/ administration	6 judges + 62 clerks/ administration
Average decision time	approximately 6 months	2 days – 55% 5 days – 95%	2 days – 66% 5 days – 90%	2 days – 55% 5 days – 74%	2 days – 65% 5 days – 84%
Form	100% paper	54% e-ind., 19% e-bulk, 27% paper	62% e-ind., 32% e-bulk, 6% paper	59% e-ind., 37,5% e-bulk, 3,5% paper	53,9% e-ind., 43,5% e-bulk, 2,6% paper
Appeals / Objections	Est. 20-30%	1,1% appeals, 8,9% objections	1,5% appeals, 11% objections	3% appeals, 12,6% objections	1,6% appeals, 10,6% objections

7. Discussion and evaluation

7.1. Factors affecting the design and development of the project

The project made it clear from the start that its goal was to achieve a transition from a decentralised, bottom-up system to a centralised, top-down system. Some of the major problems with the existing, installed base, both technologically as well as organisationally, related precisely to its decentralised nature. The old IT solution allowed neither connectivity nor centralised maintenance or upgrades, thus increasing the costs and dependence on the original external developers. It was used only for internal and partial case management of enforcement procedures, because it was basically built around a paper-based procedure defined by legislation for decades. Although the technological base did, to a certain extent, support the basic case management, it did not facilitate preparation of statistical and analytical reports, even though these are essential for efficient court management and prevention of unnecessary delays at the organisational level. As a consequence, organisational solutions at local courts varied (e.g., number and quality of personnel allocated to the procedure) and resulted in different approaches to solving similar legal or substantive issues, as well as in different resolution times. Obviously, the old system did not allow e-filing.

The new solution, however, aimed to utilise the developments and possibilities of the technological advances of the last decade, and build a new system by their integration with the core principles of the procedure and the necessities of efficient court management.

Research was thus a significant part of the design phase. Project specifications were initially limited to the way the project should be conducted and

what should be its general results, and have not focused on any chosen solution, but rather on the general principles of ICT project management. It is worth noting that project partners firstly signed a project covenant that defined some of these principles, along with benchmarks and mandatory results for various phases.

The decisions made in all components show that simplification of the system was on the minds of the project leaders from the very beginning, and that complexity was intentionally avoided. The project team tried to look at the widest possible picture from the very start, and included a wide variety of stakeholders in the process of designing the solution. Extensive input from internal and external users as well as other stakeholders was collected, and a detailed analysis of the existing installed base (in all of the components) was made, identifying obstacles, bottlenecks and drawbacks and looking to a number of comparative models for possible solutions to avoid or overcome them.

The initial design of the project identified the need to divide work into four distinct components: legislative, technological, organisational and promotion. All project components worked concurrently under the supervision of the steering committee and adapted their tasks to each other's findings and to the committee's decisions. Specifications for the final solutions in all components were drafted and completed only at the later stages of the project and contained some significant solutions that were not included or even mentioned during the inception phase. The centralised organisational component, for example, was included only at a later stage.

Legal, technological and organisational frameworks of the existing system were significantly adapted to serve the functional objectives of the project and were aimed at increasing the efficiency of enforcement procedures both from the customers' as well as the courts' perspective.

Despite a detailed analysis of the legislative environment that identified a number of structural faults and suggested solutions for them, project leadership experienced difficulties in getting relevant input and feedback from the executive branch and certain stakeholders from the business sector, which caused delays. The executive also showed reluctance in implementing certain suggestions, especially regarding some organisational and legislative aspects (e.g., exclusive jurisdiction of only one appellate court, minimum debt limit for attachment of real-estate, creation of a frequent debtors database, etc.) that could have increased the efficiency of the procedure even more.

Nevertheless, suggestions relating to technological modernisation of the procedures were accepted and implemented in the legislation almost fully. Legislative changes aimed at creating an environment that avoided traditionally obvious elements of formality in favour of functionality and effectiveness. Requirements such as multiple copies of submitted claims or signatures were the result of paper-based procedures, but were not necessary in an e-context, or even presented a burden. Cooperation of the judiciary and the ex-

ecutive was thus critical for the general success of the project. A number of laws and by-laws had to be changed or amended, most notably the Civil Procedure Law, which fully enabled informatisation of the civil procedures and paved the way for others as well. The adopted solutions consequently not only enabled the basic scope of the project but also provided the ground for subsequent projects and the development of other legal procedures.

On the organisational level (which also had to be defined in the legislation) decision-making was to be transferred from judges to clerks in a number of procedural activities. Preparedness of the first level judges and presidents of the courts to accept and adopt the suggested organisational changes was an important factor. This allowed the establishment of a new, centralised department with newly employed personnel, as opposed to using the installed organisational and institutional scheme with the existing employees.

Involvement of judges was to be limited only to the legally most demanding tasks, such as verification of legal merits for appeals, while other activities were either to be automated or delegated to clerks. Time and resource consuming activities, such as the preparation of outgoing mail and the scanning of incoming mail, were delegated to outsourced companies. Nevertheless, software solutions that were to be used by outsourced contractors for these tasks were developed by the project itself.

The pre-existing technological base was completely replaced by the new solution, along with hardware. The new solution was based on CIF's strategic technological guidelines, such as three-tier architecture, modularity, reusability, interoperability, vendor neutrality and vendor independence and most importantly – open standards.

The experiences from the previous projects led by the same individuals at the SC have shown the importance of a strategic commitment to open standards, and of the sustainability of the final solution. This also led to the creation of a principle of not committing to a certain solution on a legislative level in advance, but rather creating a technological solution based on new legislation, but in line with the SC's strategic technological guidelines, in a time slot prescribed by the legislation. Only after such a solution is developed and tested, a ministerial decree can be issued, officially confirming that the solution had been verified by the SC and that the conditions for the implementation of the new legislation have been met.

It could be said that both legislative and organisational developments were initiated by the technological developers and ICT specialised lawyers from within the judiciary, and that this probably represents the most important factor affecting the design and development of the project. The results of the COVL project are in a direct relation to the centrally-led and goal-oriented approach of the RDSC and its CIF.

7.2. Legal, technological, organisational and institutional factors affecting the interoperability

The simplicity of the final result required highly complex and meticulous work during the design and development phases. Most of the internal business process is hidden away from the user's eyes, although its complexity can be glimpsed by the users, for example, when the user receives error notices for entering a non-existing surname, street, company name, registration number, date or any other data that is simultaneously verified through external connections.

For this purpose, but more importantly for the internal gathering of all necessary data required for the identification of case parties and means of possible attachment or garnishment, connections with external information systems had to be established anew, because they were previously paper based. One of the major issues affecting the interoperability was related precisely to the formal right of the judiciary to automatically access personal data from other registries and data bases. While it was relatively easy to establish technological interoperability between COVL and external operators, a new methodology in line with the strict requirements of the personal data protection legislation project had to be developed by the project. Legislation relating to general organisational aspects of the courts (Courts' Law) was amended by a general provision creating an obligation for operators of collections of personal and other protected data to provide data to the courts free of charge, as well as by allowing the creation of automated connections between the courts and these institutions.

Such connections are based on web service calls and message passing of clearly defined XML requests, thus resulting in relatively low coupling. This allows significant changes in the assembled modules with little costs of maintaining or re-establishing interoperability, as long as agreed standards are maintained.

Claim submission was simplified by preparation of the XML structured forms and minimisation of the required data. Documents that were traditionally attached to the paper-based claims as proof of transaction on which the claim is based, are no longer required. Simple email access is sufficient for user identification. The logic behind this is "if they are willing to pay, they are the case party." Similarly, no signature is required on e-claims. Free text was avoided almost completely and most inputs are verified for accuracy while the user is entering the data into the form, through the above mentioned connections with external databases.

The e-form has significantly contributed to the simplification and speed of claim processing. It is interesting to note the percentage of cases in which the court has to appeal to the claimant to correct or amend his claim. In electronic claims, this happens in only 1,54% of cases, whereas mistakes are made in 16,27% of paper-based claims.

An alternative, slightly more complex solution has been developed for larger users, who may implement bulk filing into their own systems. Its open code also allows users to modify it for further adaptation to their internal requirements. For such users a digital certificate is required, as opposed to individual users.

As a consequence, users can file claims without any legal training. Numbers show that the new approach significantly simplified the complexity of filing a claim for non-professional users, because they had previously relied on specialist assistance, either from a lawyer or some other professional. This raised their initial costs, as well as the costs of the debtor, and led to frequent hesitation or delays in requesting a judicial decision.

Significantly more complex solutions could be imagined, though, and potential elements of those were contemplated during the design phase. Project could attempt to provide electronic serving to debtors, e-filing of appeals and objections, creation of an e-file for second and third instances, an extension of the CMS to the external enforcement officers, etc. It could be envisaged that such attempts would require substantially more work on technological level (as well as in legislative), but would also risk success due to increasing complexity. Nevertheless, the modular assemblage allows further developments in the future.

Further simplicity of the system could always be achieved at the user-interface level, because different functional and e-literacy levels of users require different means of presentation, but the proof of the pudding is in the eating. The project had to draw the line somewhere, and that was at the finality of the decision allowing enforcement. This covers the majority of work, however.

The system has since proven to be able to evolve and adapt to new functional needs. The technological solution was assembled with largely independent modular components that permit modification in light of legislative or organisational changes and with relatively low costs. Many modular solutions from the project (e.g., centralised filing, unique case ID, electronic case file, modules, automated postal dispatch system etc.) are now being reused and implemented at a national level for modifications or development of other judicial information systems, according to their procedural and logistical specifics and requirements (e.g., Criminal Law Information System, Land Registry, Company Register etc.) and in line with the SC's information strategies. The project became a model for successful transformation of a judicial procedure from a paper based to an electronic format, and such an approach also seems to provide a comfortable adaptation of users to the new environment. Compatibilities of a number of similarly constructed applications eventually led to the creation of a new judicial portal for e-filing of different claims (Land Registry, Insolvency, Enforcement), which utilises many of the same modules (COVL was added to the new portal on 1 March, 2012).

One of the cost-saving measures planned for the near future, and a completely feasible extension of the existing system, relates to mandatory e-serving of all court documents to attorneys and large institutional recipients, such as banks, instead of sending them by post. This is especially important, because post-related expenses represent almost one quarter of the budget for all material costs of the judiciary (12 million euro out of 50 million EUR; the figure does not include salaries), and in case of COVL more than half of all the costs (3,5 million euro per year).

E-filing has since expanded from enforcement procedures to the land registry and insolvency procedures, and was made mandatory for professional users in all enforcement and lien related procedures. It is interesting to note, however, that a recent introduction of mandatory e-filing was met with resistance by the attorneys themselves, and its implementation had to be postponed. The crucial component that was missing among the attorneys seems to have been an appropriate training on how to use the system. Organisation of this was supposed to be the responsibility of the Bar Association, but was not executed appropriately. An encouragingly low rate of paper-based claims among lay users would seem to prove that the e-literacy rate is high, and that the reasons for such outcome need to be sought elsewhere. While it was relatively simple to organise and educate the internal users in the judiciary on how to use the system, and lay users as well as the economy quickly adapted to the system once they have discovered its advantages on their own incentive, such an incentive seems to have been missing in the particular professional group.

The human element and reluctance of the established business models to accept change remain important factors in establishing interoperability, as willingness of individuals to engage in or use a certain system is a crucial precondition for establishing a connection at all.

The operational cost of the COVL system is approximately 6 million euro per year, and it generates around 11 million euro in court fees. The cumulative amount of the enforced claims, however, is over 1,2 billion euro, which makes it highly cost-efficient, and through this, it seems, also an economical and highly attractive option for the economy.

Although the project is acknowledged as a general success story, this is not, however, mirrored in suitable institutional or political support. One of the examples of this is the fact that it took more than three years for the executive branch to find new, more suitable work premises for COVL. Recently, a new proposal of the national budget predicted a significant lowering of the courts' budget in light of the current financial crisis, which will have a direct affect on the availability of funds for informatisation. One of the cost-saving requests from the government, for example, includes lowering of the costs for software licenses. This might be possible in institutions that have so far relied on outsourced and proprietary solutions, but is an impossibility in

a system that has been systematically using open source solutions since 2004 (use of Open Office instead of MS Word alone saves approximately 1 million euro per year). There are also plans of abolishing CIF or submitting it to the executive branch that could prove disastrous in terms of support to the existing information systems. At the same time, the government is proposing to lower the court fees for a number of procedures, instead of viewing them as an important source of budget income and a means of cost recovery.

While these are not factors directly related to interoperability, they are relevant as a precondition for a normal and sustainable functioning of the system. A comparatively disproportionate dependence of such projects on the input from the judiciary might present a danger for their sustainability and evolvability, as the judiciary in turn depends on the executive and legislative branch for material resources and political support. These, however, seem to be shifting on the basis of factors that are not completely objective.

7.3. Lessons for EU

The COVL project shows the importance of a holistic approach during the phases of design and development, and the need for avoiding complexity in the final product. The latter can be achieved by focusing on the crucial functional elements of the system and by designing its building blocks on the principle of modularity, which allows subsequent modifications and additions in the future. The former, however, depends on the willingness of all major stakeholders to commit to finding a working, efficient and sustainable solution.

Efficient governance of any judicial procedure depends on the statistical and analytical capabilities of the system. These allow monitoring of the system's performance and enable its potential adaptations based on empirical data, and not merely on assumptions. At the same time, however, such monitoring needs to be performed by a dedicated management that has the responsibility, as well as the tools for ensuring that the system remains stable and sustainable.

COVL could serve as a model for pan-European enforcement procedures. It already allows filing of claims by foreigners, as it does not discriminate between nationalities of the creditor, but its jurisdiction is obviously limited to debtor's property in Slovenia. The user interface is currently in Slovenian language only, but the system could relatively easily be adapted to enable filing in other languages as well, thus facilitating creditors from EU or any other countries to make claims directly.

The system is, however, limited to the documents that are referred to in the Slovenian legal system as "authentic documents." These are exhaustively defined in the law and their minimum elements and characteristics are defined in their respective legislations. Consequently, automation of the procedure is based on a meticulous specification of all possible claims and verification of

possible entries. Similarly, decisions are pre-formulated on the basis of the same variability, and would therefore potentially require new forms if a new authentic document were to be classified by the legislation.

This is, nevertheless, relatively unlikely on the national level, but still easy to modify if it happens. It might be a completely different issue if such a system would be transposed to a pan-national level, where different procedural rules apply. It can be predicted that the differences, and especially the perceived deviations from the established systems, would, at least initially, create an obstacle.

What is termed as one category of authentic documents in Slovenia, might fall within a wider or more general category of monetary claims. Countries might have different rules regarding the need for establishment of a particular claim. While Slovenia chose to abolish the need for presenting the document that is the basis for a particular claim, and only a claim that it exists is sufficient, other countries might require a written, free-text explanation of a particular claim, which could complicate its feasibility for automated processing. An EU-wide catalogue of monetary claims that would harmonize their elements for the purpose of cross-border enforcement, could be one of the solutions.

Development of a suitable legislative framework seems to be the most challenging project component when looking for the solutions on an EU level. But even a common legal framework can produce different results unless common organisational structure is employed. As it was evident even on the national level, differing practices of both individual first level courts regarding VL matters in pre-COVL era, as well as of the four appellate courts during the 2008-2010 period, may lead to divergent results even when identical legislative, technological and institutional bases are in place. As such, they pose a caveat for future cross-border or pan-national approaches to uniform judicial solutions, especially in the EU where national legislation requirements in any field, including enforcement of monetary claims, still vary.

Different practices may lead to low predictability of the outcome, which is one of the crucial elements of the rule of law. Also, they might affect their confidence in efficiency of cross-border enforcement, or even dissuade users from using the system in the long run..

A centralised department model, such as COVL, which is also used to a certain extent by the UK and Germany, could offer a possible EU solution, but its effect also depends on the automation of data gathering for the purpose of claim processing. This might be possible in Slovenia or Finland, but was not legal in Germany (at least at the time when comparative research was made for the project). It is therefore questionable whether similar controls and exchange of data with external registries could be established at a pan-European level with the same methodology and within the same timeframe.

Regardless of this, some organisational and technological elements could be applied generally. Enforcement of monetary claims, or any similar judicial

procedure, should be viewed as a service for citizens and the economy, and its optimisation as a business process. Tasks should be standardised and the routine administrative work should be outsourced wherever possible. Among other effects, this relieves the judges of non-judicial work, accelerates the processing and lowers the costs.

Modularity, use of open standards and independence from vendors and external contractors seem to stand out most from the technological elements. Independence, however, implies an independent development unit that is dedicated primarily to a sustainable implementation of such solutions (and not necessarily making profit), or at least a highly professional and stable IT management team directly connected to the judicial system and capable of effectively managing the external contractors through all the phases of the project.

While it is necessary to have professionals to organise the judicial management of such a procedure as a business process, it is at the same time equally important to have them cooperate closely with the judges and other legal professionals in the creation of efficient and stable solutions. Legal, especially judicial knowledge of procedural and operational aspects is crucial and seems to be indispensable for effective optimisation or reforms of any judicial procedure. It should not be attempted without their inclusion, otherwise it is reasonable to expect practical problems to emerge at later stages. Project management organisation of ICT projects at the Supreme Court of Slovenia could therefore serve as another example of good practice.

8. Method

For the purpose of preparation of this case study, a number of interviews was conducted with individuals who have participated in the development of the COVL project, and their cooperation provided an enormous amount of material for this paper. Among these Mrs. Alenka Jelenc Puklavec, the Supreme Court Justice who was the Head of the RDSC and also the president of the project's Steering Committee, deserves the first mention. Mr. Rado Brezovar was the Project Leader and the Director of CIF at the time explained the project development phase. Mr. Bojan Muršec is the current Director of CIF and described current functioning and future plans. Mrs. Jana Savković was employed at the MOJ at the time of the project, and was responsible for the legislative component. After the project was concluded, she left MOJ and joined RDSC as the head of the Enforcement Project Group. Mrs. Barbara Mejač is the current head of the Enforcement Project Group, and was crucial for gathering and analysis of statistics regarding COVL's current functioning. Mrs. Nataša Kosec is the head of COVL and was very helpful in providing information on the functioning of COVL's inner environment. Mr. Andrej Gogala is a computer engineer at CIF who was a member of the technologi-

cal component for COVL, and helped explain the technological aspects of the system. Mrs. Breda Gruden was in charge of project administration and assisted in gathering extensive project documentation.

Project created substantial amount of project documentation (approximately 5.000 pages) that includes the initial Project proposal, notes and materials from individual activities, Interim Reports, the Final Report and the specifications for the final solutions that were made available to the author, and all studied in great detail for the inclusion in this case study. Monthly reports of the RDSC and of the Enforcement Working Group were used for the analysis of the project's subsequent progress for the period after 2008. Statistical reports of the SC¹⁴ and of the MOJ¹⁵, as well as internal statistical reports from judicial Business Data Storage were also used for numerical analyses. As different sources were used for seemingly similar data and due to the time-related changes of the formal status of submissions falling into a particular category, some data relating to the same category might differ (e.g., the number of objections in a particular year, etc.).

Changes in legislation were analysed in great detail by studying the adopted versions, as well as preparatory material and by-laws for the Civil Procedure Law, Enforcement and Securing Civil Claims Law, Court Fee Law, Lawyers' Fee Law and the Penal Code.

The author of this case study wrote the initial project proposal in 2004, but has since worked on other projects at the SC.

9. Acronyms

CIF	Center za informatiko pri Vrhovnem sodišču RS	Center for Informatics at the Supreme Court
CMS	Elektronski vpisnik	Case management system
COVL	Centralni oddelek za izvršbo na podlagi verodostojne listine pri Okrajnem sodišču v Ljubljani	Central Department for Enforcement on the Basis of Authentic Documents at the Local Court of Ljubljana
CSCC	Klirinško depotna družba	Central Securities Clearing Corporation
IS	Informacijski sistem	Information System
ICT	Informacijska in komunikacijska tehnologija	Information and Communication Technology

¹⁴ http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/.

¹⁵ http://www.mp.gov.si/si/storitve/uporabni_seznami/statistika/.

KZ-1	Kazenski zakonik	Penal Code
MF	Ministrstvo za finance	Ministry of Finance
MJU	Ministrstvo za javno upravo	Ministry of Public Administration
MOJ	Ministrstvo za pravosodje	Ministry of Justice
OJLJ	Okrajno sodišče v Ljubljani	Local Court of Ljubljana
RDSC	Evidenčni oddelek Vrhovnega sodišča	Registry Department of the Supreme Court
SC	Vrhovno sodišče Republike Slovenije	Supreme Court of the Republic of Slovenia
SR	Sodni red	Court Rules
ZEPEP	Zakon o elektronskem poslovanju in elektronskem podpisu	Law on Electronic Commerce and Electronic Signature
ZIZ	Zakon o izvršbi in zavarovanju	Law on Enforcement and Securing of Claims
ZOT	Zakon o odvetniški tarifi	Lawyer's Fees Law
ZPP	Zakon o pravnem postopku	Civil Procedure Law
ZS	Zakon o sodiščih	Courts' Law
ZST	Zakon o sodnih taksah	Court Fees Law

Chapter 6

CITIUS: the Electronic Payment Order Procedure in Portugal

Paula Fernando, Conceição Gomes, Diana Fernandes

1. Introduction

The present case study concerns the Portuguese experience of Citius, the system developed by the Ministry of Justice to achieve – an almost – procedural dematerialisation. The system's background, with its various stages and applications, including the one(s) that deal specifically with small civil claims, are dissected over the next pages.

After this brief introduction, section 2 presents the institutional background, offering a broad picture of the Portuguese justice system, focusing on the one hand on the entities involved in the use of ICT, and on the other on the courts from the civil jurisdiction specifically affected by the innovations. In section 3, we find the historical background of the use of ICT in civil jurisdiction, specifically addressing the regime of small civil claims. The outlined framework is followed by a description of the arrival of Citius and the system's characterization, concentrating on its various applications and latest developments. Once again, there is a special focus on its use in small claims, with the specific case of the payment order procedure. Section 4 offers a more technical approach (in a narrow sense), addressing the system's architecture. The daily functioning of Citius, with its virtues and drawbacks as experienced and perceived by actors, is the subject of section 5. In section 6, we offer a critical overview, bringing forth the most noteworthy aspects of the experience, discussing its panorama and future prospects. Finally, section 7 addresses methodological issues, section 8 is a list of acronyms and section 9 is an annex containing images such as graphics and diagrams.

The Project is coordinated by IRSIG-CNR, having CES as its Portuguese partner for the Citius case study. The Portuguese research team was comprised by Conceição Gomes, Paula Fernando and Diana Fernandes. The information provided in this chapter is based on the research work carried out from until March 2012.

2. Institutional Background

2.1. Portuguese Justice System: A Broad Picture

2.1.1. Civil Jurisdiction: The Courts Affected by the Innovation

In compliance to the Constitution of the Portuguese Republic from 1976¹, the national justice system is divided in two different jurisdictions: the civil (which encompasses for these desiderata also the criminal justice system), and the administrative. To this building must be added the Constitutional Court (competent in matters of legal-constitutional nature), as the highest instance concerning the fundamental text and principles, and the Court of Auditors (competent for the verification of the of public expenses' legality). Administrative and Fiscal courts profit from a different electronic system (SITAF, see also the list of acronyms at the end of the chapter), adapted to administrative proceedings, and therefore are out of the scope of the present case study. Civil jurisdiction is mainly ruled by the Act on the organization and functioning of judicial courts (LOFTJ), as well as the code of civil procedure.

On the top of the pyramid from the civil jurisdiction there is the Supreme Court of Justice, with competence on all territory as the highest instance. It is followed by five Courts of Appeal (based in the four judicial districts – Coimbra, Oporto, Lisbon, and Évora –, to which Guimarães, belonging to the Oporto jurisdiction, was added). Finally, the first instance is composed by judicial circles, and within them the district jurisdictions, where District Courts are based.

District Courts take on one of three categories, depending on the subject and value at stake: (1) courts of generic competence (general courts of law); (2) courts of specialized competence (criminal instruction, family, minors/juvenile, labour, commercial, maritime, and execution of sentences); (3) courts of specific competence (civil, criminal and mixed jurisdictions; civil courts and criminal; civil small instance courts and criminal small instance courts).

Specifically for dealing with payment order procedures, special registry services were created in 1999, with exclusive jurisdiction in the cities of Lisbon and Oporto, for their respective territorial jurisdiction. These two registries worked until the 31st of May 2008, when it was installed a general registry, with national jurisdiction over payment order procedures, called “National Desk for Payment Order Procedures” (BNI) [*Balcão Nacional de Injunções*]. BNI is today the general registry with exclusive national jurisdiction for this electronic procedure, in the terms and with the characteristics addressed below.

This building is however on the verge of change, with the implementation of structural reforms of the judiciary map. Back in 2008, after a long debate

¹ Articles 209 and following.

and the publication of scientific studies², Law no. 52/2008, from the 28th of August, brought forth significant changes to LOFTJ with the introduction of a new judiciary map. This not so silent revolution entered into force on the 14th of April, 2009, in three jurisdictions: Alentejo Litoral, Grande Lisboa Noroeste and Baixo Vouga. A deep reform places the emphasis in specialisation of all sorts, introducing a brand new territorial matrix, a new model of competences (specialised courts and divisions in all territory, not only in urban centres), and a new model of court management (administrative tasks traditionally belonging to the judge president of each court are now distributed by court administrator and registrar, thus leaving judges free to exercise their technical legal competences). The new model is still being tested in said three jurisdictions, since the foreseen trial period of two years was dilated. In 2010³, it was determined that from the 1st of September, 2010, the new model would be gradually applied until it filled the whole territory on the 1st of September, 2014. In the following year, a new law⁴ foresaw the application of the judiciary map to two new jurisdictions (Lisboa and Cova da Beira), but the process entered on permanent hiatus until early 2012, when the new Ministry of Justice announced the reform of the judiciary map would use a different matrix. However, the major purposes of specialization are maintained, now with a strong focus on concentration and centralization of services and courts.

2.1.2. *Entities involved in the use of ICT*

The Ministry of Justice (*rectius*, some of its agencies) has taken the lead in terms of the use of ICT in justice. As so, the Directorate-General of Justice Administration (DGAJ) [*Direção-Geral da Administração da Justiça*] developed the computer application, in close connection with the Institute of Information Technologies in Justice (ITIJ), and providing technical support to court staff users; the ITIJ is generally competent for the management and monitoring of the justice network, to issue the electronic signature cards for all court officers, and to support the users of Citius with a special telephone line; and the Directorate-General of Justice Policy (DGPJ) [*Direção-Geral da Política de Justiça*] has been monitoring the Citius project, as well as ensuring training sessions for judges and public prosecutors interested in deepening their knowledge and use of ICT. The Higher Judicial Council and the Public Prosecution General have mostly been away from these processes, taking in a more passive role, mainly in terms of consultancy. Finally, the associations of Bar Professionals (lawyers and solicitors) have been responsible for the computer

² See Santos, Boaventura de Sousa and Gomes, Conceição (coord.) (2006) *A geografia da justiça – Para um novo mapa judiciário*. Coimbra: CES/OPJ.

³ Law no. 3-B/2010, from the 28th of April.

⁴ Decree-Law no. 74/2011, from the 20th of June (rectified on the 19th of August, Rectification no. 27/2011).

applications used by said professionals in their daily practice, in order to connect with the systems provided by the ministerial agencies. In the following pages a brief overview of the entities involved will be provided.

Judicial Actors

The Higher Judicial Council (CSM) [*Conselho Superior da Magistratura*] partakes some responsibilities in the use of ICT in judicial courts of the three instances. More specifically, Law no. 34/2009 gave the CSM the power to manage the data from the proceedings of all judicial courts, as well as data concerning detention and pre-trial measures involving deprivation of liberty, detention orders and arrest warrants emitted by a judge, and procedural connection of criminal proceedings simultaneously in pre-trial (instruction) and trial phases. Within these competences, those responsible for data management must specifically ensure said data, the legality of the consultation and reporting of information, compliance with the measures deemed necessary for information and data processing, and compliance with the rules of access and security of the electronic archive. In addition to these functions of data management, this entity plays an eminently consultative role, as it can indicate representatives to be commission members (see below).

The Public Prosecution General (PGR) [*Procuradoria-Geral da República*] has also a chiefly advisory role, having its representatives in commissions (see below). It too partakes responsibilities in data management, as foreseen in Law no. 34/2009. According to its regime, the PGR is responsible for managing the data concerning the criminal proceedings during the phase of investigation; as well as for the data from all other proceedings, procedures and records under the jurisdiction of the Public Prosecution; measures of provisional suspension of criminal proceedings, and procedural discharge in case of penalty waiver; procedural connection of criminal proceedings simultaneously in pre-trial (investigation) phases; and detention orders and arrest warrants emitted by a public prosecutor.

The Portuguese Bar Association (OA) [*Ordem dos Advogados*] also partook in the processes of bringing forth information technologies to the justice system, playing an essential role in what concerns the activity of its associates in an era of dematerialised proceedings. It is the OA that, through the private company Multicert (the entity operating in Portugal that provides digital certification, by means of PKI – Public Key Infrastructure), granting lawyers with the necessary digital signature that enables access to the Citius-H@bilus platform (which is needed for all forensic activities, from lodging a pleading, to consult a proceeding in digital format, or check the dates of a specific hearing). OA has also commissioned other applications to private companies: the National Information System from the Bar Association (SINOA)

[*Sistema de Informação Nacional da Ordem dos Advogados*]. It is a web-based software application, which lawyers may access through browser. SINOA is integrated with the OA Portal, giving users the ability to update, in real time, relevant information concerning their professional data and legal aid intervention. Specifically in terms of legal aid, SINOA allows lawyers to consult and confirm data from the judicial proceedings they are commissioned to; confirm data on their nomination for legal aid proceedings, in its various forms; insert data from proceedings or court hearings concerning their legal aid shifts; present requests, namely payment requests in legal aid services. In addition, SINOA connects with other services, such as the OA Portal. Its databases are integrated with the Portal, which allows for consultation and alteration of personal data of the users (lawyers, trainee lawyers and law firms), and collecting information for SINOA services. The OA Portal was specifically designed, as commission by the OA to a private company, to work as a privileged communication interface between lawyers and information systems.

The Chamber of Solicitors (CS) [*Câmara dos Solicitadores*] is responsible for the development and maintenance of the WEB solution for procedural management of the enforcement procedure, called GPESE/SISAAE (Procedural Management for the Offices of Enforcement Solicitors/Support Computer System for the Activity of the Enforcement Agent) [*Gestão Processual de Escritórios dos Solicitadores de Execução/Sistema Informático de Suporte à Atividade do Agente de Execução*]. It was commissioned to a national private company expert in business development and information, and had the support of the Ministry of Justice. This system was specifically created for procedural management, control of deadlines, documental management, management accounting, and electronic communications between intervenients within the enforcement procedure (courts, lawyers, and enforcement solicitors). The main needs within enforcement procedures to which the system responds to are: (1) electronic communication between the GPESE/SISAAE and Citius-H@bilus; (2) electronic consultation of registrations, social security and taxes; (3) electronic attachment of cars, shares, trademarks and real estate; (4) communication with lawyers by Citius, with electronic writs of notice between lawyer and enforcement agent, and vice-versa; (5) electronic edictal for writs of summons; (6) entering data in the public list of enforcement procedures; (7) electronic writs of summons of public creditors such as social security and tax administration.

Governmental entities: the bodies from the Ministry of Justice

The Directorate-General of Justice Administration (DGAJ)⁵ [*Direcção-Geral da Administração da Justiça*] is a service from the Ministry of Justice,

⁵ The structure of the governmental entities described in this chapter is based on its legal framework at June 2012.

meant to ensure operational support to all courts⁶. According to its Organic Law⁷, to this service pertain the following competences: (1) support the Government member who is responsible in the area of Justice for the definition of the organization and management policy for the courts, as well as participating in the drafting of studies aiming to update them and to optimize the means, proposing and carrying out the appropriate measures, and collaborate with the Institute of Judicial Technologies and Computerization (ITIJ) in the implementation, operation and evolution of the information systems of the courts; (2) ensure the criminal and disobedience identification services; (3) program and carry out actions regarding the management and administration of the Justice staff, directing the activity of the court administrators and processing the remunerations for the Justice staff, judges and public prosecutors working at the courts without administrative autonomy; (4) program and carry out the initial and subsequent training actions for justice staff, as well as collaborating in the actions bestowed unto them; (5) collaborate with the Directorate-General of Justice Policy (DGPI) in the collection, treatment and sharing of information elements, namely statistical, concerning the courts; (6) program the needs of court facilities and collaborate with the Institute for Justice Financial Management and Infrastructures (IGFIJ) in the planning and carrying out of construction, refurbishing or maintenance works; (7) ensure the supply and maintenance of the court equipment, together with the ITIJ, and the structure of the Ministry of Justice responsible for contracting; (8) coordinate the drafting, execution and evaluation of the budget, financial and accounting management of the courts without administrative authority, as well as ensure budget preparation and management for first instance courts, judges, and public prosecutors.

DGAJ has had central core role in the development and implementation of information technologies in courts, as it was within this service that the process started. In fact, from 2001 until 2010, the team specifically committed to the introduction of information technologies to courts, creating and maintaining the needed information systems and applications, was lodged here. In that year, thanks to internal dynamics and the necessity of implementing the regime of Law no. 34/2009, from the 14th of July, concerning the (new) legal regime for the treatment of data of the justice system, said responsibilities and team moved to the Institute of Information Technologies

⁶ The organic structure of this service can also be found in Decree-Law no. 124/2007. It is headed by a director-general, assisted by three deputy director-generals. Ordinance no. 515/2007, from the 30th of April, contains details on DGAJ's structure, and a general outline of its organic units' competences. The maximum number of said units is defined by Ordinance no. 558/2007, from the 30th of April; and their competences are defined by Order no. 12339/2007, from the 20th of June.

⁷ Decree-Law no. 124/2007, from the 27th of April.

on Justice (ITIJ), until then only committed to maintaining databases and providing technical support. Decree-Law no. 83/2010, from the 13th of July, officialised this change, as it came to respond to specific need for urgent measures concerning: (1) the development of computer applications; (2) the protection of the physical infrastructure of the communication networks of justice; (3) and finally the implementation of audio and video communication devices for procedural needs, recording of court hearings, and electronic archive.

These measures were considered to be only feasible if by the same team that since 2001 had been completely responsible for the application of ICT to the courts. Also taking into account the need of high security standards for the coordination and enforcement of said measures, and therefore transited to the service from the Ministry of Justice specifically directed at the use of ICT.

The Institute of Information Technologies in Justice (ITIJ) [*Instituto das Tecnologias de Informação na Justiça*] is a service of the Ministry of Justice meant to provide technological support to all services of the justice system submitted to the Ministry of Justice⁸. It is a public institution within the indirect administration of the State, endowed with administrative autonomy and its own assets. ITIJ proceeds tasks of the Ministry of Justice, under supervision of the Minister of Justice. Since 2010⁹, this service succeeded DGAJ in the task of developing projects and applications of systems of computer, information and communication technologies in courts. It is specifically responsible for the study, the design, the execution, and the evaluation of plans for computerization and technological update of the activities of organs, departments and agencies included in the area of justice.

This service's mission¹⁰ is specifically to: (1) ensure the permanent and complete adequacy of the information systems to the management and operation needs of the organs, services, and organs included from the area of justice, in conjunction with them; (2) ensure the management of the resources allocated to the implementation of informatics policy from the area of justice; (3) set standards and procedures for the acquisition and use of computer

⁸ This body's organization, as defined in its Statute [Ordinance no. 521/2007, from the 30th of April, amended by Ordinance no. 990/2009, from the 8th of September], is headed by a President, and has the following core organic units: (1) the department of infrastructures and systems' administration; (2) the department of development of information systems; (3) the department of service delivery/supply; (4) the department of general administration. These core unit-departments may be subdivided in other sub-units. Each department is headed by a Director, and the sub-units by a Coordinator.

⁹ By means of Decree-Law no. 83/2010, from the 13th of June.

¹⁰ As defined by Decree-Law no. 130/2007, from the 27th of April, and amended by Decree-Law no. 83/2010.

equipment; (4) manage the communication network of justice, ensuring its safety and operation, and promoting the unification of methods and processes; (5) promote the development and articulation of the strategic plan of information systems in the area of justice, taking into account technological developments, and global training needs; (6) coordinate and advise on the preparation of investment projects in the field of computing and communications from the organs, departments and agencies of the Ministry of Justice, as well as monitor their implementation; (7) build and maintain databases of information in the area of justice, including the ones of access; (8) provide services to departments of Public Administration, public companies or private entities, based on appropriate contractual agreements that determine, among other issues, performance levels and counterparts; (9) perform the functions of electronic accreditation body within the Ministry of Justice, in accordance with the laws and regulations of the State's electronic certification system; (10) since 2010, ensure the development of the computer applications necessary to the procedure, and the management of the justice system, including the necessary analyses, implementation and support.

The Directorate-General of Justice Policies (DGPJ) [*Direcção-Geral da Política de Justiça*] is a central service of the Ministry of Justice. DGPJ's mission and attributions are defined in the Organic Law of the Ministry of Justice [Decree-Law no. 206/2006, from the 27th of October], and its organic regime can be found in Decree-Law no. 123/2007, from the 27th of April.

Specifically concerning the use of information technologies in justice, this entity's role is: (1) ensure the collection, use, treatment and analysis of statistical information from the justice system and promote the dissemination of those results, within the national statistical system; (2) develop, together with the Institute of Justice Statistics and Informatics, a system of indicators of activity and performance to support the definition, monitoring and evaluation of policies and strategic plans in the area of justice; (3) develop, together with the Institute of Justice Statistics and Informatics, models and other predictive methodologies appropriate for drawing up scenarios that allow the definition of policies and strategic plans in the area of justice.

The Institute of Justice Statistics and Informatics (IGFIJ) (*Instituto de Gestão Financeira e de Infra-Estruturas da Justiça*) is a public institute from the indirect state administration, submitted to the Ministry of Justice, with administrative and budgetary autonomy, and its own assets. It was created by the new Organic Law of the Ministry of Justice¹¹. As seen above, together with DGPJ, within these matters this Institute is committed to develop a system of indicators of activity and performance to support the definition, mon-

¹¹ Decree-Law no. 206/2006.

itoring and evaluation of policies and strategic plans in the area of justice; as well as models and other predictive methodologies appropriate for drawing up scenarios that allow the definition of policies and strategic plans in the area of justice.

Special Advisory Commissions

The Coordinating Commission for the Management of Data Relating to the Judicial System [*Comissão para a Coordenação da Gestão dos Dados Referentes ao Sistema Judicial*] was created by means of Law no. 34/2009 [on the legal regime of data relating to the judicial system], albeit it has not to date officially met and ensued its duties.

This entity's role pertains: (1) to ensure the coordinated exercise of the competences for managing said data; (2) to promote and monitor the system security audits; (3) to define guidelines and recommendations on the safety requirements of the system, by taking into account the priorities for application development, the possibilities for technical implementation and available financial resources; (4) to create and maintain an updated register of the technicians who perform the physical operations of data and treatment management; (5) to immediately report the violation of the provisions of this law to the competent authorities for the establishment of the appropriate criminal or disciplinary proceedings.

It is headed by a President, who is designated by the Parliament among personalities of considerable merit, and composed by representatives indicated by (1) the Higher Judicial Council, the Higher Council for the Administrative and Fiscal Courts, and the Public Prosecution General (two per entity, one having technical competence and experience in administrating systems); (2) the Board for Monitoring Peace Courts, and the Bureau for Alternative Dispute Resolution (one per each entity, with technical competence and experience in administrating systems); (3) and the Parliament, the ITIJ, and the DGAJ (two per each entity). The representatives indicated by the Higher Judicial Council, the Higher Council for the Administrative and Fiscal Courts, the Public Prosecution General, the Board for Monitoring Peace Courts, and the Bureau for Alternative Dispute Resolution, are granted full access to the premises and physical infrastructures that support data treatment, as well as the data collected.

The Commission for Monitoring the Citius Plus Project was created by Order no. 11387/2010, from the 13th of July, from the Minister of Justice. It is composed by the secretary of state for justice and judiciary modernization, who presides to the commission; a representative of the Higher Judicial Council, the Public Prosecution General, the Bar Association, the Chamber of Solicitors and DGAJ, the president of the directive board of ITIJ, and the project coordinator. The president may request the participation of representa-

tives of associations or trade unions of judicial users, as well as experts who may provide valid inputs.

This entity is specifically assigned to: (1) accompany the transition process of the attributions related to the development of projects, applications and systems for the use of information technologies in justice, from DGAJ to ITIJ; (2) debate and evaluate the strategic lines of the Citius Plus Project; (3) pronounce on the priorities of the project; (4) monitor the quality indicators; (5) ensure the verification of functional requirements, validation of the functional documentation, and acceptance of the technical components; (6) propose to the Minister of Justice measures aiming at an effective solution for organizational, financial, or strategic issues arisen during the project completion.

Other entities involved

As well as the advisory role they partake on these matters, the Higher Council for the Administrative and Fiscal Courts, the Board for Monitoring Peace Courts, and the Bureau for Alternative Dispute Resolution are responsible for the management of data concerning proceedings from administrative and fiscal court, peace court proceedings, and proceedings from public ADR systems, respectively.

At a different level of action, there is also the Commission for the Efficacy of the Enforcement Procedure (CPEE) [*Comissão para a Eficácia das Execuções*], an independent evaluating organ created in 2009, that since January 2012 gained further competence: gaining access to Citius and SISAAE, this entity intends to pursue further judicial dematerialization and electronic procedures, its evaluations aiming at a stronger transparency, swiftness and efficiency of all judicial actors involved in the enforcement procedure.

Power assignment: the outline

From this broad picture, it can be said that the Government holds the monopoly of ICT implementation in justice; outsourcing of any sort is rare and most times avoided by ministerial bodies. That is most visible in the development and implementation of ICT innovations: these competences are shared – overlapped, for some years – between DGAJ and ITIJ, with the first holding most decisive power; the latter took over those powers in the past few years, in addition to its traditional central hardware maintenance tasks, while the first keeps being responsible for court hardware and other ICT equipment. Training is kept under the wing of DGPIJ, whom, mostly supported by IGFIJ, also develops and implement systems of indicators, models and other methodologies, in order to elaborate scenarios for the definition of various policies for the area of justice, including the implementation of ICT.

Monitoring and system control are legally distributed between governmental bodies (DGPIJ and DGAJ) and professional bodies (Higher Judicial Council and Public Prosecution General), although the latter keep in practice

an advisory role that appears to dilute the weight of the judicial actors' intervention in the policies that affect and determine the judiciary and their own activity. In addition, these entities keep stronghold on the management of judicial data that concerns their professionals' activity – also notice the Coordinating Commission for the Management of Data Relating to the Judicial System, though created in 2009, has yet to start its monitoring activity.

Support systems and platforms for the intervention of Bar professionals, which are exclusively non-state judicial actors in the Portuguese justice system, are also dealt by the respective coordinating bodies – Bar Association and Chamber of Solicitors, for which private entities have been commissioned to provide ICT services. Unlike what happens in the ministerial bodies, these associations of Bar professionals rely on market intervention for development and maintenance of their auxiliary systems/platforms and electronic signatures, though maintaining tight control and responsibility over the providing companies and their products.

It has been argued by judicial officers that a stronger intervention by the Higher Judicial Council and Public Prosecution General is needed, mostly in what concerns development and management of the systems directly related to the powers of judges and public prosecutors in judicial procedure. Such strengthening would mean a shift in nature, in terms of being a direct and permanent intervention (not merely advisory), together with the ministerial bodies that are nowadays monopolists; and would encompass the choice of the system itself, access and control over the system's structure, and application development¹². Nonetheless, different perceptions also arise from other sources, from ministerial bodies to judicial officers (namely their respective trade union associations), considering that these organs already take a flagrant passive role in the current state of affairs.

3. The project background, The development strategy and the history of the project

3.1. ICT in the Civil Jurisdiction

3.1.1. ICT in the justice system: strategic outline

It was back in 1987, with the XI Constitutional Government (1987-1991), that the use of ICT in justice was first mentioned in a governmental programme: in order to “reduce the distance between justice and citizens”, a stat-

¹² Pereira, Joel Timóteo Ramos (2010) A criação e gestão do sistema informático dos Tribunais na computação das Tecnologias da Informação, Proceedings of the “VII Encontro Anual do Conselho Superior da Magistratura”. http://www.csm.org.pt/ficheiros/eventos/7encontrosm_joelpereira.pdf. Accessed 30 March 2012.

ed major goal of this legislature was to “modernize courts, substantiating a growing need in terms of judiciary or management ICT”, leading to the extension of computer equipment to court of law, enabling current access to databases, and the use of computer applications for procedural and statistic management. The following government (1991-1995) gave continuity to these *desiderata*, stating the application of ICT in the justice system as a cardinal course of action. For instance, during those 4 years it was aimed to conclude the installation of audio recording systems in all courts across the country.

The cabinet from the XIII Constitutional Government (1995-1999) was more generalist in its purposes, stating a purpose of “endowing courts with human and material resources, and technology that allows an effective regulation of the citizens’ needs” in its 4-year programme, corresponding to a period of little visible legal changes in what concerned ICT and the judiciary. These purposes were solidified over the next tenure (XIV Constitutional Government, 1999-2002), an obvious turning point in governmental policies for the judiciary, at least in what concerns technological progress. This new ministerial office envisaged complementing and boosting “the ongoing process, guaranteeing judicial officers may use ICT on their daily practice”. It was during this period that first procedural management tools were developed by ministerial services. By means of an exhaustive programme of application of ICT to the judiciary also guaranteed “the installation of networks in 80% of all courts of law by the years 2000, with a full coverage in 2001, when a complete network, encompassing all public services connected to the Ministry of Justice, [was] expected”.

This route of technological progress was continued by the XV Constitutional Government (2002-2004), with the Ministry of Justice aiming to reinforce judiciary capacity with measures such as “the development and completion of ICT application to courts of law, and their network connection – between courts and between courts and the other systems from the justice sector”. These intents were followed over the next tenure (XVI Constitutional Government, 2004-2005), whose governmental programme for the area of justice stated a desire for a reinforcement of the justice system, with the prosecution of the measures pointed out by the previous cabinet.

The XVII Constitutional Government (2005-2009) sought an intensive use of ICT in justice, bringing forth definitive measures to dematerialize procedures, intending to speed up tasks and a better management on the whole. Purposes were such as a progressive procedural dematerialization and respective training for all judicial officers, as well as intensive use of (cheaper) “high-tech communication devices” for and between justice services, and an easier access to legal resources online. During this period of time, Citius-H@bilus was extended to all courts of law and all Citius applications were fully activated, thus providing the civil justice system with a long sought electronic procedure.

Extending the electronic procedure to the superior courts, as well as further broadening the use of ICT in justice (i.e. replacing existing analogic and paper communication and recordings, adopting judicial sales and electronic management tools, etc.), was the stated purpose of the ministerial office that followed (XVIII Constitutional Government, 2009-2011).

The current cabinet's (XIX Constitutional Government, 2011-...) resolve is similar, addressing the issue with an intent to improve information systems and management systems "to improve efficiency, reduce costs and avoid waste", aiming at "making the use of ICT [in justice] correspond to a principle of unification.

As a reform to take place together with the implementation of the judiciary map, in 2013, this tenure published the Action Plan for Justice in the Information Society¹³, which poses as a major purpose to install a sole platform for all judiciary, thus terminating all systems currently active, such as Citius, H@bilus and SITAF. This new platform will include an integrated system for case management, which will allow further control of the judicial officers' activity, such as foreseeing the time needed for a certain procedure, or knowing at all times how many cases each actor has assigned and their procedural phase.

The Action Plan for Justice in the Information Society specifically states as aims for this tenure: develop an ICT architecture for justice that ensures the foundation for application development, including a platform of reference data on companies and citizens, a repository of documents, video and audio common to all the institutions of justice and a set of norms on the development of computer applications for justice; update and develop, according to the drawn architectural model, the procedural management system integrated in courts, offering support to all taken activities (not just administrative, but also on the full register of multiple interventions in court involving all actors). This action aims at greater control of the respective "productive" process, thus increasing predictability and compliance with procedural deadlines. Furthermore, the ICT system for procedural management should allow associating to each procedural intervention the tools necessary to its completion, such as auxiliary components (v.g. integrated timetables and agendas), and access to legislation and case law databases and other sources of knowledge and information sharing; review the metadata associated with the procedures, to ensure the same point of view in all, thus achieving effective transparency and efficiency the activity of all legal actors involved; updating, in accordance with the designed model architecture, the mechanisms linking the applications of institutions of justice and state agencies that need to interact with the courts, as well as with other legal professionals; create a platform of courts' analytical information systems with the use of indicators to timely identifying constraints and allow their control before there is significant impact; up-

¹³ Order no. 1617/2011, from 29th of November.

date the means of access to court applications in what concerns hardware and other communication equipment, in order to ensure better usability of information systems, thus increasing citizens' levels of efficiency, efficacy and satisfaction; ensure safe and remote access by judicial actor to courts' systems; redesign the legal aid model within this new architecture; promote, with the intervention of the private sector, a platform for ADR that is integrated in the courts' systems, by means of an electronic platform for online mediation services; increase the use of the citizen card as a mechanism for authentication and citizen access to the justice ICT systems.

3.1.2. *The First Steps: a light legal background intertwined with the development of the first applications (gpcível and h@bilus)*

The use of new technologies in judicial acts was firstly addressed back in 1995, with an amendment brought to the Code of Civil Procedure¹⁴: “[t]he chapter on pleadings – one of the most marked by the erosion of time and the application of new technologies to forensic activity – deserved significant amendments, reformulating numerous solutions of the current Code, in order to prevent the maintenance of unnecessary or disproportionate formalisms, thus operating a real progress in simplifying and streamlining the causes”¹⁵. In the following year, a new amendment came to “allow the use of electronics for the treatment and completion of any act or pleading, as long as rules concerning protection of personal data are respected and their use is mentioned.”¹⁶.

Nonetheless, it was only in 1999 the Act on the organization and functioning of judicial courts¹⁷ was amended with an item on the use of information technology, stating “[i]nformation technology will be used to treat data related to judicial courts management and procedure, in accordance to constitutional and legal provisions in force.”¹⁸.

After this, consecration of the use of information technologies in judicial courts came step by step. The following year, the possibility of lawyers to present pleadings in digital form and using of certified e-mail addresses for their delivery was added: “for the practice of pleadings by the parties, presentation of the pleadings and allegations and counter-pleadings in electronic form is foreseen, accompanied by a copy on paper, which will act as a backup and certification tampering scanned into the text and documents that are not scanned. The parties may also play such acts by fax or e-mail, valid as of the date of the practice even of his expedition, which is possible even outside the opening hours of the courts and is expected however the obligation of

¹⁴ Decree-Law no. 329-A/95, from the 12th of December.

¹⁵ Preamble.

¹⁶ Article 138, no. 5, from the Decree-Law no. 180/96, from the 25th of September.

¹⁷ Law no. 3/99, from the 13th January.

¹⁸ Article 132.

sending, within five days of the digital or the backup, respectively, accompanied by the documents that have not been sent. Given the need for adaptation of legal professionals and the full computerization of the courts, it is foreseen in transitional provision that pleadings, appeal allegations and counter-allegations, in electronic form shall only be mandatory from the 1st of January 2003, and is optional from the date of entry into force of said law, whether for such pleadings, or for any other procedural steps that must be practiced in written form, thus eliminating the need to merge the duplicate copies, when pleadings are submitted in digital format.”¹⁹. Presentation of pleadings by e-mail²⁰, and the compulsory presentation of pleadings, appeal allegations and counter-allegations in digital format, in addition to a copy on paper²¹, were specifically foreseen²².

This legal framework²³ was revoked soon after, and replaced (in 2003)²⁴ by one that foresaw, “*in a more realistic fashion*”²⁵ that dematerialization could not be compulsory at such a stage; its rules (concerning presentation of pleadings by e-mail and the form of these pleadings presented to the court) took a step back and were accepted as “*possibilities*”, rather than “*realities*” (*ibidem*), as the legislator had too greedily advanced three years before. Concretization on the use of e-mail for the presentation of pleadings and for writs of notice was introduced the following year²⁶.

However, practice had been running ahead underneath these somewhat slow legal developments. In fact, the implementation of ICT owes more to common practice than to written law, and specifically to the action of court clerks and registrars, within the jurisdiction of the Ministry of Justice. In the meantime, it was the administrative and fiscal jurisdiction that took decisive steps towards an accomplished use of information techniques, aiming at a fully-electronic procedure²⁷.

¹⁹ Preamble of Decree-Law no. 183/2000, from the 10th of August.

²⁰ Amended article 143, no. 4, from the Code of Civil Procedure.

²¹ Amended article 150, no. 1, from the Code of Civil Procedure.

²² More detailed reglamentation was introduced by Ordinance no. 1178-E/2000, from the 15th of December, and afterwards Ordinance no. 8-A/2001, from the 3rd of January.

²³ Decree-Law no. 183/2000, from the 10th of August.

²⁴ Decree-Law no. 324/2003, from the 27th of December. Came to amend the code of civil procedure. It ruled on the presentation of pleadings by e-mail (amended articles 260-A, 254, and 229-A, from the Code of Civil Procedure), and the form of pleadings presented to the court (amended articles 150 and 152, from the Code of Civil Procedure).

²⁵ Lameiras, Luís Filipe Brites (2008) A informatização na justiça cível, in Brito, Rita (co-ord.) Novos Rumos da Justiça Cível. Braga: CEJUR, p 119.

²⁶ By Ordinance no. 337-A/2004, from the 31st of March, followed and revoked by Ordinance no. 642/2004, from the 16th of June.

²⁷ Decree-Law no. 325/2003, from the 29th of December, introduced electronic procedure

Back in 1999, when no relevant legal developments on this matter were to be expected any time soon, a group of court clerks and registrars started a project called GPCível (from “Gestão Processual Cível”, *Civil Procedural Management*). This was indeed the first attempt to use information technology for case management, and the direct ancestor of electronic procedure and dematerialization processes in Portugal. The GPCível Project was sponsored and flourished within DGAJ, resulting in the birth of the application named H@bilus. This new case management tool was then used in registries of both civil and criminal competence courts. Using the technology available at the time, each court worked on its own, much like an island, as the application was client-server, supported by modems and telephone lines.

Working ahead of legal developments, H@bilus was being applied to a growing number of courts, under the aegis of DGAJ, until it covered all civil and criminal courts by 2005. By then, technology had evolved immensely, and modems had been replaced by local servers. Still, each court was isolated, as there was no network.

3.1.3. *Major Step Forward: The Arrival of Citius*

The Background of an Electronic Procedure: A Quest for Dematerialisation

The ancestor of the dematerialized procedures was H@bilus, when court clerks became able to make writs of notice directly in the platform, but a concrete procedural dematerialization only became real with Citius, which finally allowed the actual electronic lodging of a proceeding.

A larger legislative step was finally taken in the year of 2006. Mirroring the outline drafted in the law on the organization and functioning of judicial courts, a norm specifically concerning electronic procedure was finally added to the Code of Civil Procedure in 2006²⁸: “*Procedure takes place electronically in the terms defined by ordinance from the member of the government responsible for the area of justice; procedural rules concerning acts from judges, public prosecutors and judicial offices shall be adapted when necessary*”²⁹.

Citius was announced in the following year by means of a brand new Law³⁰, with the legislator now offering a platform which could now host elec-

in administrative and fiscal courts (see article 4). It was later regulated by Ordinance no. 1417/2003, from the 30th of December, concerning the brand new Sitaf, an electronic system adapted to the administrative proceeding. It was this article 4, from Decree-Law no. 325/2003 (more precisely, its no. 1) that inspired said article 138-A, as we may see below.

²⁸ Law no. 14/2006, from the 26th of April.

²⁹ Article no. 138-A.

³⁰ Complementing the regime of Law no. 14/2006, ground-breaking Ordinance no. 593/2007, from the 14th of May, introduced the platform Citius.

tronic pleadings of judges and public prosecutors. A year later, the code of civil procedure was amended³¹, dictating that “*electronic procedure guarantees its own integrity, authenticity and inviolability*”.

In the meantime, the formulation of the Law on the organization and functioning of judicial courts was maintained throughout various amendments, to be completed nearly 10 years later³²: it was only after these specifications within the code of civil procedure that the law on the organization and functioning of judicial courts was adapted in what concerned electronic procedure. This more detailed enunciation within the law on the organization and functioning of judicial courts³³ specifically reads: “*1 – Information technology is used for the treatment of data related to judicial courts management, procedure, and archive. 2 – Procedure takes place electronically in the terms defined by ordinance from the member of the government responsible for the area of justice; procedural rules concerning acts from judges, public prosecutors and judicial offices shall be adapted when necessary. 3 – Said ordinance shall regulate, among other issues: a) presentation of pleadings and documents; b) file assignment; c) electronic pleading by judges, public prosecutors and court officials; d) acts, pleadings, minutes and procedural terms that may not exist in paper*”³⁴.

In fact, the legal implementation of the *desiderata* present in Law no. 14/2006 came only two years later: in order to fill the legislative gap, the Ministry of Justice³⁵ introduced the regulation of several aspects of electronic procedure in first instance courts, by means of the new system Citius³⁶. This Ordinance no. 114/2008 specifically came to regulate on³⁷ the presentation of

³¹ Decree-Law no. 303/2007, from the 24th of August, added a no. 2 to article 138-A, from the Code of Civil Procedure. This norm’s entry into force was then subjected to the publication of the foreseen Ordinance from the Ministry of Justice, as specifically ruled in the no. 2 from article 11, of Decree-Law no. 303/2007. The Decree-Law was subjected to Rectification no. 99/2007, from the 23rd of October, which however did not bring any alteration to these specific norms. Therefore its transitory norms (article 8, especially its no. 1) maintained alive, when needed, the dispositions altered or revoked until the publication of that ordinance.

³² Law no. 52/2008, from the 28th of August.

³³ A brand new article 159 came to replace former article 132, thus complementing its broad formulation. Notice how the no. 2 of this new article 159, of the law on the organization and functioning of judicial courts, paraphrases article 138-A, of the code of civil procedure, as amended by Law no. 14/2006.

³⁴ Article 159.

³⁵ Ministerial Ordinance no. 114/2008, from the 6th of February, from the Ministry of Justice.

³⁶ It has subsequently been altered by Ordinances no. 457/2008, from the 20th of June; no. 1538/2008, from the 30th of December; no. 195-A/2010, from the 8th of April; and no. 471/2010, from the 8th of July.

³⁷ In the sequence of what had been earlier stipulated in article 11, no. 2, of Decree-Law no. 303/2007.

pleadings³⁸; compulsory copies³⁹; publicity of the procedure⁴⁰; electronic case assignment⁴¹; publication of said electronic case assignment⁴²; electronic writs of notice⁴³; proof of court fees payment⁴⁴.

It therefore specifically regulates several aspects⁴⁵, as stated in article no. 1: (1) electronic presentation of pleadings and documents⁴⁶; (2) proof of court fees payment and/or legal aid admittance⁴⁷; (3) designation of the enforce-

³⁸ In accordance to article 150, as seen in articles 1a) and 3, both from said Ordinance.

³⁹ In accordance to article 152, as seen in article 3b), from said Ordinance.

⁴⁰ In accordance to article 167, as seen in article 22, from said Ordinance.

⁴¹ In accordance to article 209-A, as seen in articles 1d) and 15, both from said Ordinance.

⁴² In accordance to article 219, as seen in article 16, from said Ordinance.

⁴³ In accordance to articles 254, no. 1, and 260, as seen in articles 1a), 21-A, 21-B, and 21-C, all from said Ordinance.

⁴⁴ In accordance to article 486-A, indirectly addressed by article 8; scope, as foreseen in article 2.

⁴⁵ This Ordinance is structured in accordance to said purposes: (1) an initial chapter of general provisions outlines its object and scope. It was introduced by the original Ordinance no. 114/2008, and subsequently amended by Ordinances no. 457/2008, 1538/2008, 195-A/2010, and 471/2010; (2) a second chapter addresses the presentation of pleadings and documents, which includes electronic presentation of pleadings and documents, Citius user registration, dispositions concerning forms and annexes, and pleadings' specifications, designation of enforcement agents, and appeals. It was introduced by Ordinance no. 114/2008 and amended by Ordinances no. 457/2008, 1538/2008, 195-A/2010, and 471/2010; (3) a comparatively diminute third chapter concerns electronic file assignment, and refusal of electronic pleadings. The latter was included by Ordinance no. 471/2010, and the former by Ordinance no. 114/2008 and subsequently amended by Ordinance no. 195-A/2010. This chapter also addresses the publication of daily file assignment, as introduced by Ordinance no. 114/2008; (4) a fourth chapter ascertains proceedings by judges, public prosecutors and court officials, which includes specifications of security, access to public services' data, and signatures of parties, their legal representatives, or witnesses. It was introduced by Ordinance no. 114/2008 and amended by Ordinances no. 457/2008 and no. 195-A/2010; (5) a fifth chapter thoroughly regulates electronic notifications, by means of three articles introduced by Ordinance no. 1538/2008; (6) a sixth chapter consists of an article establishing the consultation of judicial proceedings by lawyers and solicitors. It was present in the original version, Ordinance no. 114/2008, and amended by Ordinance no. 1538/2008; (7) a seventh chapter, entitled "organization of the proceeding", presents an article that ascertains which pleadings and documents must exist both in electronic and physical form. This article was introduced by Ordinance no. 114/2008 and amended by Ordinances no. 457/2008, 1538/2008, and 471/2010; (8) an eighth chapter deals with the communications between courts, emission of judicial certificates included. It was introduced by Ordinance no. 114/2008 and amended by Ordinance no. 1538/2008; (9) finally, ninth and a tenth chapters address issues specifically concerning courts for post-sentencing follow-up, and administrative and fiscal courts (i.e. their electronic platform SITAF), respectively.

⁴⁶ In accordance to article 150, no. 1, 3 and 4, and article 810, both from the Code of Civil Procedure), appealing including (in accordance to articles 688, 691, 691-B, 721, 763, and 771, all from the Code of Civil Procedure.

⁴⁷ In accordance to article 150-A, no. 3, and article 467, no. 4, both from the Portuguese Code of Civil Procedure.

ment agent in charge of the writ of summons⁴⁸; (4) electronic case assignment⁴⁹; (5) electronic writs of notice⁵⁰; (6) electronic pleading by judges, public prosecutors, and court staff; consultation of proceedings⁵¹; (7) within an execution of penalties' procedure, electronic presentation of pleadings and documents, electronic file assignment, electronic pleading by judges, public prosecutors and court staff, electronic writs of notice and communications⁵².

As such, regulation of the Citius system in terms of technology and operability are extremely light, as these norms focus on the work of the registry, i.e. mostly procedural terms. Still, further legal production came to conform the regime, such as amendments to the legal regime of court fees⁵³, that became another decisive step, as seen in further detail in section 5. In addition, the dematerialised lodging of pleadings became compulsory for lawyers and solicitors⁵⁴. Finally, new legislation concerning the transmission and protection of judicial data⁵⁵ was introduced in 2009, and came to offer the needed data protection framework; it also presented new key entities and re-defined the competences of others.

Citius System: Characterization

Ordinance no. 593/2007, from the 14th of May, following the needs defined in Decree-Law no. 130/2007, finally introduced Citius, arguably the greatest breakthrough application for the fully-dematerialised electronic procedure.

The project named *Citius* – meaning *faster* in Latin – was specifically developed by the Ministry of Justice with the same team of registrars and court clerks under the aegis of DGAJ, and currently inserted in ITIJ, that created and developed H@bilus. As said before, this new system is a further development of H@bilus, aiming at a procedural dematerialisation, by treating electronically all information belonging to the proceeding, thus reducing their physical form to a minimum. It is therefore composed by several applications, data-

⁴⁸ In accordance to article 467, no. 1, g.) 7, and 8, from the Portuguese Code of Civil Procedure.

⁴⁹ As foreseen in articles 209-A, 211, 213, 214, and 219, all from the Portuguese Code of Civil Procedure.

⁵⁰ In accordance to article 254, no. 2, article 258, no. 2, and article 260-A, all from the Code of Civil Procedure.

⁵¹ In accordance to article 167, no. 1 and 3, from the Code of Civil Procedure.

⁵² In accordance to Book II, from the Code on the execution of penalties and custodial sentences.

⁵³ Such as Decree-Law no. 34/2008, from the 26th of February.

⁵⁴ Decree-Law no. 34/2008, from the 26th of February, which entered into force on the 5th of January, 2009. For further operational detail, see section 5.

⁵⁵ Law no. 34/2009, from the 14th of July.

bases and services that communicate with each other: computer applications for public prosecutors, and judges and court staff, as well as for lawyers and solicitors, complement each other in order to achieve full electronic pleading. Over the next pages we will offer a schematic overview of their objectives and possibilities⁵⁶.

H@bilus is a component of the Citius system used by court clerks and registrars, in courts, to manage the acts of registries, such as reception and distribution of pleadings, file management, registration and archive.

Citius-Judges and *Citius-Public Prosecution*, as their names suggest, are the two versions of H@bilus used by judges and by public prosecutors, respectively. More specifically, *Citius-Judges* is a work tool that intends to reduce bureaucracy and provide for better management tools for judicial courts. With said desiderata in mind, this application was specifically created to enable judges to: (1) make sentences, court orders and other judicial decisions directly in the application, with no need of previous writing said decisions in the paper proceeding; (2) sign sentences, court orders and other judicial decisions with electronic signatures, by means of a card (smartcard) associated to a PIN code, with no need of signing said decisions in the paper proceeding; (3) receive and send the proceedings electronically to the registry, with no circulation of the paper proceeding; (4) immediately know all procedures assigned to them and at what stage they are. Similarly, *Citius-Public Prosecution* is adapted to activities of their officers, thus allowing them to: (1) make and sign court orders, with no need of printing them; (2) receive and send the proceedings electronically to the registry, with no circulation of the paper proceeding; (3) organise and manage the titular officer's own proceedings; (4) electronic connection between the public prosecution, police forces, and courts; (5) conduct electronically national inquiries concerning defendants.

Citius.Net (lodging of pleadings and documents) is a web application that allows legal representatives such as lawyers and solicitors to lodge their pleadings, as well as consult the state of the procedures they are related to. This system makes the use of pleadings in paper needless, "which is seen as a great breakthrough in reducing bureaucracy in the connection between legal representative and court"⁵⁷. Furthermore, common citizens may use the application to access public information concerning the justice system, namely publicity of sales and bankruptcies. This work tool specifically allows its users (lawyers and solicitors) to use the internet to: (1) lodge pleadings and other documents; (2) know the results of the distribution; (3) consult proceedings

⁵⁶ For further detail concerning technical issues, see section 4 and 5.

⁵⁷ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. 30 March 2012, p. 25.

and related court hearings; (4) follow the status of their due payments within legal aid action.

TribNet, also called **Citius-Public Access**, is the application that offers information of compulsory publication to the general public, by means of direct access to the central databases of the Citius system, or of local court databases. The information at stake specifically concerns issues such as public lists of case assignment, publicity of sales, and publicity of insolvency, public court sessions, edictal writ of summons, or addresses and contacts of courts.

As well as these applications that allow a direct interaction with different types of users, the Citius system also enables communication with other information systems from external entities. For instance, requesting or providing information from entities such as the Central Department of Investigation and Criminal Action (DCIAP), the BNI, the Directorate-General for Social Reinsertion (DGRS), or police forces, thus allowing Citius to both request and receive information in a quick and integrated way, from each one's information systems⁵⁸.

H@bilus, Citius-Judges and Citius-Public Prosecution use VB6, an outdated technology (by now discontinued by Microsoft), whilst Citius.Net and TribNet are developed in .NET⁵⁹. The latter were also created by members of the same team that created the others.

H@bilus, Citius-Judges and Citius-Public Prosecution function at a local level, with a local server, in all courts of the civil jurisdiction. These servers are then connected in web, through a circuit. Unlike the others, Citius.Net is not local by its own nature, it has a central database. Thanks to the Law on the protection of data⁶⁰, there was the legal background to create a central database, with the headline of the proceeding. This headline contains the basic data of each proceeding, such as court, serial number, and name of the pleading parts. The complete proceeding is lodged at the local server of each court, to which the lawyer accesses through Citius WEB, which then connects the user to the local court server. The central database is currently lodged – physically – at ITIJ, but until 2007 there was a central server lodged at a court in Évora, under care of two court clerks of the DGAJ team. The displacement of hardware and databases to the ITIJ implied a cost of 150.000 € in various equipment, back in 2007. As for the local database of each court, they are usually physically lodged at the building of the respective court. However,

⁵⁸ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. 30 March 2012, p. 26.

⁵⁹ See section 4 and 5 for further detail concerning technical issues.

⁶⁰ Law no. 34/2009.

since some were not in the best environmental conditions, a few are currently physically lodged at ITIJ, but maintaining their autonomy and work logic (server-client), still “belonging” to the court itself. There are plans of complete centralization of the hardware at ITIJ, though maintaining each database’s local control and autonomy.

Citius-Judges and Citius-Public Prosecution became operational in July 2007, but its use only became compulsory from the 5th of January 2009 on. To prepare for these ground-breaking changes in the judicial actors’ activity, throughout the year of 2008, laptops and digital certificates were assigned to judges and public prosecutors, and DGPIJ gave intensive training courses to all. These courses were decentralised (i.e. across the territory, and not only in Lisbon), and for them a team of 112 instructors was assembled, with DGPIJ hiring 80 extra staff members to fulfil this task.

A commissioned third-party audit: in 2009, an audit to the Citius system was commissioned by the ITIJ to a private national company, Critical Software. The results of this audit were presented in a report from the same year, and from them a reformed and updated version of Citius was created: the platform Citius Plus⁶¹.

The audit took place in three analytical vectors: security, architecture and technology, and performance. The areas under analysis were application, infrastructural and IT procedures, concerning both Citius-Web and Citius-H@bilus.

In short, the applications that use less recent technology (as said above, H@bilus, Citius-Judges Citius-and Public Prosecution are in VB6) have revealed in general more problems in all areas under analysis than the others. On account of said fact, the latter were implemented with a three-layer architecture (i.e. presentation, business and data layers). Still, the older applications present fewer problems than the others when it comes to sheer performance⁶².

From the information available for the audit, Citius-Web applications have less architectural problems, though both reveal similar security problems. As for IT Procedures, there were revealed more disconformities in the local component (Citius-H@bilus) than in the central component (Citius-Web). The audit report highlights said disconformities are mostly grounded on lack of formalism in its implementation: for instance, there were detected severe prob-

⁶¹ See section 4 and 5 for further detail concerning technical issues.

⁶² Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 21-22.

lems with the passwords, due to a lack of strict rules for the attribution and use of passwords. That being said, during the audit, an exercise to explore password vulnerability resulted in the discovery of 53% of all passwords of lawyers and solicitors in two hours, using only tools of easy access (i.e. retrieved *in loco* from the internet). According to the report, 90% of these passwords have less than 9 characters, “which does simplify its discovery”⁶³.

A core recommendation that emerged from the audit was an update to the architecture and technologies of the Citius applications that use VB6: H@bilus, Citius-Judges and Citius-Public Prosecution. Critical Software highlights that this technology was made available by Microsoft since 1999, but the support ceased in April 2008, “which means technical updates, correction of vulnerabilities, or service packs of any sort were not, and will not, be available in the future” by Microsoft, as well as “technical articles or support tools for the technology”⁶⁴. Furthermore, the supplemental report⁶⁵ (Critical Software, 2010) highlighted the severity of the situation, taking into account the growing risks for the system as a whole, “as the other support technologies, such as the operative systems, will keep evolving”. Other benefits would be to provide for several improvements, such as “the need of a better structuring and compartmentations of projects according to said needs”, and “the need for better internal documentation of the code (module headlines and their routines)”⁶⁶. The final report thus recommended “the migration of the software now existing in Visual Basic 6 to technologies supported by the seller”⁶⁷).

The problems of Citius-Web are considered easier to solve, since its architecture is based on a more evolved model and technologies; the lacks of Citius-H@bilus may be considered “more serious”, especially taking into account the data at stake. Nonetheless, Critical Software reckons the latter are

⁶³ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 22.

⁶⁴ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 25.

⁶⁵ Critical Software (2010) ACitius. Relatório de Auditoria – Aditamento. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-2010-RPT-02371-aditamento-auditoria-acitius.pdf>. Accessed 30 March 2012.

⁶⁶ Critical Software (2010) ACitius. Relatório de Auditoria – Aditamento. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-2010-RPT-02371-aditamento-auditoria-acitius.pdf>. Accessed 30 March 2012, p. 53.

⁶⁷ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 49.

more difficult to access from the outside than Citius-Web, “which limits the probability of such threats to actually occur”⁶⁸.

In spite of these findings, the audit was not shy to underline several positive aspects of the Citius system, namely the historical work that took place; the system as an undisputed “motor of change” for the dematerialisation; and the general gains in productivity it allows, as well as the rise of speediness in the justice system globally considered⁶⁹.

Citius Plus: after this audit, Citius was subjected to a reformulation, conducted by the team of Critical Software together with the DGAJ-ITIJ team. The project’s name is *Citius Plus*. Its main objectives were to correct security issues pointed out in the audit, and evolve in the technology, from VB6 to VisualBasic.NET. This process also enabled the documentation of the application and, indirectly, also made knowledge less restrict. Some problems were unable to be solved, as they are structural in their nature, related with the very architecture of H@bilus⁷⁰.

Ministerial Order no. 11388/2010, from the Minister of Justice, legally introduced Citius Plus, stating its objectives: (1) reformulation of the technological infrastructure of the Citius platform, ensuring an efficient response to requests from various types of users, both in its ability to evolve and in supporting legal changes; (2) adequate levels of quality, control and security in access to procedural information, and the guarantee of audits to ensure their access and actions; (3) homogenization of environments and technological solutions, in order to pursue synergies in the use of the platform; (4) introduction of practices, tools and procedures that will allow to support development activities and to increase service levels and quality management in a subsequent evolution of the platform; (5) raising the level of knowledge about the system, through the description of its core functionalities and its behavior, and the specification of tests that should serve to support the validation and acceptance of any evolutionary solutions.

This normative also states that an essential condition for this technological consolidation is the transition, from DGAJ to ITIJ, of functions related to the development of projects, applications and systems relating to information and communication technologies within the activity of the courts and the justice system⁷¹.

⁶⁸ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 23.

⁶⁹ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 23.

⁷⁰ As seen in detail in section 5.

⁷¹ Through Ministerial Order no. 10.471/2010, as seen above.

Citius Plus is currently at use in two courts, after a period of pre-tests conducted with a restricted number of judges in simulated proceedings. The two courts are the Court of Appeal of Coimbra – providing a second instance experience –, and the District Court of Figueira da Foz – a coastal town near Coimbra which has a workload considered to be average and therefore appropriate for a first instance try-out. The migration of the code, from VB6 to Visual Basic.NET, was in charge of Critical Software. The changes are solely related to software, and as so the functionalities remain the same, with virtually no visible changes to the user accustomed to Citius.

As for future evolutions of Citius beyond Citius Plus, some constraints were highlighted during fieldwork. In short: a limited team working at ITIJ; a still working obsolete technology (VB6); stumbling blocks in terms of decision power to alter and improve the system.

3.1.4. *Small Claims*

Dealing with small claims has been traditionally interwoven with the use of information technology in courts. As so, Decree-Law no. 269/98, from the 1st of September, is undoubtedly a landmark both for the use of ICT in courts and to dealing with small civil claims in a simplified way. This ground-breaking law⁷² specifically deals with small claims and payment order procedures for debts originated by contracts. The main target upon its publication was to speed up small claims litigation. For such purpose, its regime gathered up previous legislative initiatives concerning both small civil claims procedures and payment order procedures, now further developed with the use of ICT, especially for the latter. These new procedures came to offer an extremely simplified *iter processualis*, in addition to the ones already foreseen in the code of civil procedure, for claims worth up to first instance courts' jurisdiction value (a limit which was later amended), and based in consumer contracts or other commercial transactions, where proof is simple and document-based, and statements of objection rare. The focus of this study is the payment order procedure, and therefore the next pages will provide an overview of its evolution.

⁷² It has subsequently been amended/republished by a series of diplomas: Rectification no. 16-A/98, from the 30th of September; Decree-Law no. 383/99, from the 23rd of September; Decree-Law no. 183/2000, from the 10th of August; Decree-Law no. 323/2001, from the 17th of December; Decree-Law no. 32/2003, from the 17th of February; Decree-Law no. 38/2003, from the 8th of March; Decree-Law no. 324/2003, from the 27th of December; Rectification no. 26/2004, from the 24th of February; Decree-Law no. 107/2005, from the 1st of July; Rectification no. 63/2005, from the 19th of August; Law no. 14/2006, from the 26th of April; Decree-Law no. 303/2007, from the 24th of August; Law no. 67-A/2007, from the 31st of December; Decree-Law no. 34/2008, from the 26th of February; and Decree-Law no. 226/2008, from the 20th of November.

The Payment Order Procedure: Legal Background

The payment order procedure had been introduced back in 1993⁷³, as a quick and swift way of recovering debts, most of them unobjected. Until 1998, its use had been reduced, but this new regime specifically intended to increase demand, for which procedural simplification and, not to be underestimated, reduced court fees concurred: *“The intention is now to encourage the use of payment order procedures, in particular the possibilities offered by modern computer technology to the treatment and removal of procedural obstacles doctrine opposed to Decree-Law no. 404/93 (...). At the same time its jurisdiction value is raised up to the equivalent of the courts of first instance, there is a significant reduction of court fees payable by the applicant, despite the time already elapsed on its setting, in January 1994.”*⁷⁴.

Procedural Characteristic: the payment order procedure, as created in 1993, consists of a simplified pre-judicial procedure that allows for a swift enforceable title, without the intervention of a jurisdictional organ (in the case of unchallenged claims). It is a specific mechanism for the collection of debts arising from unpaid bills. As said above, its *iter processualis* is extremely simplified: (1) by filling in a form and paying a court fee (initially, a court fee stamp) the creditor requires the notification of the debtor to pay, under penalty of said payment order becoming an enforceable title; (2) the debtor may present a defense, by means of a statement of objection. In the case of unchallenged claims, there is no intervention of jurisdictional organs; otherwise, as well as when it is impossible to notify the debtor, the proceeding is presented to a judge; (3) after the writ of notice takes place, if the debtor does not pay the debt or does not present a statement of objection in due time, the payment order procedure form becomes enforceable, by gaining the nature of an enforceable title with the intervention of the court registrar; (4) if the debtor presents a statement of objection, a trial takes place in 30 days, and the final ruling from the judge shall become enforceable.

⁷³ By means of Decree-Law no. 404/93, from the 10th of December.

⁷⁴ Preamble of Decree-Law no. 269/98. Coincidentally, article 19, on court fees, stipulated in 1998: “Article 19, no. 1 – Court fees. Presentation of the payment order procedure’s form requires immediate payment of court fees through appropriate stamp, of model approved by Ordinance from the Minister of Justice, valued at 4.000 Portuguese escudos or 7.000 Portuguese escudos, when the procedure has a value equal to or greater than half the jurisdiction of first instance courts, respectively.” The basic regime of Decree-Law no. 269/98 was subsequently amended and republished by Decree-Law no. 107/2005, from the 1st of July, almost immediately amended by Rectification no. 63/2005, from the 10th of August. Its regime entered into force in 15.09.2005, bringing significant changes to payment order procedures, as seen below.

Jurisdiction Value: in terms of jurisdiction value, this procedure started off with a maximum of 1.870,49 €, this limit was raised to 3.740,98 € in 1998⁷⁵ and to 14.963,94 € in 2005⁷⁶. In 2007, the jurisdiction limit value was rounded to 15.000 €. A big breakthrough came in 2003, with the Decree-Law⁷⁷ that transposed Directive 2000/35/EC, of the European Parliament and of the Council, of 29 June 2000, on combating late payment in commercial transactions. According to it, debts from commercial transactions⁷⁸ could be claimed by means of a payment order procedure regardless of its value.

Use of ICT in the Payment Order Procedure: unlike what happened with H@bilus, the development of the application and the legal framework walked side by side: Decree-Law no. 107/2005 specifically introduced the use of information technologies to this procedure (in addition to an enlargement of competence, as seen above). It was finally consecrated by means of electronic communication: the presentation of the payment order procedure's form could be – optionally – electronic. After the 15th of September of 2005, the creditor could also be contacted by the court via e-mail. The court registrar could create an enforcement title by opposing his/her electronic signature. The Ministry of Justice came to regulate the presentation of the form, which could be either in paper or electronic document⁷⁹. The format and content (“the form”) of said electronic document would be later defined by the Ministry of Justice (DGAJ), and released on its website at www.tribunaisnet.mj.pt.

Competent *fora* and ways of presentation: the competent *fora* to present the forms and the ways of presenting them are intertwined, and therefore their evolution is presented as one. In terms of territorial competence, the creditor may choose to present the payment order procedure in the registry of the court from (1) the place of performance of the underlying obligation, (2) or the place of the debtor's address⁸⁰. This means the district courts or, more accurately, their registries, are the competent forum to lodge the action, and the same applies if in that territorial circumscription there are courts of special-

⁷⁵ Decree-Law no. 269/98.

⁷⁶ Decree-Law no. 197/2005.

⁷⁷ Decree-Law no. 32/2003, from the 17th of February.

⁷⁸ Defined as “transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration” – article 2, of the Directive.

⁷⁹ Ordinance no. 809/2005, from the 9th of September.

⁸⁰ Article 8, no. 1, of the Annex from Decree-Law no. 269/98.

ized competence or specific competence⁸¹. This will be the competent forum in case there is a statement of objection and the proceeding becomes judicial, as well as the place to deliver the form.

In 1999, the Ministry of Justice created special registry services with exclusive jurisdiction for payment order procedures in Lisbon and Oporto, for their respective territorial jurisdiction⁸². Almost a decade later, a general registry was installed⁸³, with national jurisdiction over payment order procedures⁸⁴, called “National Desk for Payment Order Procedures” (BNI) [*Balcão Nacional de Injunções*]. Oporto and Lisbon registries worked until the 31st of May, 2008⁸⁵. BNI is today the general registry with exclusive national jurisdiction for this electronic procedure. It is located in Oporto and only receives forms electronically – it receives directly those that are sent over the Internet, and indirectly those that are delivered in registries over the country, since the information of those forms is introduced in the computer application where it is received. Still, whenever the creditor presents a statement of objection, the proceeding is presented to a judge and gains judicial nature, following the rules of the small civil claims procedure⁸⁶; in such case, the court territorially competent may be one of the two previously addressed.

At first, the form could only be personally presented in paper, or sent by fax or regular mail in that format, at the competent registries referred above⁸⁷. Later on⁸⁸, it became also presentable in electronic file (cd, cd-rom, floppy disk, pen-drive) at the same registries, as well as the now extinct registries with exclusive jurisdiction for payment order procedures in Lisbon and Oporto, and today BNI. However, the form may only be delivered in person or by regular mail in these formats (paper and electronic) when the creditor is not represented by a lawyer or solicitor. In fact, in 2008⁸⁹, the electronic delivery via Citius became compulsory for lawyers and solicitors. The BNI is always the competent forum for the procedure. Thus all information on the *iter*

⁸¹ No. 2, of said normative. For further detail, see section 1.

⁸² Ordinance no. 433/99, from the 16th of June.

⁸³ Ordinance no. 433/99 was later amended (overruled, rather) by Ordinance no. 220-A/2008, from the 4th of March (in compliance to article 8, no. 4, of the Annex of Decree-law no. 169/98).

⁸⁴ See article 3.

⁸⁵ See article 4.

⁸⁶ Also ruled by Decree-Law no. 269/98.

⁸⁷ The registry of the court from the place where the underlying obligation should have taken place, or the place of the debtor's address), in accordance to Decree-law no. 269/98 (article 8 of the Annex).

⁸⁸ By means of article 1, of Ordinance no. 809/2005, from the 9th of September.

⁸⁹ By means of Decree-Law no. 34/2008, from the 26th of February, which amended article 19, no. 1, of the Annex of Decree-Law no. 269/98.

processualis became accessible online, by the Citius platform, in a way that the enforceable title within may also be created, and used electronically if needed.

The BNI platform: *Citius-Small Claims Procedure*

Citius-Small Claims Procedure allows lodging a small claim procedure request, payment of court fees and electronic procedure for that specific registry (BNI) since 2008. It specifically was developed by a team from court clerks and registrars within the DGPJ-ITIJ in order to: (1) lodge the request electronically through the internet, at the website <http://citius.tribunaisnet.mj.pt>, by form or computer file; (2) electronic payment of court fees by ATM or home banking; (3) full electronic procedure of the payment order by BNI; (4) electronic remittance of the payment order to the competent court, if a statement of objection is lodged by the debtor; (5) send warnings by e-mails to the creditor, in order to fully accompany the procedure; (6) creation of an enforceable title that makes it possible to start an enforcement procedure.

The electronic application working at this registry is in VBNet format. The development team, formed by court clerks, was also different from the H@bilus one, though under the wing of DGAJ and afterwards ITIJ. It is different from Citius-H@bilus, even though both interact. It has a centralised server, a specific application for writs of notice, and to deal exclusively with the electronic procedure. Citius-Small Claims Procedure connects to Citius-Web to allow lawyers to lodge payment order procedures, and access the virtual proceeding. It also connects with Citius-H@bilus when a statement of objection is lodged, and when it transits to an enforcement procedure. Connection also takes place with other entities and services, as seen in the following section.

4. The configuration of the system

The Citius system is a product of many years of work from a team of registrars/court clerks under the aegis of the Ministry of Justice – more accurately, of DGAJ-ITIJ. It is also maintained by the Ministry of Justice, with the central server and database lodged at ITIJ, and the local ones at the respective courts – as said above, in a few cases, the server is physically lodged at ITIJ, though truly belonging to the respective court. Management and maintenance are also responsibilities of the bodies from the Ministry of Justice. The intervention of public entities such as the Bar Association or the Chamber of Solicitors is mostly restricted to the activity (more accurately, their *interaction* with Citius) of their professionals. Private entities have been hired by all these public entities to provide specific services, though in the case of the

Ministerial bodies their intervention has been reduced, thus strategically avoiding any dependence from private third parties.

The system's development was somewhat *sui generis*, as being a step ahead any legal framework. Finally, in 2007, Decree-Law no. 130/2007 cleared the path to the publication of Ordinance no. 593/2007, which finally introduced Citius to the civil justice system. Common civil procedure did not experience relevant changes with the arrival and consecration of ICT. The exception is the payment order procedure's regime, whose latest legal (*rectius*, procedural) amendments are tightly interwoven with the development of electronic tools and the creation of a sole forum (BNI) with a specific Citius application to deal with the procedure. In fact, the application's development team was deeply involved in the procedural novelties, thus truly adapting one to another.

But what does the system truly look like? Over the next pages we will try to offer a technical overview of its components, strengths, weaknesses, and future possibilities. Due to some restraints in accessing detailed technical information, this section is based on data collected and provided by Critical Software during the commissioned 2009 audit of the Citius system⁹⁰. We therefore follow closely their final report. For further technical detail, see Critical Software, 2009: section 5⁹¹.

As seen above, a major contingency of Citius-H@bilus revolves around the use of Visual Basic 6 (VB6) for H@bilus and synchronisation services, since this technology has been discontinued by Microsoft: since April 2008 there were no more technical updates, vulnerability updates, or service packs of any kind, nor technical articles or support tools to support the technology. Therefore, the number of tools and libraries from sources other than Microsoft is also reduced, and the reduced interest in the user community substantiates in a reduced amount of technical information, such as tutorials, on the technology. This panorama made the audit company first and foremost recommend the migration of the existent software from VB6 to Visual Basic 2005 or Visual Basic.NET – the technology used for Citius Plus.

The Citius system is supported by the justice communication network, with contact points with external entities, whether to support some functionality, or for the use of certain actors, such as lawyers and solicitors. In addition to the applications described in the previous section, there are synchronization services that transfer information between the central services and the courts.

⁹⁰ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 22.

⁹¹ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. 30 March 2012, Accessed 30 March 2012. section 5.

4.1. *H@bilus*

As said before (see section 3), the *H@bilus* application has a two-level architecture. It is therefore composed by two essential parts: (1) a client application, which implements the functional requirements and all the functionalities required to the presentation of contents and functionalities; (2) a management system database (SGBD⁹²) that implements the support for the functionalities of creation, reading, updating, and data removal in a relational and structured way.

In this architecture, the *H@bilus* applications (one for each workspace) connect to a SGBD at the court (implemented in MS SQL Server 2005), to perform SQL queries in a database. As the audit highlighted, in this kind of architecture, the business application is installed at the specific user's workplace, although there may be administrator restrictions. Sensitive information circulates in the network path between workplace and respective database servers.

To exemplify how operations occur in the application *H@bilus*, Critical Software shows how three common operations occur: (1) login, (2) listing a profile, and (3) creating a proceeding. The process occurs as follows: (1) login: when a user fulfils the credentials to enter the system, a request by *H@bilus* to the court's database is executed, in order to determine if said user is has the necessary credentials to login; (2) listing a profile: when a user requests a listing of his/her profile, *H@bilus* issues a SQL request to the local database, in order to determine if said user has the necessary permissions; if yes, a new SQL request to the database is issued, in order to transfer the profile data, which are then shown to this user; (3) creating a proceeding: when a user intends to create a new proceeding, he/she executes said functionality in the *H@bilus* application, which then determines if this user has the necessary permissions.

In the audit, Critical Software pointed out as its main strength the fact that this is a thick list application, which improves interactivity with the final user, since all interactions at graphic interface level are local. On the other hand, the control of the application that manages the business logic by the final user is a source of concern: the user may inspect and alter the application, although not easily, and this possibility becomes even more difficult if quick wins⁹³ are implemented. Another frailty concerns the connection of *H@bilus* to the SGBD, which occurs by remote web authentication. This implies that the authentication credentials at SGBD (such as code and configuration files) are present, freely or not, on the side of *H@bilus*, and can thus be controlled by the user.

⁹² From the portuguese "sistema de gestão de base de dados".

⁹³ These were presented during the 2009 audit.

The main recommendation for H@bilus, as referred in the previous section (see section on Citius Plus), Critical Software suggested implementing three-level architecture. In three-level architecture the application is separated in three distinct levels: (1) presentation level (displays information connected to the services offered by the application; communicates with the application level to collect data and invoke actions); (2) application level (controls the application's functionality and does the logical processes to satisfy business requirements; communicates with the data level to insert, update, remove, and read information); (3) data level (consists mostly of database servers; all information is stored and maintained here; relations between data entities are usually established here).

Specifically for H@bilus, such a change would imply, according to the study from Critical Software, the maintenance of the SGBD, but H@bilus would be divided in two components: (1) *an application server*, for the application level – implementing the business rules, especially activities of security such as authentication, authorization and audit; (2) a *client application*, for the presentation level – which could be implemented with a *thin client*, making requests to the application server whenever the required operations are requested by the user, or with a simple browser that presents HTML pages served by the application server. The presentation application would be available at the users' workplace, whilst the application server would be available at the courts' infrastructure. Local SGBD would be withdrawn from the general access through the justice network, and only reachable by their court services.

With these changes, ICT technicians consider there would be an increase of security, since the attack surface of the SGBD is reduced, and maintenance, scalability, and software update production would be facilitated. For instance, the three operations analysed above would occur very differently in three-level architecture: (1) login (when a user fulfils the credentials to enter the system, a request by the H@bilus user to the court's application server is executed, in order to determine if said user has the necessary credentials to login; the application server communicates, by SQL with the SGBD to determine if the credentials are valid); (2) listing a profile (when a user requests a listing of his/her profile, H@bilus client application issues a request to the application server to request profile data; the application server communicates with the SGBD, in order to determine if said user has the necessary permissions; if yes, a new request to the SGBD is issued and the profile data is transferred to the H@bilus client application, which then shows the profile data to this user); (3) creating a proceeding (similar in both architectures).

4.2. Central services: Citius.Net and TribNet

Central services are used by legal representatives (lawyers and solicitors) to send pleadings (with 3MB or less) and to access information from the pro-

ceedings by the internet. This action spares these actors of sending said documents in paper. For said actions, (1) these actors access **Citius.Net** (which has the role of an application server in this specific situation), where the operations necessary to send and to access pleadings, among other documents, are made available. Citius.Net then (2a) connects directly to the central SGBD to save/store sent pleadings, (2b) or connects to the court's SGBD for direct access and consultation. (3) Pleadings submitted through Citius.Net are saved in the central server, and afterwards are synchronised to the court of destination (as seen below). (4) Common citizens may also use the application **Trib-Net** (also working as an application server) to access public information concerning the justice system (e.g. public sales and bankruptcies) In this case, a connection to the SGBD is established to retrieve the information when the citizen accesses the application.

As said before (see section 2), unlike H@bilus, this is a three-level architecture, which elevates their security levels in what concerns access to information. Nonetheless, both applications still present a few drawbacks, according to the results of the 2009 audit: (1) both Citius.Net and TribNet are exposed to the internet and access the central SGBD for various actions, which implies that when application is compromised, such as an attack by *SQL injection*, the central server itself is immediately compromised as well, thus causing a generalised fail of Citius functionalities; (2) Citius.Net accesses directly to the courts SGBD to download files, which implies that if the application is compromised, the local SGBD at the court may also be compromised, which may spread to the whole court.

With this scenery in mind, the auditing company offered some specific solution. Considering most issues arise from the fact that the application server of Citius.Net directly accesses each court's SGBD, Critical Software suggested two new database servers, related by replication schemes. These would be natively supported by MS SQL Server 2005. Then TribNet and Citius.Net will only connect to the copy and never the central server. This proposition specifically connects to the ones considering synchronisation of information, as addressed below. The global outline of this new architecture can be better perceived with this image.

4.3. *Synchronisation of information*

The users of H@bilus send requests using the application when they need to make asynchronous requests to other entities. These are kept in the SGBD of the specific court, and marked to be sent to the respective entity, such as a different court. In order to send said requests, there are periodical synchronisation services, which connect directly to the SGBD at stake (using SQL instructions) and transfer the necessary data. The headlines of the proceedings are also periodically synchronised to the Citius central server. The same

method is used to transfer pleadings inserted in the system by the Citius.Net portal, to their destination courts.

This audit has shown that the main strength at this level was that the communication between entities does take place (enabling flows of business information, such as headlines and data from proceedings, or information requests, between courts, centralised and with other entities), and is almost immediate, controlled, and possible to be audited. Nonetheless, the fact that the synchronisation services access directly the intervening SGBD may create a few disadvantages, such as (1) the existence of a *tight coupling*⁹⁴; (2) the impossibility of establishing rules of business in data access, or high level mechanisms inherent to the same access, such as controlling permissions, and auditing operations – thus, if a sole component is compromised, the whole information system that supports Citius is easily compromised. Before these flaws, Critical Software proposed an architecture for the synchronisation between courts, and between courts and the central server. For instance, in order to reduce the level of connection between the components, thus achieving a loose coupling, an interface mediating the connections of the synchronising servers to the SGBD could be introduced.

According to the audit company, with this change, synchronization servers are always forced to use a known and well-defined at a Web Services server, interface every time they intend to access a data source. This allows (1) the introduction of an application layer (at the level of business rules) in the interconnection with entities such as the court and the central server; (2) and the introduction of mechanisms for control, authentication, and audit of relevant operations.

4.4. *Communication*

4.4.1. *Connections of H@bilus to other systems*

Since the users of H@bilus (court clerks and registrars) often need to communicate with entities external to their court, they use the functionalities that initiate communications with other entities in the following (4) manners: (1) direct connection to Web Services made available by other entities (such as the Chamber of Solicitors); (2) connection to Web Services made available by other entities by a central gateway of Web Services (such as the Bar Association); (3) connection to central Web Services (such as national researches); (4) direct connection to the central server (by SQL).

The current functionalities of H@bilus allow its users to access other entities in a fast and dematerialised way, but the 2009 audit found a few draw-

⁹⁴ I.e. the components that deal with data are strongly connected to them, as there is no defined interface that enables both parts to evolve separately with no need of synchronised updates/changes.

backs: (1) H@bilus accesses entities external to the court in the four said manners, which are very different, therefore, it is more difficult to establish policies of security or communication interfaces; (2) it is also difficult to implement security policies in the servers of external entities (e.g. to limit the IPs that can connect to the servers); (3) as seen before, establishing direct connections to the central SGBD involves the risk of compromising the whole info form the central server when the H@bilus application is compromised in a sole workplace; (4) it is difficult to centrally audit and control individual access of workplaces to external systems, since said connections are established directly from workplace to the external entity's server.

The auditing company suggested a unified model of access to external entities instead. Such a model is based on the mediation of communications by a central server of Web Services. To make a request to an external entity, H@bilus connects to the Web Services' central server to initiate the request, by the application server installed at the respective court. The central server then forwards the request to the entity of destiny, invoking the service at stake. This option is considered to be most advantageous by Critical Software, namely in terms of security, since: (1) communications from the H@bilus client (at the user's workplace) are restricted to the application server of each specific court; (2) the application server only communicates directly with the central server, hence it is not needed to know technical information from other entities; (3) external entities only need to receive external communications initiated from the central server, which reduces the surface of potential attacks to said servers.

4.4.2. *Communication from external entities to Citius*

Communication for the exchange of information is frequent between external entities and Citius. Critical Software points out the three main ways of access of external entities to Citius: (1) access of an external entity to a web service of bankruptcies, through the internet; (2) access of the Chamber of Solicitors to a database (GatewayCS) lodged in the central SGBD; (3) access of criminal police forces to the Web Service, to lodge official reports. When the access is through a Web Service (internal or external through the internet), said services access the central SGBD to read and write the needed information.

As outlined in the audit report from 2009⁹⁵, the integration of entities external to Citius enables a better interaction between entities for exchanging information on justice with the use of ICT. Notwithstanding, since entities external to the justice system access directly the central SGBD to read and write

⁹⁵ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, p. 40 and ss.

information, if their software is compromised, the central SGBD may also be compromised. On the other hand, some external entities connect by internet to Web Services that access directly the central SGBD, which implies that, if the Web Service is compromised, the central server may also be immediately compromised, thus causing a generalised failure of some functionalities of the Citius system. In order to contain the control that external entities have of Citius, and also unify the access to the system, Critical Software suggested a new architecture, where all interactions would occur with the access of Web Services at central level. This would, nonetheless, imply a distinction between internal (from the justice network) and external accesses (by internet) to the Citius system. For that, a specific model was suggested: (1) internal access would be served by a Web Services server connected to the central server, in accordance to the previously said; (2) external access would be made available at a specific server (which would be exclusive, and different from the latter) connected to a replica of the central SGBD (once again, as addressed in the section of central services – Citius.Net and TribNet.

4.5. Software updates

Citius is in constant update, so there is a system that distributes updates for new software versions, as in: (1) binary applications from H@bilus; (2) binary applications from synchronising services; (3) reference data; (4) sample documents. When the development team finishes a new software version, they put it in a windows share at an update server, to be distributed in the justice network, and simultaneously it updates a database lodged at the central SGBD with the last reference data. When the *SincGlobal.exe* service is executed (periodically) at the central servers, the most recent reference data are installed at the central database (*H@bilusGlobal*), and the *SincLocal* service (at each court) also updates their database with the latest reference data. The periodic service *SincLocal.exe* also has the task of downloading the last updates (binaries and auxiliary files) to a local repository from each court, for internal distribution. Finally, when users access the application, H@bilus checks for software updates at the court's repository, and downloads them to that workplace, thus completing the update process.

Software updates are indeed fast and easy for all intervenients, and since the update takes place at two levels (central/court) reduces congestion in comparison to a distribution centralised in a sole server. Still, some flaws were detected during the audit, such as (1) if the software distribution fails, the system may become completely or partially unavailable; (2) if the updates of binaries and database data are unsynchronised, the same may occur; (3) when various users at the same court initialize the update process simultaneously there a major traffic load on local network, and taking into account the court staff's strict work schedules this is likely to occur quite often.

In order to counteract the increased traffic load on local network, Critical Software suggested: (1) to make sure the network infrastructure is adapted to additional traffic load during the update times; (2) to implement a more *granulous* update system for H@bilus, which implies checking the software version at module level, instead of application level – thus a user would only need to make a specific update when a modulus was executed, and therefore distributing the update load for a wider period of time, and reducing traffic load (always making sure there is an analysis of any dependency between used modules our libraries); (3) to use utilities for compression of executable code, in order to reduce the size of executable files before they are compacted by generic utilities and transmitted by the network infrastructure; (4) to set the system software update policies to take place at a different time from the user's start-up system, or even at different periods during the day, in defined groups, thus reducing the traffic load on the network during the common update time. The audit nonetheless company highlighted that said changes will not be necessary if the general changes of architecture for H@bilus (a three-level architecture, with the inherent characteristics) are accepted.

5. The functioning of the system

5.1. *How to File a Payment Order Procedure*

The payment order procedure was conceived as a specific mechanism for the collection of debts arising from unpaid bills. It consists of a simplified pre-judicial procedure that allows for a swift enforceable title, without the intervention of a jurisdictional organ (in the case of unchallenged claims).

As mentioned before, the payment order procedure is limited to money claims up until 15.000 € for non-commercial transactions and has no value limitation for debts from commercial transactions⁹⁶. A payment order can only be filled in paper when the creditor is not represented by a lawyer or solicitor. When the creditor is represented by a lawyer or solicitor, it is compulsory to deliver it electronically, via Citius.

The Citius is, thus, only accessible to the legal professionals. Lawyers can access Citius through a web portal (<http://citius.tribunaisnet.mj.pt>), using their user ID (professional email address) and password, and lodge the request electronically through the internet, at the website, by form or computer file. The recognition of the users is made through the digital certification, done by

⁹⁶ Defined as “transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration” – article 2, of the Directive.

means of PKI (Public Key Infrastructure), granting lawyers with the necessary digital signature that enables access to the Citius-H@bilus platform.

The user can file one single claim for an unlimited number of unpaid bills and can also file one single claim against more than one debtor. The user must indicate the name, address and fiscal number of the debtor, the type and reference of the unpaid bills that justify the request, the date of issuance, the maturity and the amount in debt, stating also the amount of interest due, and the competent court in case of statement of objection by the debtor. The amount of interests can be automatically calculated in the electronic form. In this phase and as long as debtor does not a defense, by means of a statement of objection, the user does not submit any documents supporting the claim.

With the delivery of the electronic form, the platform generates a unique identifying number, which allows for electronic payment of court fees by ATM or home banking. As seen below, the court fees in substantially lower than in traditional procedural cases.

By filling in this electronic form the creditor requests BNI to notify the debtor to pay, under penalty of said payment order becoming an enforceable title.

The procedure of the payment order by the BNI is fully electronic. Only the writ of notice to the debtor is sent by regular post. All notifications for lawyers are issued by email. If no objection is stated by the debtor, i.e in the case of unchallenged claims, an enforceable title that makes it possible to start an enforcement procedure is created, with absolutely no intervention of a judge.

If a statement of objection is lodged by the debtor or if it is not possible to notify the debtor, the proceeding must be presented to a judge and there is an electronic remittance of the payment order to the competent court. The statement of objection can be delivered either by paper, email or via Citius. Nonetheless, the statement of objection can only be lodged via Citius if the debtor is represented by a lawyer, since the platform is only accessible for legal professionals.

Once the electronic remittance of the payment order to the competent court occurs, a new judicial case is created. Thus, lawyers are no longer obliged to communicate with the court electronically. If they choose to do so, they will benefit from a reduction of the court fees (see below), will be able to track all the proceedings and will be notified by the court in the platform. If not, they are able to communicate with the court by paper, fax, email or regular mail. In short, only if both parts of the case (debtor and creditor) are represented by lawyers and only if both lawyers choose to communicate with the court electronically does the procedure, after the statement of objection, remain fully electronic.

5.2. *Development Strategy and Incentives*

In what concerns the use of ICT, the payment order procedure profits from a definitive advantage when compared to the standard civil procedure, and criminal procedure as well. Since its legal regime was modified simultaneously with ICT innovations, and with the direct intervention of the DGAJ-ITIJ team of development, its framework is remarkably – legally – accurate and adapted to the “tasks” of each actor (court clerk, registrar, lawyer) plays within.

The simplicity and speediness of this procedure poses as a true incentive to its use; nonetheless, the Government’s general strategy to attract plaintiffs and lawyers to the use of ICT was mostly monetary, i.e. by means of court fees. Not only fees for payment order procedures are substantially lower than for common civil procedures, the use of ICT started to be awarded with significant reductions.

This approach was used by the Ministry of Justice throughout different tenures to promote the payment order procedure, and also to convince lawyers to prefer electronic pleadings in all civil claims, thus promoting a global use of electronic pleadings and electronic procedure.

It was Decree-Law no. 324/2003, from the 27th of December, that introduced reductions to court fees on account of ICT use – thus changing a regime that was unaltered in such matters since 1996⁹⁷. An amended article 15 came to foresee, in its no. 1, a reduction of 1/10, offered to parts lodging all pleadings electronically (“by e-mail or other means of electronic transmission”, stated the norm).

But it was the new Regulation of Court Fees⁹⁸, from 2008, which brought definitive changes to the regime. This new diploma maintained the incentives to the use of electronic lodging, offering reduced value fees to users.

For procedures starting after the 20th of April 2009, when a pleading party lodges the first (or only) pleading electronically (i.e. using the recently introduced Citius), the court fee could be reduced in 25% (ie. due payment of 75% from whole value)⁹⁹. In the end of the procedure, if the pleading party lodged all pleadings electronically, 1/3 of the value paid was converted in prepayment of charges¹⁰⁰. Nonetheless, in the situations where the electronic pleading is compulsory¹⁰¹, the discount foreseen in article 6, no. 3, from the Regulation of Court Fees, will not take place.

⁹⁷ Decree-Law no. 224-A/96, from the 26th of November.

⁹⁸ Introduced by Decree-Law no. 34/2008, from the 26th of February.

⁹⁹ This discount occurred in obedience to Decree-Law no. 34/2008, from the 26th of February, with the amendments from Law no. 64-A/2008, from the 31st of December (article 156), and the Regulation of Court Fees (article 6, no. 3).

¹⁰⁰ As stipulated in Ordinance no. 1417/2003, from the 30th of December (article 22, no. 5).

¹⁰¹ As regulated by Law no. 64-A/2008, from the 31st of December.

This general reduction took place when an alternative to electronic pleading existed¹⁰²; in the other cases, such an incentive naturally ceases to be needed. The cases at stake comprised (1) the lodging of a payment order procedure pleading¹⁰³, and (2) the lodging of an enforcement procedure pleading¹⁰⁴, in both cases when the parties were legally represented.

On the other hand, the payment order procedure regime possesses specific regulation on this subject matter. As a matter of fact, in the case of payment order procedures, when the request was lodged electronically by the legal representative of the creditor party, the court fee value had a 50% reduction, as stipulated in article 6, no. 4, from the Regulation of Court Fees.

To have an idea of the values at stake, the payment order procedure is subjected to the following court fees, in accordance to articles 6, no.s 3 and 4, from the Regulation of Court Fees: (1) for values up to € 5,000, a fee of ½ uc (unit of account for court fees)¹⁰⁵; (2) for values from € 5,000.01 to € 15,000, a fee of 1 uc; (3) for values higher than € 15,000.01, a fee of 1 ½ uc.

Summing up, the Regulation of Court Fees foresaw that (1) for general civil claims the part lodging a pleading by electronic means would automatically benefit from a 25% value reduction; furthermore, if all pleadings were lodged electronically, 1/3 of the paid fee was considered prepayment of charges; (2) specifically for payment order procedures, electronic lodging would imply a reduction of 50%; in case the proceeding became a small civil claim procedure (in the terms seen in section 2), the paid value would be discounted.

¹⁰² See Law no. 64-A/2008, from the 31st of December.

¹⁰³ See articles 810, no. s 10 and 11, from the Code of Civil Procedure, with the amendments provided by Decree-Law no. 226/2008, from the 20th of November, and articles 2 and 3, from Ordinance no. 331-B/2009, from the 30th of March – which entered into force in the 31st of May 2009 and applied to procedures starting from said date. Notice how these norms basically transpose to the code of civil procedure article 3, no. s 1 and 4, from Decree-Law no. 200/2003, from the 10th of September, which was then revoked by article 21, §d), of Decree-Law no. 226/2008. Article 810, Code of Civil Procedure. Enforcement procedure pleading [...] Parts nominating a legal representative must lodge the enforcement pleading electronically, as defined in the previous paragraph. 11 - The party that, being subjected to lodging the enforcement pleading electronically, submits the pleading in paper is subjected to a fine, valued at ½ uc, unless states and proves the just impediment, in accordance with article 146.

¹⁰⁴ Submitting the payment procedure pleading when the creditor has a legal representative (see article 19, from the Annex to Decree-Law no. 269/98, from the 1st of March, with the amendments of article 10, from Decree-Law no. 34/2008, from the 26th of February. Article 19, lodging the payment procedure pleading, 1 - A lawyer or solicitor lodging a payment order procedure must do so electronically. 2 - The creditor, represented by a lawyer or solicitor, who fails to comply with the provisions of the preceding paragraph, is subjected to the immediate payment of a fine of ½ uc, unless states and proves the just impediment, in accordance with article 146. from the Code of Civil Procedure.

¹⁰⁵ “UC” is the acronym of the “unit of account” for court fees. Conventionally ¼ of the legal minimum wage, it is updated every three years, and is currently set at € 102.

Over the last couple of years, with the daily use of Citius – now virtually compulsory for all legal actors –, *stimula* for external use became less and less important. Recently, Decree-Law no. 52/2011, from the 13th of April, which amended the Regulation of Court Fees, came to significantly reduce the aforementioned benefits: (1) for civil procedures starting after the 13th of May 2011, only a part lodging all pleadings electronically benefits from a discount of 10%, and not 25% as before, on due court fees; (2) the reduction of 50% foreseen for payment order procedures is also eliminated for such procedures after that date. If the pleading part from a civil claim procedure lodges a subsequent pleading in paper after being granted reduced court fees for that proceeding, immediately loses the right to the discount and must pay back its value, being subjected to sanctions (i.e., a fine of between 1 uc and 5 uc) in case of violation of such rule.

In what specifically concerns the payment order procedure, since the use of Citius-BNI became compulsory for lawyers, further incentives to the use of ICT became virtually useless – hence the recent end to the reduction of court fees by the use of electronic pleading.

Also notice how the introduction of the 50% court fee reduction (April 2009) came *after* electronic pleading became compulsory for lawyers and Citius-BNI was introduced (March 2008), in what appears to be a somewhat misplaced strategy. One may say that, for payment order procedures, the strongest incentives for its use, as said above, are its (1) speediness (there is a pre-judicial procedure that avoids judicial intervention; if there is no opposition from the debtor, an enforcement title is created in a very short waiting time), (2) procedural simplification (there is a user-friendly pleading form that is filled in directly in the Citius-BNI platform), (3) and reduced court fees in comparison to civil procedure – even without reductions.

The factor of procedural simplification, connected to the use of an electronic platform and a fully-dematerialised procedure, appears to be of high importance to users: the effect of this governmental strategy is evident in the demand of payment order procedures, with an accentuated growth tendency in 2008, coinciding with the installation of Citius-BNI (and not with the introduction of a 50% court fee reduction, which started in April 2009). Comparing the former payment order procedure application to Citius-BNI, a major upgrade is evident, as the former was deemed “inaccurate” and “outdated” by its users: in the words of another interviewee, “it was definitely frozen in time”.

One may say that, since the use of ICT was by then compulsory for lawyers, and they are the main source of pleadings, a use incentive by court fees’ discount was undoubtedly less important than the other benefits. Effects in the demand is not visible in the figures: the high growth felt in 2008 fell back in 2009, and has been descending since that year, even if maintaining high demand figures.

5.3. *Impact of Citius on Users (Roles and Satisfaction)*

The implementation of an electronic procedure brought significant changes to the daily practice of all judicial actors, and is patent in the everyday life of a court of law, after an initial period adaptation. Both positive and negative aspects of Citius were at the time more extreme, as the habituation process was still taking place.

In what concerns the courts of law (in this case, meaning judges and public prosecutors), the use of Citius became compulsory after around one year of trial, when intensive training courses were offered to those officers. Unlike what happened to court clerks, which were not offered such possibility; however, these officers had the advantage of having an application exclusively designed for their activity, which offers them, in addition, an array of example-forms for the various acts to be undertaken, as well as an area for continuous training and problem-solving (*H@bilândia*).

Several positive aspects were immediately highlighted by users, of which the most unanimous were: (1) a simplified control of pending procedures waiting a decision, and a timely action on procedural acts by the registry; (2) a simplification of the work at the registry; (3) a simplification of the access to procedural acts by lawyers¹⁰⁶.

As major pitfalls, security issues and work form adaptations were the highest source of concerns back in 2009. The Judges' Association denounced that, six months after Citius-Judges became compulsory, several judges reported health problems (posture, vision), which users directly connected to the systematic use of Citius (which meant using the computer almost all time), and 79% of consulted judges considered there was an increase (up to 114% in some cases) in the time spent with daily tasks; this increase was mostly due to inadequate equipment, slow actions (due to excess traffic, or the more prosaic multiplication of actions to fulfil a task otherwise simple. For instance, the case of an electronic signature, for which five different actions must take place, instead of a simple – handmade – gesture¹⁰⁷.

In terms of security¹⁰⁸, 60% of the judges consulted by their trade union association back in 2009 did not trust Citius in terms of liability and security¹⁰⁹.

¹⁰⁶ ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf. Accessed 30 March 2012.

¹⁰⁷ ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf. Accessed 30 March 2012.

¹⁰⁸ For technical detail on the subject of security, see section 4.

¹⁰⁹ ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf. Accessed 30 March 2012.

However, the High Judicial Council (Communication no. 2/2009) and the Public Prosecution Office (Communication from the 2nd of March, 2009) considered the system to be “safe enough”, having both entities cooperated with the Ministry of Justice and being provided guarantees deemed as sufficient; and the Bar Association officially highlighted “*[the Bar itself] guarantees the safety of the system, ensuring it is not possible to alter pleadings by anyone without said changes being thoroughly registered*”¹¹⁰.

In spite of common worries about security still existing among users, it appears the responsible entities officially maintain their trust in the system; minor breach reports conveyed by professional associations and media, and a bluntly negative audit in terms of security¹¹¹ (Critical Software, 2009 and 2010¹¹²) are overlooked as light and unavoidable in all systems, especially considering civil procedure is by nature public.

A few of the current conception problems that affect the users’ daily practice are maintained since the introduction in 2009, such as (1) difficulties in consulting the dematerialised proceeding (i.e. opening several pdf documents is considered by some to more complicated than browse a sole paper file); (2) impossibility of consulting the proceeding during trial audiences; (3) impossibility of working in Citius outside the court premises (i.e. taking work home to deal with more complex cases with added time is now impossible); (4) an incipient word processor (that does not allow complex formatting, footnotes, grammar and spell check, among other flaws); (5) not so timely technical support¹¹³.

¹¹⁰ OA. (2009.) Ordem garante segurança do Citius. Boletim da Ordem dos Advoga, no. 51. Lisbon: Ordem dos Advogados (pp. 12-14).

¹¹¹ Critical Software (2009) ACitius. Relatório de Auditoria ao Citius. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-ACITIUS-2009-RPT-02393-relatorio-final.pdf>. Accessed 30 March 2012, and Critical Software (2010) ACitius. Relatório de Auditoria – Aditamento. <http://72.29.69.19/~ejal/images/stories/arquivos/artigos/CSW-2010-RPT-02371-aditamento-auditoria-acitius.pdf>. Accessed 30 March 2012.

¹¹² See section 5.

¹¹³ For further detail, see published stances and evaluation reports such as ASJP (2009) Primeiros Seis Meses de Utilização do Citius. Inquérito de Avaliação à Funcionalidade e Eficiência. Relatório Preliminar. http://72.29.69.19/~ejal/images/stories/arquivos/artigos/relatorio_preliminar_citius.pdf. Accessed 30 March 2012; OA. (2009.) Ordem garante segurança do Citius. Boletim da Ordem dos Advoga, no. 51. Lisbon: Ordem dos Advogados (pp. 12-14); Vidal, R. M., J. F. e Cunha, M. P. Monteiro, J. P. Faria, L. Amaral, P. C. Henriques and P. Gomes et al. (2009.) Relatório final comparativo e valorativo sobre os métodos de trabalho resultantes da introdução do processo electrónico do projecto Citius e da utilização das aplicações informáticas Citius e Habilus. Oporto: FEUP/ITIJ; Pereira, J., R. Timóteo. R (2010.) ‘A criação e gestão do sistema informático dos Tribunais na computação das Tecnologias da Informação.’ Proceedings of the “VII Encontro Anual do Conselho Superior da Magistratura”. http://www.csm.org.pt/ficheiros/eventos/7encontroscsm_joelpereira.pdf, Accessed 30 March 2012; Marçal, A. (2011.) ‘Informatização da “Justiça”’. Proceedings of the ‘Conferência informatização da justiça: problemas e soluções’. Sintra: SFJ (fac simile).

On a more technical level, it was also noticed that the Citius applications were not fully communicating with one another, creating several difficulties in everyday practice, such as: (1) feeble import-export of data (in terms of court fees, for instance); (2) the judge/public prosecutor unable to know if his/her order is actually enacted by the registry; (3) the judge/public prosecutor unable to know when the proceeding was last accessed and altered; (4) the judge/public prosecutor does not qualify his/her own pleading or judicial order, and so the qualification by the court clerk may be incorrect – if this possibility existed in their Citius application, the court clerk would be freed from this task, and the possibility of flawed classification would be eliminated¹¹⁴.

5.3.1. *Changes in daily activity*

Changes in daily tasks undergone by the different actors can be classified as: (1) automation – tasks that no longer require human intervention; (2) process reshaping – procedural flow from the tasks operated by different actors is altered by new functionalities of the system; (3) redistribution of competences and intervention – task distribution altered by new functionalities of the system.

As evaluated in a mid-2009 diagnosis process (demanded by the DGPI to a private consultant), Citius had a high impact in terms of redistribution of competences in what concerns the starting pleading and subsequent pleadings (excluding trial); a similar degree of changes was observed in terms of automation and process reshaping for the same procedural moments. The trial phase was one where Citius had lowest impact, mostly because it does not involve much written documents; nonetheless, light changes in terms of automation and process reshaping were still detected¹¹⁵.

In terms of timesaving characteristics, this evaluation detected a net gain of up to 19 days per procedure. Most was saved between phases and tasks, by reducing waiting time while one task is completed and the following started; in terms of beneficiaries, the majority of time gain was profited by court clerks, while both pleading parts and judges experienced added time for most of their tasks¹¹⁶. This evaluation meets the dissatisfaction in terms of new

¹¹⁴ For further detail, see for instance Marçal, A. (2011.) ‘Informatização da “Justiça”’. Proceedings of the ‘Conferência informatização da justiça: problemas e soluções’. Sintra: SFJ (fac simile) and Vidal, R. M., J. F. e Cunha, M. P. Monteiro, J. P. Faria, L. Amaral, P. C. Henriques and P. Gomes et al. (2009.) Relatório final comparativo e valorativo sobre os métodos de trabalho resultantes da introdução do processo electrónico do projecto Citius e da utilização das aplicações informáticas Citius e Habilus. Oporto: FEUP/ITIJ.

¹¹⁵ KPMG (2009) Diagnóstico à eficiência e eficácia processual nos tribunais judiciais antes e após implementação do suporte electrónico http://72.29.69.19/~ejal/images/stories/arquivos/artigos/KPMG_Diagnostico.pdf. Accessed 30 March 2012.

¹¹⁶ For further detail, see KPMG (2009) Diagnóstico à eficiência e eficácia processual nos

time-consuming tasks that was conveyed by judges, as reported above, and shows how the system was truly developed with the work of the registry as matrix.

Applications were indeed designed *by* and *for* court clerks and registrars. As a drawback, this design makes Citius-Judges and Citius-Public Prosecution less adapted to these professionals' activities. During fieldwork, the dissatisfaction of some actors was noted, which consider that the applications, as based on H@bilus, are still more appropriate to the work of the registry than to the work of the judge and the public prosecutor. Nonetheless, some functionalities have more recently been adapted to the judges and public prosecutors' activities, in accordance to a series of requests and suggestions collected by the Ministry of Justice. These opinions were collected either through the contacts of the Citius helpdesk and direct contact "with hundreds of judges and public prosecutors" [ministerial communication].

Since the implementation of Citius, practice in some registries has been showing an evolution towards specialisation, profiting both from the use of ICT in an increasingly dematerialised process, and the surrounding climate of change. Court clerks from a registry observed during fieldwork divided tasks among them, so that one individual or a small group will deal specifically with one, or few, similar acts – thus specialising in specific tasks. In this registry, teams specialised in precise acts (e.g. writs of summons and writs of notice, trials, etc.) operate a strict protocol of sequential actions, and the final result is a more efficient registry, resembling an assembly line of administrative and procedural acts that make a judicial proceeding. Nonetheless, said changes are not widely spread. Furthermore, they are not grounded on legal norms: not only these registries walk ahead of the others, they run ahead of written law, thus making their practice *de facto* admirable but in practice not legally grounded.

All acts are made within the digital proceeding lodged in the Citius platform. In principle, both proceedings – digital and conventional/paper – are equal, one and the same: (electronic) pleadings and other procedural documents are printed; authentic documentation added as proof is scanned. Still, some minor administrative acts (such as re-schedulings) are considered by various actors to be unnecessary in paper, thus making the digital version more complete. This practice, unveiled during fieldwork, is not homogenous, though.

The decision (*to print or not to print*) belongs to each judicial actor, although the Ministry of Justice (DGAJ-ITIJ) suggests that the following documents only exist in the digital proceeding: minor pleadings and other docu-

mentation, related to work at the registry and similar doings, delivered by lawyers through the Citius platform; minor judicial orders related to work at the registry and similar doings, delivered by judges and public prosecutors; acts of court clerks that do not request the signature of the parties, legal representatives, or third persons. The aim is that the paper proceeding becomes smaller, containing only the major pleadings and documents with odd formats/objects that cannot be digitalised, as well as the pleadings and documents considered to be most important for the judge's decision. A major goal is that the paper proceeding becomes easier to use, with coloured markers that indicate the most important pleadings of the proceeding¹¹⁷.

Another finding was that since some actors do not fully trust ICT, there is a practice – more common in the first years – of having everything in paper form “just in case something happens”, i.e. in an attempt to protect both the information within the proceeding and the solid proof of one's own actions and work.

Furthermore, since parties need a paper proceeding to consult, when not accompanied by a lawyer, a total “dematerialisation” appears to be yet distant. During fieldwork, a solution for this specific matter was advanced: to provide a computer screen at the attending area so that parties are able to consult the digital proceeding *in loco*.

6. Discussion and Evaluation

The Portuguese case poses as an example of a process led and controlled by the executive, with ministerial bodies holding the monopoly of ICT implementation in justice. The judiciary keeps either an advisory (Higher Judicial Council and Public Prosecution General) and/or an instrumental role in what concerns judicial data and, in the case of Bar Professionals, the applications necessary for their actors' activity. An actual strengthening of the Higher Judicial Council and Public Prosecution General's intervention is still a controversial topic. Intervention of external entities, especially private, is scarce and carefully measured; it mostly poses as an option for the associations of Bar professionals, and within the *accessory* systems from lawyers and solicitors.

While H@bilus has not encountered visible resistance from court clerks and registrars, the same cannot be said about the Citius applications for judges and public prosecutors. The first were created and developed by the same professionals that were meant to use it, which poses as a strong advantage in terms of both adequacy and accession. In terms of daily use, Citius-Judges and

¹¹⁷ The markers follow the matrix shown in the annex.

Citius-Public Prosecution appear to be less adapted to these professionals' activities than Citius-H@bilus, but the feebler participation of representatives of these professional bodies cannot be negligible in their process of acceptance/mistrust. Security concerns and consequent mistrust also appear to be current among judges and public prosecutors, mostly in the beginning, but still with occasional outbursts. Nonetheless, their High Councils, together with the Bar Association, kept a supportive and trustworthy position towards Citius.

The different degree of participation of the various judicial actors in the building of ICT tools to the justice systems seems to play a significant role on the implementation of such tools by their users. Since the H@bilus was specifically addressed and conceived by court clerks it had an undisputed acceptance among them. The lack of participation of judges and public prosecutors led to, at least initially, to its rejection. Lawyers, on the other hand, as mentioned before, were "forced" to adapt to the new circumstances, mainly through the benefits in court fees.

Another criticism concerning the low participation in building the system to be pointed out relates to the limited exchange of information on the technological functioning of the system. This resulted in an excessive reliance of a small team of experts to perform all the technological updates needed.

Still, the benefits brought by Citius, directly and indirectly, in terms of efficiency and effectiveness of the judicial procedure appear to be currently indisputable.

Developing the payment order procedure shows how a purpose of functional simplification resulted in a solid system. The payment order procedure poses as an example of functional simplification within the Portuguese civil justice system, at various levels. Back in the 90s, "solely" on account of a simplified procedure: a non-jurisdictional nature (up until there is no opposition to the claim) and a reduced *iter processualis* that provides an enforcement title on a short period of time; more recently, the installation of the BNI simplified the jurisdictional building of competences with clear benefits for all intervenients, thus providing for both centralization and staff specialization. Such an evolution was made possible by the ductility of its legal framework, whose last amendments have been made simultaneously and in direct connection to Citius-BNI, and by the same development team. This integrated development process originated a set of procedural rules and a computer application that work as true symbionts, all made real in a tailored registry.

With Citius, as well as its ancestors GPCível and H@bilus, technological developments came before the actual legal change – at first even in spite of no legal change. H@bilus was installed in all registries by 2005, but the Citius system itself, from which Citius-H@bilus is a core application, was only legally introduced two years later. The absence of a pre-existing insti-

tutional and legal framework did not seem to cause major contingencies, mostly due to the centralization of competences in ministerial bodies; however, the recent clarification of the competence distribution between DGAJ and ITIJ, strengthening the latter's role, made decision-making and actual implementation swifter. Light legal provisions in what concerns system specifications, on the other hand, mean that adaptations and reforms are not bared by an over-specific framework. As for the absence of an adapted set of procedural norms, it seems that the case of civil procedure is somewhat of a blunder, with a feasible set of amendments in order to simplify the *iter processualis* of its various forms of process that did not take place. Further profiting from dematerialization, in terms of procedural simplification, is the case of the payment order procedure, but not traditional forms of process.

In terms of development, the Citius system, as it currently exists, does not have much room to evolve due to technological constrictions, since it is based on an outdated technology. Nonetheless, Citius Plus came to respond to such contingency, and could be expanded to all courts from the civil jurisdiction. A common platform for the judiciary, as foreseen in the Action Plan for Justice in the Information Society, however, poses as a more realistic future for ICT systems in justice. Either way, in terms of institutional and normative framework, current legislation seems permeable enough to (allow) change. It has been proven in the past that technological evolution does not actually need to be preceded by a – strong – building of specific ruling institutions and laws. Norms describing how the system must operate are not detailed, which may also give latitude to further changes.

7. Method

The Portuguese team carried out the research through a combination of qualitative and quantitative methods, in accordance to the outlined methodological framework, here adapted to national specificities. The starting point was the collection and study of literature, comprising relevant doctrine and studies (national and international) and legislation (national and European). This documental analysis was deepened by means of collection and statistical treatment of data concerning the payment order procedure's use, several interviews to key actors (including ministerial officers, court clerks, registrars, judges and public prosecutors), registry observation, and a focus group with experts (gathering practitioners, academics and researchers).

8. Acronyms

BNI	Balcão Nacional de Injunções	National Desk for Payment Order Procedures
Citius	Programa de Gestão Processual de terceira geração	Third generation Procedural Management Program
Citius BNI	Aplicação para o Balcão Nacional de Injunções	Computer application for civil small claims procedure
Citius Plus	Programa de Gestão Processual de terceira geração	Fourth generation Procedural Management Program
Citius-H@bilus	Aplicação para funcionários judiciais	Computer application for court staff
Citius-Judges	Aplicação para magistrados judiciais	Computer application for judges
Citius-Net	Aplicação para advogados e solicitadores	Computer application for lawyers and solicitors
Citius-Public Prosecution	Aplicação para magistrados do Ministério Público	Computer application for public prosecutors
CPEE	Comissão para a Eficácia das Execuções	Commission for the Efficacy of the Enforcement Procedure
CS	Câmara dos Solicitadores	Chamber of Solicitors
CSM	Conselho Superior da Magistratura	Higher Judicial Council
DGAJ	Direcção-Geral de Administração da Justiça	Directorate-General of Justice Administration
DGPJ	Direcção-Geral da Política de Justiça	Directorate-General of Justice Policies
GPCível	Programa de Gestão Processual Civil de primeira geração	First generation Civil Procedural Management Program
GPESE/SISAAE	Gestão Processual de Escritórios dos Solicitadores de Execução/Sistema Informático de Suporte à Actividade do Agente de Execução	Procedural Management for the Offices of Enforcement Solicitors/Support Computer System for the Activity of the Enforcement Agent
H@bilus	Programa de Gestão Processual de segunda geração	Second generation Procedural Management Program
ICT	Tecnologias de Informação e Comunicação	Information and Communication Technology
IGFIJ	Instituto de Gestão Financeira e de Infra-Estruturas da Justiça	Institute of Justice Statistics and Informatics
ITIJ	Instituto das Tecnologias de Informação na Justiça	Institute of Information Technologies in Justice

LOFTJ	Lei de Organização e Funcionamento dos Tribunais Judiciais	Act on the organization and functioning of judicial courts
OA	Ordem dos Advogados	Bar Association
PGR	Procuradoria-Geral da República	Public Prosecution General
SGBD	Sistema de Gestão de Base de Dados	Management system database
SINOA	Sistema de Informação Nacional da Ordem dos Advogados	National Information System from the Bar Association
SITAF	Sistema de Informação dos Tribunais Administrativos e Fiscais	Procedural Management Program for Administrative and Tax Courts
TribNet	Aplicação complementar de acesso ao público	Complementary application for access to the general public

9. Annex

9.1. Section 1

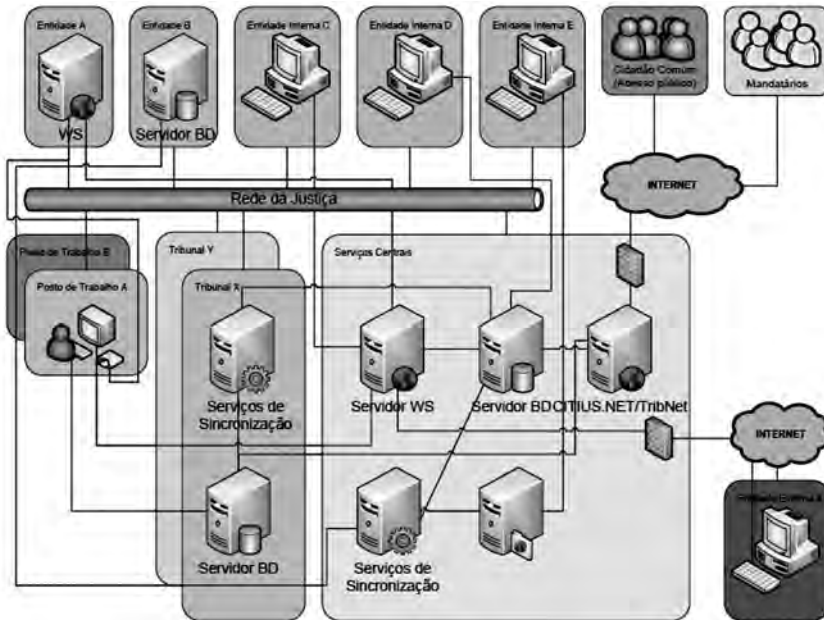
Power assignment: the outline (1&2)

broad policy conception	development	implementation and enforcement	management and supervision	advisory	judicial data management	training	auxiliary systems
DGPJ	DGAJ	DGAJ	CSM	CSM	CSM	DGPJ	OA
IGFJ	ITU	ITU	PGR	PGR	PGR		CS
			DGPJ	OA	DGPJ		
			CCGDRSJ	CSM	CCGDRSJ		
			CAPCP	CCGDRSJ	CAPCP		

	DGAJ		development	implementation and enforcement	management and supervision			
executive	ITU		development	implementation and enforcement				
	DGPJ	broad policy conception			management and supervision		judicial data management	training
	IGRG	broad policy conception						
judiciary	CSM				management and supervision	advisory	judicial data management	
	PGR				management and supervision	advisory	judicial data management	
	DA					advisory		auxiliary systems
	CS					advisory		auxiliary systems
advisory commissions	CAPCP				management and supervision	advisory		
	CCGDRSJ				management and supervision	advisory	judicial data management	

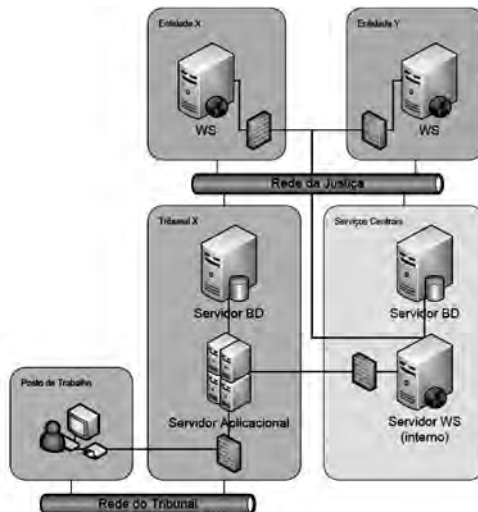
9.2. Section 2

Citius system: outline



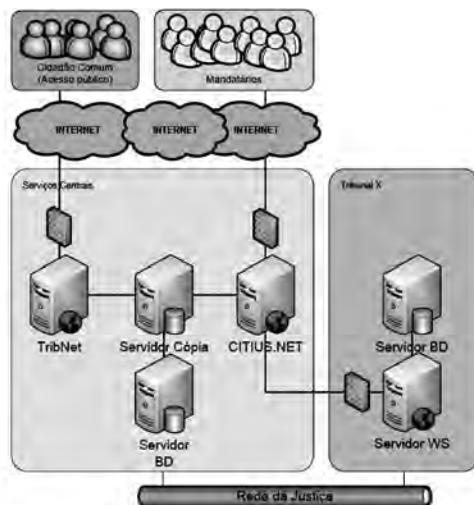
Critical Software, 2009: 33

Use of central services



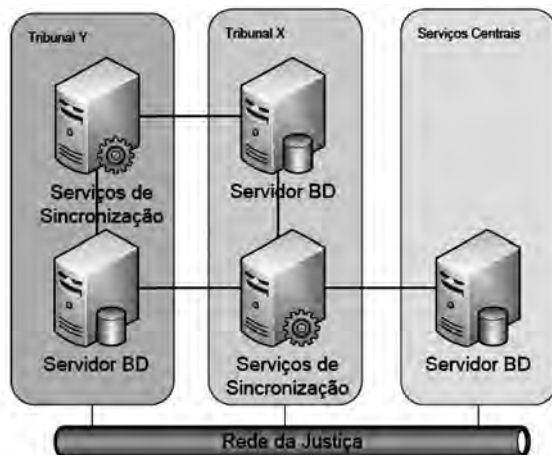
Critical Software, 2009: 42

Central services: suggested 3-level architecture



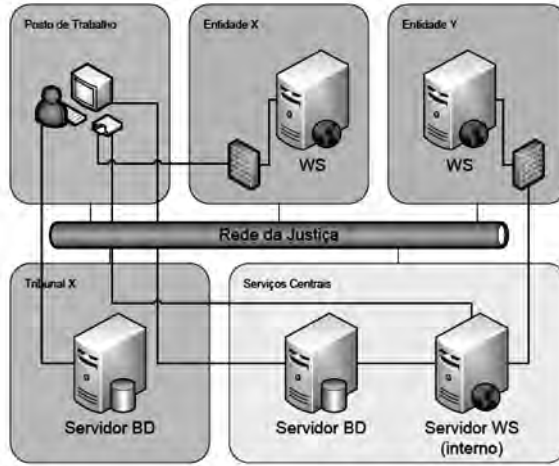
Critical Software, 2009: 45

Synchronisation of information



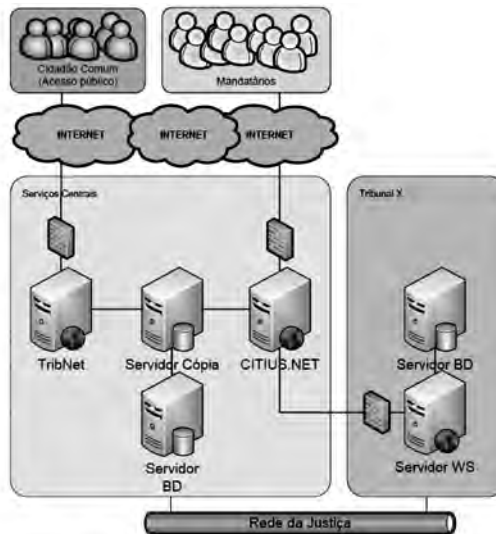
Critical Software, 2009: 39

Communication between H@bilus and other systems

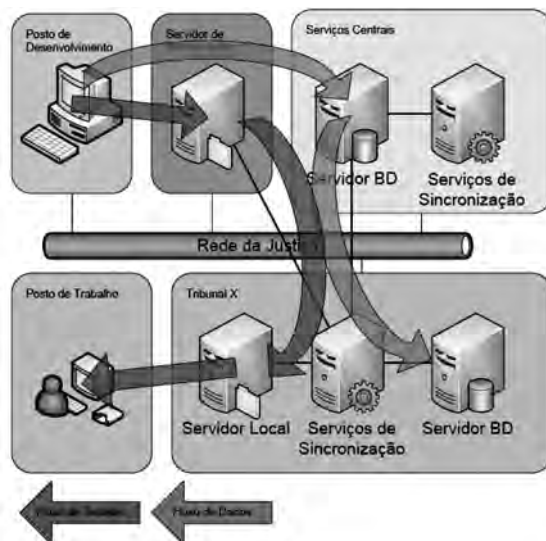


Critical Software, 2009: 41

Communication between external entities and H@bilus

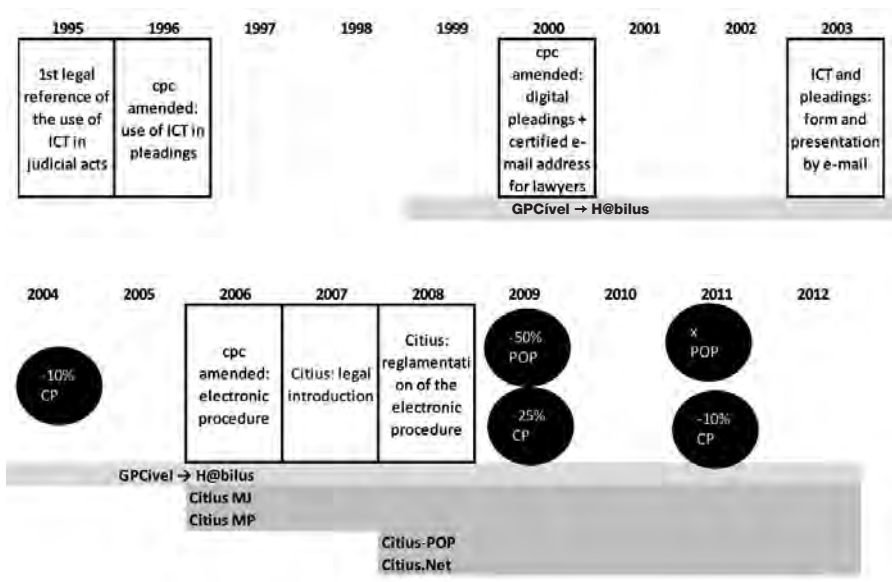


Critical Software, 2009: 46

Software updates*Critical Software, 2009: 48*

9.3. Section 3

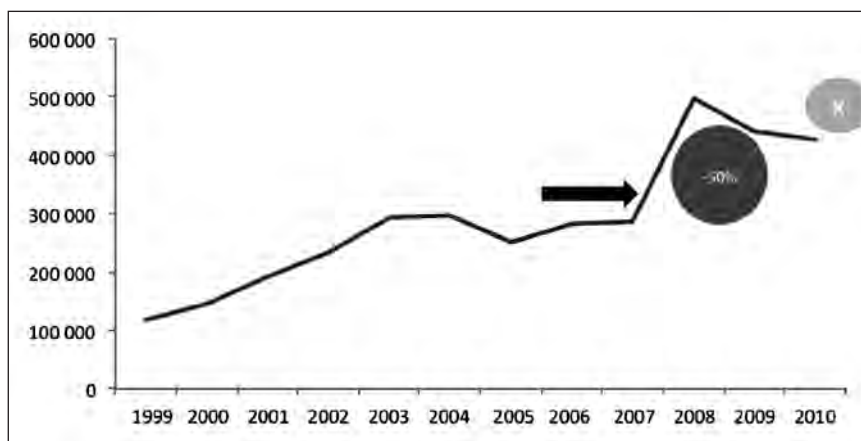
Legal and technological evolution (w/ court fees' incentives)



Entered Payment Order Procedures
*National Figures, Period 1999-2010*¹¹⁸

year	entered
1999	118.173
2000	146.802
2001	190.511
2002	232.564
2003	293.958
2004	298.382
2005	252.019
2006	283.406
2007	285.021
2008	498.153
2009	441.901
2010	427.134
total	3.468.024
















Entered Payment Order Procedures
*National Figures, Period 1999-2010 (w/ Citius-POP + court fees)*¹¹⁹



¹¹⁸ Source: official statistical data from the Ministry of Justice (DGPJ), available at <http://www.siej.dgpj.mj.pt/>.

¹¹⁹ Source: official statistical data from the Ministry of Justice (DGPJ), available at <http://www.siej.dgpj.mj.pt/>.

Proceeding markers: general matrix

Designação do separador	Cor
Petição/Requerimento Inicial	
Contestação/Oposição	
Réplica/Resposta	
Tréplica/ Articulado Superveniente	
Despacho Saneador	
Actas (Audiências Preliminar e Julgamento, Conferências e Assembleias)	
Acórdão/Sentença/Saneador Sentença/Despacho Homologatório/Decisão de incidente ou medidas cautelares	
Desistência/Transacção/Acordo	
Relatório Pericial/Social/do Administrador de Insolvência	
Auto de Penhora/Arresto/Arrolamento/Relação de bens	
Adjudicação/Consignação de Rendimentos/Venda	
Alegações de Recurso	
Mapa de Partilha	
Declarações de cabeça de casal	
Plano de Insolvência	

Chapter 7

The case of Trial On-Line in Italy

Davide Carnevali, Andrea Resca

1. Introduction

In Italy, massive investments in ICT projects have been made to improve the so-called “quality of justice”. It was considered the only way out (and also the “one best way”) to take out justice from a never-ending state of crisis. This is not ensued. The applications that currently work in judicial offices have not changed or affected the judiciary functioning (such as structures, procedures, working practices, way of thinking, etc.). Considered as *plug n’ play tools*¹, technology applications have been simply and usually “placed on” the current judicial environment, largely losing their power of change and benefits.² The good results of innovation related to the adoption of a new technology are very intricate processes: a long trip, not linear, not always appropriate, and very costly at the beginning. This is even truer if the complexity of technology to manage increases, such as in the application of e-justice (i.e. more technical specifications, more rules, more organizations and institutions involved, more interoperability needs, etc.). In order to affect an improvement process, a strong involvement of the entire context (institutions, organizations, judges, court staff, court users, etc.) is needed. They should take care and “cultivate”³ the change in day-by-day operations, according to an incremental approach.⁴ Another important factor of success of a worthwhile ICT adoption is the attainment of a “critical mass” of users. “As the number of

¹ Fabri M (2009) E-justice in Finland and in Italy: Enabling versus Constraining Models. In: Contini F & Lanzara GF (eds) ICT and Innovation in the Public Sector. Basingstoke, Palgrave, pp 115-146.

² Contini F, Cordella A (2007) Information System and Information Infrastructure Deployment: the Challenge of the Italian e-Justice Approach. The Electronic Journal of e-Government, 5(1): 43-52.

³ Dahlbom B, Mathiassen L (1993) Computers in Context. The Philosophy and Practice of Systems Design. Cambridge, MA, Blackwell Publishers.

⁴ Fabri M (2009), see footnote 1.

users grows, technology tends to get momentum, and it starts growing through a ‘self-reinforcing’ process”.⁵

In this regard, the paper explains a true experience of e-justice in Italy. The Civil Trial OnLine (TOL) project – the word “trial” is the conventional name given to the project even if the right word to be used is “proceeding” – is the most important ICT programme developed over the last ten years by the Ministry of Justice, and because of this has collected the highest investment of resources. TOL is a project on which the greatest expectations were placed as the “ultimate source of change” to overcome the chronic crisis of civil justice in Italy. However, the results indicate that we are just at the beginning.

The Trial On-Line project aims to a “full e-filing system”, which means a complete electronic management of all civil proceedings from case filing to disposition up to the ensuing enforcement. The system also provided public access (with some restrictions) to the data collected in the court CMSs (Court Management Systems) databases, electronic notification and communication to and from the court, any payments of amounts due and court fees.⁶ In particular, TOL is a double and parallel story of e-filing and public access, very entangled but clearly differentiated. The e-filing part of the story was planned as a whole system and starts being operational in 2006, but as an e-filing for payment orders only. The public access part of the story, known as PolisWeb application, is still operative since the beginning, although it has passed through a multitude of architectures.

The whole story will be told in a chronologic way, with an in-depth analysis in order to better understand some specific areas. The source of data comes from several interviews of key actors of the story located at governance and operative level. Some data were collected during observations on-site. All this data collection was embedded in a solid literature produced in this field in the last twenty years, mainly by the IRSIG-CNR researchers, during the course of the European Commission projects.

After, a general overview of the environment in which TOL has been developed will be presented: from the governance of ICT to the critical infrastructures, passing through the legal framework. The situation before TOL will also be described and then the TOL system – architecture and laboratories in place – will be displayed in all releases. A remarkable attention will be given to the first operating case, the “Tribunal of Milan”, with a dedicated Section. In the concluding remarks, some issues for discussion will be presented, as an initial assessment to anticipate the forthcoming developments.

⁵ Hanseth, O, Aanestad M (2003) Design as Bootstrapping networks. On the Evolution, of ICT Networks in Health Care. *Methods of Information in Medicine*, 42, 385-391.

⁶ Contini F, Fabri M (2003) Judicial Electronic Data Interchange in Europe. In: Fabri M, Contini M (eds), *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*, Bologna, Lo Scarabeo, pp 1-26.

2. The TOL environment

In order to better understand the characteristics and functioning of TOL, it is necessary to define the organizational, legal and technological frameworks, in which it was created and developed. Furthermore, this context was not static forever. It was an environment that changed overtime; partly because of some critical issues related to the dynamics of ICT innovation, highlighted by the TOL project itself.

2.1. Governance of ICT: an overview

Until 1993, the ICT development did not follow a specific pattern, but it was strongly dependent on open choices of different courts, case-by-case endorsed and founded by the Ministry of Justice.⁷ A central governance of ICT was possible thanks to the lead of an independent authority for public administration created in 1993 (Law L. 39/1993), known as *Autorità per l'Informatica nella Pubblica Amministrazione* (AIPA). The AIPA authority was established to promote, coordinate, plan and control the development of information systems in all branches of the public administration (ICT Three-Years Plan), to provide for standards, ICT regulations, and training. In 2001, the function of AIPA was included in the new Ministry of Innovation and Technology (Legislative decree D.Lgs. 196/2003) in an IT centre called *Centro per l'informatica nella Pubblica Amministrazione* (CNIPA). In 2009, the CNIPA centre was changed in a new structure: DigitPA (Legislative decree D.Lgs. 114/2009). DigitPA is a non-economic public institution under the control of the new Ministry of Public Administration and Innovation (the union between the former Ministry of Public Administration and Ministry of Innovation and Technology). The tasks of DigitPA are quite similar to the others previous institutions, but more emphasis now is putted in the development of a new policy known as “digitalization of public administration” inside a new “e-Government Master Plan”.⁸

The law that established the AIPA also provided for the creation of IT general directorates within each ministry, including the Ministry of Justice. The goal was to connect the single parts of the administration with the AIPA authority and afterwards with the following ICT institutions (CNIPA and DigitPA). The IT Directorate of the Ministry of Justice (MJ-IT Directorate

⁷ Carnevali D, Contini F, Fabri M, Velicogna M (2007) Technologies for the Prosecution Offices in Italy: the tensions between legacy and creativity. In: Fabri M (ed), *Information and Communication Technologies for the Public Prosecutor's Offices*, Bologna, Clueb, pp 229-281.

⁸ Carnevali D (2010) Vent'anni di informatica negli uffici giudiziari: un percorso in (chiaro)scuro. In: Carnevali D (ed) *Soggetti smarriti. Perché innovazione e giustizia non si incontrano (quasi) mai*, Milano, Franco Angeli, 101-167.

General) known as *Direzione Generale per i Sistemi Informativi Automatizzati (DGSIA)* has more than 500 people, ICT experts and administrative personnel, distributed at central level and locally in 13 regional offices (CISIA) spread all over the country. The MJ-IT Directorate General executive position is always held by magistrates, as in almost every executive position in the Italian Ministry of Justice. The strategy adopted still follows a “top-down approach”. It decides on ICT applications and their use is mandatory for courts and prosecutors’ offices across the country, without taking into account the local context.⁹

In addition, the Italian Superior Council of the Magistracy provided for the creation of two so-called ICT magistrates (for criminal and civil sector) in each judicial district. Their tasks were to coordinate, stimulate and evaluate ICT initiatives proposed in their own district. The real meaning of this decision is related to consider ICT a critical issue that cannot be delegated solely to the Ministry of Justice. Magistrates perceived ICT as a tool able to change the present power structure of the judicial system and the sphere of their own independence, as well.¹⁰ The duality of the governance of the judicial system governed by the Ministry of Justice (typically managed by judges) and the Superior Council of the Magistracy, without a clear distinction of responsibilities and accountabilities makes almost very difficult to manage the justice system and also the policy making process.¹¹

2.2. Rules of ICT and the legal framework

Another issue to be considered to understand the dynamics of ICT innovation in the judiciary is the complexity and the level of detail of rules that prescribe how technology has to operate.¹²

Italy was the first country in Europe to have a specific and entire legislation on the application of ICT for the public administration, in particular electronic document and digital signature¹³ regardless of functioning applications and mostly in the justice sector.¹⁴ The proliferation of rules was also led by reasons of “sensitivity” and “security”, which justified the production of further rules deemed necessary to adapt general rules to judicial proceedings.

⁹ Fabri M (2009), see footnote 1.

¹⁰ Fabri M (2009), see footnote 1.

¹¹ Contini F, Cordella A (2007), see footnote 2.

¹² Contini F, Mohr R (2008) *Judicial Evaluation, Traditions, Innovations, and Proposal for Measuring the Quality of Court Performance*, Staarbrucken, VDM.

¹³ Villecco A (2007) *Le notificazioni e le comunicazioni telematiche nel processo civile*, Bologna, Geditedizioni.

¹⁴ Fabri M (2009), see footnote 1.

Emphasis that can be summarized in the sequence: higher sensitivity of data, increased security needs, more needs for legal constraints. This excess of risk prevention had the effect often of paralyzing the innovation itself.¹⁵

This led to a hypertrophic regulation mainly driven by “legal formalism” instead of “legal pragmatism”, which aims to facilitate the achievement of concrete goals.¹⁶ The unwieldy and endless regulations were introduced to make possible and legal use of judicial electronic documents, electronic folders, and the electronic data and documents interchange, but it was oversized to actual needs even if coherent with formal concerns.

Until the '90s, judicial offices were forced to keep also a hard copy of the electronic case tracking systems. The Ministerial decree DM 27 March 2000 was necessary to certify the full legality of electronic case tracking and management systems when equipped with certain technical and procedural features (Ministerial decree DM 24 May 2001). This did not change the traditional approach to record of judicial offices. The registers have been paper-based partially or printed in hard copy for a long time.¹⁷

When was necessary to define the concept of electronic document and regulate in advance the electronic data interchange, specifically to involve external users, was started a massive production of rules. In 1997, the Presidential decree DPR 513/1997 introduced the concept of the electronic document and digital signature that allowed the electronic exchange of documents among public sector agencies, private organizations and the general public. However, only after the adoption of technical rules for working procedures would be possible to use it. The first technical rules were introduced in 1999 with the Decree of the Council of Ministers (DPCM 8 February 1999), which regulated the use of the “strong” digital signature with a public key infrastructure (PKI), and set out rules and standards for establishing certification authorities. In 2000, the Parliament legislated an act (Presidential decree DPR 445/2000) for reordering the entire related previous legislation (including the DPR 513/1997) regarding the documentation in the Public Administration. This act seemed to be not applicable for regulating the justice sector. So the Presidential decree DPR 123/2001 allowed the use of such electronic means for civil, administrative, and fiscal proceedings. In 2002, the Legislative decree D.Lgs. 10/2002 changed the rules embedding the European Directive 1999/93/CE provisions. Those provisions allowed using a “lighter” electronic signature instead of digital signature (PKI). In addition, the Presidential decree DPR 196/2003, known as the “Privacy Code”, was enacted. It heavi-

¹⁵ Hanseth O, Ciborra C (2007) *Risk, Complexity and ICT*, Cheltenham, Edward Elgar Publishing. Carnevali D (2009) *E-Justice and Policies for Risk Management*. In: Cerrillo A, Fabra P (eds) *E-Justice: ICT in the Court System*, Hershey PA, Information Science Reference, pp 19-35.

¹⁶ Fabri M (2009), see footnote 1.

¹⁷ Carnevali D (2010), see footnote 8.

ly engraved on rules of access and security. It meant to provide other specific ministerial regulations for the judiciary, such as the new Ministerial decree “Technical rules for electronic means in civil proceedings (Ministerial decree DM 14 October 2004)”. Again, the Law L. 15/2005 added new administrative procedures relating to electronic transmissions. In the same year, the Parliament enacted the so-called “Code of Digital Administration” (D.Lgs. 82/2005), which contains most of the previous dispositions related to the use of electronic means in public administrations. So it was necessary to enact another technical rule for the document type definition (Ministerial decree DM 15 December 2005). The Legislative decree D.Lgs. 40/2006 also introduced the option of sending documents from the external users to the court by certified mail (introduced into the law with the Presidential decree DPR 68/2005), very important for the development of the last part of TOL system story. Even the art. 51 of Law L. 133/2008 allowed the court notifications on-line too. It was necessary to provide also a special provision for applying these rules (certified e-mail for transactions and notifications on-line) to TOL system (Presidential decree DPR 193/2009). Consequently, it appears quite clear the enormous difficulties to apply this mess of rules in day-to-day operation of judicial offices.¹⁸

These rules of ICT designed a very complex legal framework and not without any contradictions. Even the jurists find difficult to work in this tangled web of rules. This complexity yet replicates the cumbersome nature of the judicial proceeding and legal system, one of the least efficient in Europe. Moreover, there are several kinds of procedures that depend on different civil proceedings (employment law, divorce, forced sales, payment orders, etc.). It is another factor of complexity in designing and implementing ICT applications, with specific reference to electronic data interchange.¹⁹

2.3. Main ICT infrastructures for courts and lawyers

Since 1995 the public administration has a public network infrastructure known as *Rete Unitaria della Pubblica Amministrazione* (RUPA) and the justice domain *Rete Unitaria della Giustizia* (RUG) until 2006 when changes architecture a name in *Sistema Pubblico di Connettività* (SPC), as will be specified later on. The electronic services are provided in outsourcing and allow internal users to exchange information within the justice sector and some abroad for the public. In the judiciary, personnel have personal computers, but not always up-to-date models, a local area network (LAN), office software, some Internet connectivity and e-mail addresses.²⁰

¹⁸ Fabri, M (2009), see footnote 1.

¹⁹ Ibid.

²⁰ Carnevali D (2010), see footnote 8.

Since 2001, the lack of funds due to the drastic reduction in budgetary resources made untenable the increasing maintenance costs of infrastructures and applications. Even the hardware became more and more inadequate for the new programs. Nevertheless, the server growth and LAN administration for each judicial office were too much expensive to manage them in outsourcing. Furthermore, the RUG justice network became increasingly inadequate to withstand the growing use of mailing services (mainly the institution of the certified electronic mail), web services (e-services), judicial data and documents interchange (PolisWeb and TOL), etc. This situation prompted to change the architecture of ICT infrastructures in the judiciary.²¹

Only in 2006, the MJ-IT General Directorate realised to move the location of databases from the court to judicial district level. In particular, this meant changing the server of each court of first instance with a new main district server divided virtually among each court related databases. Furthermore, the new configuration provided a replacement for each court of an application server. A web-based connection via application server operated the link between the main district server and the thin-clients located into the court. In this way were put under control not only the costs of server maintenance and management, but also the risks related to database protection, and data transmission security. Likewise, it was possible to improve quality standards and development opportunities. In this new framework, it was necessary to improve also the broadband connections reducing at the same time the costs. The new public network infrastructures SPC replaced RUPA and the justice network RUG. SPC also enabled a better connection with e-services offered by the market and wider margins of development.²²

However, this new scenario of ICT infrastructures forced to change the architecture of almost all applications, including TOL. It goes without saying that those adjustments caused organizational and technical problems and additional costs.

The ICT infrastructure available to external users, lawyers mainly, are not well known. There are 160,000 lawyers in Italy, of whom about 100,000 are thought to be practicing law in the courts. The lawyers' offices are almost rather small organizations not really comparable to that of large law firms. Lawyers are organised in fragmented local bar associations represented in countrywide associations.²³ Therefore, lawyers, law firms and bar associations carried on their own ICT infrastructure development in the most varied way, even for the electronic data interchange with the judiciary. In the TOL programme, most of them assigned the development of system interface to

²¹ Ibid.

²² Ibid.

²³ Fabri M (2009), see footnote 1.

some private IT specialists or companies. Furthermore, in order to control access to the system, TOL regulation stated that the TOL access point for the external users would be located in the bar association. Only bar associations were entitled to operate TOL as the body that supervises the legitimacy of its members to practice as will be seen later on.

3. Before TOL. The challenge of the first e-justice system

The origins of the TOL conception date back to the end of nineties. The first initiative was taken by the Bar Association of Bologna, venue of one of the 165 Italian Tribunals. At the basis of this project, there was a small study group composed both by judges and lawyers known as the “Documentation, Automation, and Informatics Office”, that was later institutionalised by the President of the Tribunal.

The basic idea was to share the case law (only on civil matters) issued by the Tribunal of Bologna between judges and lawyers in order to constitute a common background on judicial matter. The characteristics of this project, known as POLIS Project, led the Ministry of Justice to back its implementation and deployment always at the Tribunal of Bologna. After the first analysis, the study group better understood the wider potentiality of ICT in this area. On the basis of these considerations, it was proposed to reorganize completely civil justice taking advantage of the development of ICT, including a design of a new CMS. At this point, within the “Documentation, Automation, and Informatics Office”, joint commissions of lawyers and judges were established in order to analyse in detail the different aspects of the entire civil proceeding and how they could be overhauled.

The reorganization of the civil justice, inevitably, required an active role of lawyers and their bar associations. The rearrangement of the civil proceeding entailed the fundamental role of lawyers due to the possibility to promote and manage judicial procedures without the necessity to attend courts. To send and receive documents and information online prevents, on one hand, lawyers and their assistants to commute regularly to courts having the possibility to carry out their work from their offices and, on the other hand, court administrations to manage paper based documents and information being substituted by digital ones.

Having assigned an explorative study to a consultancy firm in 1999²⁴, it emerged that a simple automation of present proceedings would not have led to expected results. Only a profound reorganization of the entire civil

²⁴ Jacchia M (2000) (ed) *Il processo telematico: Nuovi ruoli e nuove tecnologie per un moderno processo civile*, Bologna, Il Mulino.

process would have allowed overcoming structural inefficiencies that characterize Italian courts. On the basis of this study, the Ministry of Justice decided to finance this attempt to develop a new e-justice system based on a new CMS as its backbone. The other components of the system will be POLIS, a judicial Decision Support System (DSS) for judges and lawyers (judicial writings and case law database) connected with the new CMS, and, later, a system for electronic data access to court databases for lawyers, the so-called PolisWeb.

3.1. *CMS at the beginning*

After two years of project development, the new case management system was launched, but it did not work as expected. A change of software provider and some software redesign was required. Since the beginning of 2001, the civil sector CMSs were delivered step-by-step according to the different branches: general litigation (SICC), labour and social security disputes (SIL), non-contentious cases (SIVG), bankruptcy (SIPC), executions of judicial decisions (SIEC). Case tracking systems development in the civil sector started in the '80 with systems based on mainframe architecture, not really appreciated by courts. Courts preferred to develop their local homemade solutions. Since 1992, this trend stopped in favour of one of this case tracking system developed in a local court of first instance, and rapidly deployed "bottom-up" in almost 150 courts all over the country. At first, these widespread approvals on the system push the Ministry of Justice to support such requests, but since 1995, it began a gradual disinvestment related to the purpose to develop its own application.²⁵

Since 2002, the new CMSs were deployed all over the country. Despite the conflicts, the registries of all courts started to use the CMSs to handle civil proceedings, and no serious functional problems were noticed. In 2008, the implementation of a server consolidation policy changed the CMS architecture: from a court database with a client-server architecture to a three tier architecture: thin clients for final users, an application server in each court and the main server at district level serving all the courts of the area. At the same time, the different applications serving specific procedures (bankruptcy, labour, etc.) were unified in a CMS called SICID, which still works with almost the same features.

²⁵ Carnevali D (2006) *L'Italia nel tunnel dell'e-justice*. In: Carnevali D. et al. (eds) *Tecnologie per la giustizia. I successi e le false promesse dell'e-Justice*, Milano, Giuffrè Editore, 83-132.

3.2. *POLIS: editor and case law database for the first DSS*

Based on a large consumer word processor (Microsoft Word), the application at first was modelled with a set of features to allow judges to write customized decisions. POLIS supported judicial writings using models with some pre-established sections, data collected automatically from the CMSs databases, and obviously free text sections in which the judge entered motivation and other variable contents. Once printed, signed and sealed, the sentence was scanned and made available in a specific electronic case law database (judgements repository) for DSS purposes but also to provide a copy of decisions on request for court and parts (mainly lawyers) of proceedings.

To function properly, POLIS would need a regular use by all the judges, so to build a complete judgements repository. However, also in the Tribunal of Bologna, where the system has been developed, almost no judges used POLIS during the piloting stage, although recurrent training initiatives. It was not sufficient due to radical changes in working practices required for its adoption. Indeed, judges were not really involved in the development of the question system sponsored by the Ministry of Justice. In Italy, judges can refuse to use ICT application, according to their status of wide independence, and in most cases only moral suasion can be adopted²⁶, so a strong commitment was needed. Chief justices, Ministry of Justice, and the Superior Council of the Magistracy were not promoting POLIS to judges in a right way²⁷, and even mediation processes to find an agreed solution.²⁸

The POLIS system and the new CMSs were deployed jointly, but POLIS has never been adopted. Several editors and judges support systems were developed during the TOL project, but only in 2006 the MJ-IT Directorate General has been able to deliver a working dashboard so called “Judge Console”, as will be seen later.

Despite the failure, POLIS deeply influenced the following ICT developments in the civil sector, particularly in the electronic data interchange programme.

3.3. *The PolisWeb for the first electronic public access to court databases*

The most important component of this first wave of e-justice systems was the system for accessing the databases of the court by the lawyers.

²⁶ Carnevali D, Contini F, Fabri M, Velicogna M (2007), see footnote 7.

²⁷ Liccardo P (2000) Introduzione al processo civile telematico. In: Jacchia M (ed) *Il processo telematico: Nuovi ruoli e nuove tecnologie per un moderno processo civile*, Bologna, Il Mulino, pp 27-74.

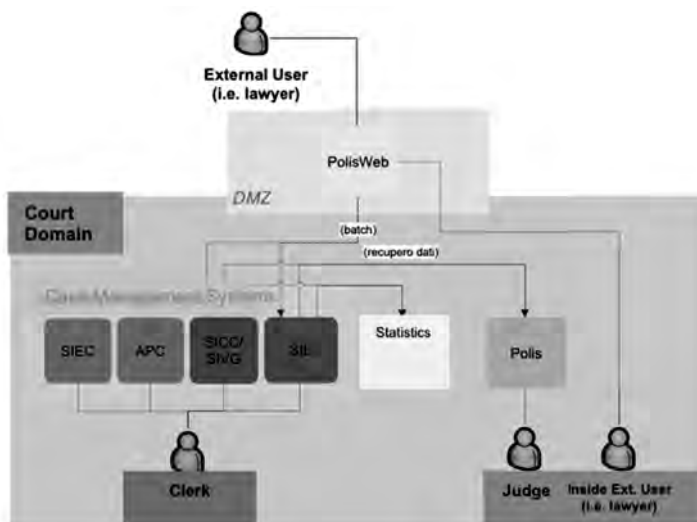
²⁸ Contini F, Mohr R (2008), see footnote 12. Contini F, Carnevali, D (2010) The quality of justice: from conflicts to politics. In: Coman R, Dallara C (eds), *Handbook on Judicial Politics*, Iasi, Editura Institutul European, pp 157-194.

Since 1999, when POLIS was at the development stage, the Bar Association of Bologna strongly required to the Minister of Justice a remote access to the CMSs database. This would have allowed the lawyers to better plan their activities, save time for accessing the court counter and, therefore, reduce travelling time and costs. Following this request, the MJ contracted the software already engaged in POLIS project to develop PolisWeb: a web based application that allows remote access to court POLIS case law databases and also CMSs data.

The system operated in this way. During the night, the databases of the court were replicated in batch mode on the PolisWeb server. The PolisWeb was placed on a so-called DMZ network (it means “demilitarized zone” also in informatics) to preserve the LAN of the court from outside, protecting a piece of it. Once registered with the court, the user received an ID and password to enable the service for the kiosks located inside the court. Otherwise, if the request of access could come from a remote location, it was necessary that the person acquired a piece of software to allow “traceability” of the computer that was connecting and for the encryption of data exchanged (see Figure 1).

Following the positive results of the PolisWeb piloting carried out at the Tribunal of Bologna in 2000, the system has been then deployed also in Rome and Milan, the other two pilot courts. Despite the pressing demands from the other courts in Italy, there have been no dissemination. One of the reasons is that the MJ was strongly engaged in the development of the TOL. In the same years, the attention of the Ministry of Justice has already moved to the development of TOL. Since then PolisWeb has been part of the TOL project, without changing its functions but only its architecture.

Figure 1 - The first system of e-filing before TOL (source: Borsari, 2004)



To summarize, at the beginning of 2000 the technological installed base was made of the following components: 1) a series of new CMSs supporting different kinds of proceedings (SICC/SIVG, SIL, APC, SIEC) with a module for statistics; 2) POLIS, supporting judicial writings for judges and case law collection for judges and lawyers; 3) PolisWeb for the first public access (mainly lawyers) to courts databases (mainly CMSs).

The positive results achieved with PolisWeb and the new CMS pushed the MJ to start the development of a much more challenging system, the well-known Trial On-Line (TOL). The goal was to create a “paperless office”, transforming conventional paper based procedures into digital ones. TOL became the key strategic project of the ICT development programme of the MJ. Since then, the large part of the available resources has been allocated to TOL.

4. Trial On-Line (TOL): the system “all-in-one”

As mentioned, it is during the development of POLIS in Bologna, Rome and Milan that the Bologna Bar Association and the Ministry of Justice decided to explore the feasibility of TOL. In 2000, a ten months feasibility study was launched in the Tribunal of Bologna and in the Tribunal of Rimini. The Ministry of Justice assigned the contract to the same consultancy firm engaged in 1999. This study was composed by two main sections: one related to the analysis of structural characteristics (offices, organization units, roles, functions, competences etc.) and the other related to the analysis of civil procedures in practice in order to redesign how the different roles, functions, working practices could be determined according to a new TOL conception. The results of the feasibility study were positive, and in 2001, the MJ-IT Directorate General issued two competitive tenders: one for the software development, the other for organizational support.

In 2002 the Ministry of Justice assigned the organisational support contract to a consultancy firm. The programme included the creation of a “project committee”, an “operative committee”, and seven pilot courts, so-called “local laboratories” (TOL Labs). The “project committee” was in charge to supervise the entire project and was composed both by members of the Ministry of Justice (MJ-IT Directorate General) and by members of the consultancy firm. The “operative committee” was in charge to supervise the pilot courts (TOL Labs). It was composed by experts in informatics, in administrative science and in civil proceedings provided by the consultancy firm other than by the Ministry. The TOL Labs were constituted in six pilot courts and were managed by local boards. Each board was composed by internal personnel (judges, administrative and technical staff) and external personnel (lawyers of the local bar association and experts in organization studies and informatics disciplines assigned by the consultancy firm).

The MJ awarded the competitive tender for the hardware and software development only in 2003, signing a contract with a software house. On the basis of the tender, the assignee had to provide the following deliverables (see the schedule in Table 1):

1. Reengineering and evolution both of the automated CMSs of civil proceedings and DSS based on the experience of POLIS system for editing, collecting and sharing the court decisions;
2. Development of an application dedicated to lawyers and experts for the electronic data and document interchange with the court (in particular e-filing legal documents and documents repository of electronic folders accessible online);
3. Creation of a so called “model office” in the Ministry of Justice in which the TOL system could be developed and tested;
4. Installation of the TOL system in the seven “local laboratories” (pilot courts and related bar associations) with maintenance and customer care services (TOL Labs);
5. Dissemination of TOL system with help desk service and training programme to further 50 courts.

As mentioned, it is during the development of POLIS in Bologna, Rome and Milan that the Bologna Bar Association and the Ministry of Justice decided to explore the feasibility of TOL. In 2000, a ten months feasibility study was launched in the Tribunal of Bologna and in the Tribunal of Rimini. The Ministry of Justice assigned the contract to the same consultancy firm engaged in 1999. This study was composed by two main sections: one related to the analysis of structural characteristics (offices, organization units, roles, functions, competences etc.) and the other related to the analysis of civil procedures in practice in order to redesign how the different roles, functions, working practices could be determined according to a new TOL conception. The results of the feasibility study were positive, and in 2001, the MJ-IT Directorate General issued two competitive tenders: one for the software development, the other for organizational support.

Table 1 - The development of Trial On Line according to the project schedule

1999	Explorative study on the conditions for the development of the TOL promoted by the Bologna Bar Association and assigned to a consultancy firm (CO Gruppo).
2000	A 10 months feasibility study of TOL promoted by the Ministry of Justice and assigned to a consultancy firm (CO Gruppo)
2002	Organizational support contract, supervision of TOL project in 7 pilot courts (TOL Lab) selected jointly with the Minister of Justice assigned to a consultancy firm (Fondazione Alma Mater and CO Gruppo) in consequence of a competitive tender.
2003	Hardware and software development related to the TOL project assigned to software house (Datamat) in consequence of a competitive tender.
2004	Hardware and software to be completed and tested in the 7 pilot courts (TOL Labs)
2005	TOL to be introduced in 50 further courts.

4.1. *The impossible challenge of TOL as a whole (2000-2005)*

TOL was born as a very ambitious project. Its original design was outlining a full e-filing system that meant a complete electronic management of any type of civil proceedings from case filing to disposition up to the final enforcement. Especially, lawyers and experts, clerks, and judges would have been able to access to data collected in the CMSs databases (as with PolisWeb), but also filing cases, as well as download and upload of procedural documents to and from an electronic folder in the court. The project also provided electronic notification and communication to and from the court, any payments of amounts due and court fees.²⁹

In particular, the TOL main focus was to manage, in a comprehensive way, every document and communication in almost all civil proceedings through digital solutions.³⁰

In other words, it would have been possible to:

1. Manage, digitally, large part of information related to civil proceedings (from filing to sentencing);
2. Manage, on the basis of electronic means, all communications and information exchanges among the different players involved in a civil proceeding (judges, lawyers, clerks, bailiffs, advisors, expert witnesses etc.);
3. Simplify the activities of any player involved in civil proceedings;
4. Promote proceeding transparency and timeliness.

TOL deployment should have been beneficial to judges as documents and information management should have been streamlined. Taking advantage of electronic communication and electronic filing, the connection with clerks and lawyers should have been favoured. Further, it should have been easier to supervise hearings and then to prepare them more accurately. In this way, conciliations should have been promoted postponements, and reservations should have been kept under control. Another expectation was that clerks and administrative staff should have largely benefitted from TOL in the new paperless environment, with more time to dedicate to judges' support tasks. Also, lawyers would have benefitted reducing the needs to go to court to handle their cases. In the original design of TOL, lawyers would have had to go to court just for trial and meetings with judges.

In addition, with the adoption of the TOL system, the ICT Three-Years Plan and the e-Government Master Plan predicted a reduction in the length of civil proceedings by 30% annually.

²⁹ Contini F (2006) L'infrastruttura dell'informazione nei sistemi giudiziari. In: Carnevali D. et al. (eds), *Tecnologie per la giustizia. I successi e le false promesse dell'e-justice*, Milano, Giuffrè Editore, pp 43-82. Contini F, Fabri M (2003), see footnote 6.

³⁰ Project Committee for "Assistenza alla realizzazione del Processo Civile Telematico", 2004.

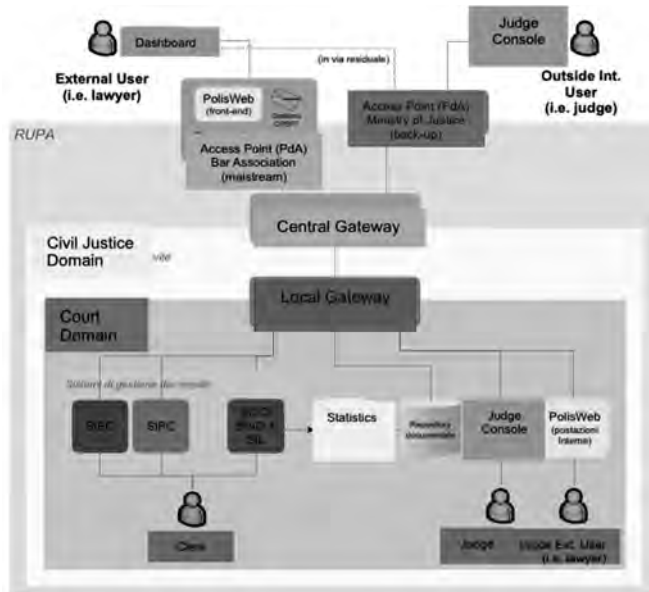
4.1.1. TOL architecture

The system architecture designed by the MJ to implement TOL is very complex. Components are placed in many different locations: local and central; internal and external to the justice system.

These components consist in:

1. *External Users Interface (EUI)*, the dashboard and a web service through which lawyers and experts can interact with the system from the outside;
2. *Access Point (PdA)* that allows the connection between EUI (outside) and the rest of the system (inside);
3. *Central Gateway (CG)* that manages the connections among the access point for EUI, the civil justice domain, the court domain via RUPA public network and RUG justice network;
4. *Local Gateways (LG)* that manages the connections among the CG via RUG justice network, the court domain (CMSs and documents repository) and the Internal Users Interface;
5. *Internal Users Interface (IUI)* to be used by court staff, judges and lawyers to perform their functions from inside the court. It is based on CMSs interface for clerks, Judge Console (a dashboard for judges), and the internal station of web service for lawyers³¹ (see Figure 2).

Figure 2 - The TOL system as a whole (source Borsari, 2004)



³¹ Borsari G, Baratta A (2004) L'interoperabilità e gli strumenti per i soggetti esterni. In: Zan S (ed) Tecnologia, Organizzazione e Giustizia. L'evoluzione del Processo Civile Telematico, Bologna, Il Mulino, pp 227-237.

For those interested in the specific architectural solutions identified by the Ministry of Justice, a more detailed description of the functions of the various components is provided below.

The **External User Interface (EUI)** is a dashboard to allow the lawyer and expert to draft and sign a summons electronically, and a brief at first. For this purposes, there is an editor based on a word processor integrated with software for signing, encrypting and enveloping the document. In addition, the dashboard provides another tool for e-filing the case, based on a specific e-mail application functioning just for the TOL (CPEPT). Through this email, it is possible to file encrypted documents and to receive an automatic reply with time stamp. As it will be seen later on, the External Users Interface have to be financed and developed mainly by the bar associations. The dashboard provides also a web based connection to access selected data collected in the court CMSs databases (front-end). This new web based service was also called PolisWeb because of the same functions of the old one, but it had a completely different architecture. In the Local Gateway section (two sections below) this so-called “TOL PolisWeb” will be discussed more in detail, focusing on its location and back-end functions.

The **Access Point (PdA)** is the hardware, software and middleware that allow establishing a secure connection via the Internet between the EUI and the Central Gateway (protecting the access to the justice domain) and from here to local courts. In practical terms, it is the system that enable lawyers, through their dashboard, to access and interact with the systems of the MJ. In legal and technological terms, the PdA has to solve the problems of secure access to the justice domain, of enabling digital signature, and of correct identification of practicing lawyers. For this reason, as a rule, it has to set up by each local bar association (upon request to MJ-IT Directorate General) since it is at this level that updated information about practicing lawyers is available. It is with the registration to the PdA that lawyers get the above mentioned specific mailbox called CPEPT and their smart cards for digital signature of procedural documents and to be identified and authorised to access to the systems of the MJ.

The **Central Gateway (CG)** manages the connections among the PdAs, the civil justice domain, and the courts systems. The CG ensures the accuracy of the composition of envelopes produced, roots the communications to the courts systems and tracks all data flows. In practical terms, the CG executes the requests submitted by lawyers via PdA and addresses the communications to the court via the Local Gateway (LG) and vice versa. The CG also certifies the receipt of a case e-filing, providing a reply message addressed to lawyer CPEPT mailbox (time stamp). This is, therefore, to be considered the date and time of legal filing.

The **Local Gateway (LG)** handles the connections between the court systems (CMSs, documents repository and internal users) the PdA and external

users. It controls case filing delivery, manages levels of access, and communications between the court the external users. The LG should also handle the TOL PolisWeb, the web service created to deliver directly in a synchronous mode and protected way the access to the court databases (CMSs, documents repository, statistics, etc.) from the external court users. However, for legal and technical problems related to security concern of direct access to court databases, TOL PolisWeb will not start until 2011. It will be fully subrogated to a parallel system, the National PolisWeb, instead operating in an asynchronous mode (a copy “batch” of court databases), as will be seen next in the specific Section 5.2.

The **Internal Users Interface (IUI)** is the last component of TOL. While the clerks and the court staff perform all their functions through the CMSs applications, the judges need a special dashboard to work with the TOL. Such application, called Judge Console, was evolution of the “old” POLIS (see Section 4.2). It supports the writing of judicial documents, the access to CMS data, and it provides calendar management and statistical functions. In 2004, the MJ developed a new web based application with similar functions, called Judge’s work desk and more recently a new simplified application called MagOffice. We will return on these difficult developments in Section 5.3.

4.1.2. *TOL in place*

The TOL technical system was released at the end of 2004³² and really completed in 2005³³ (Carnevali, 2006). Alongside with the development of the TOL architecture, the testing stage started in the seven pilot courts called TOL Labs (Bari, Bologna, Bergamo, Catania, Genoa, Lamezia Terme, and Padua). The team was composed by a team leader from the consulting firm that won the tender, a representative of MJ-IT Directorate General, the IT manager of the court, the court administrator, some interested clerks in specific workflow, some judges and lawyers. The aim of this testing stage was to develop a method to promote its organisational adoption, its integration court working practices, and solve technical and organisational problems emerging at local level.³⁴

The project milestones indicated the ending of the testing stage by 2004, and the start of the TOL deployment stage in further 50 courts. However, the story has been quite different.

On one side, there have been serious delays in the bid evaluation and adjudication for software and hardware development, and then in the software

³² Ibid.

³³ Carnevali D (2006), see footnote 25.

³⁴ Xilo G (2004) L’esperienza dei laboratori sperimentali del Processo Civile Telematico, in Zan S (ed) Tecnologia, organizzazione e giustizia. L’evoluzione del Processo Civile Telematico, Bologna, Il Mulino, pp 119-138.

development. On the other, the involvement of lawyers and bar associations has been more difficult than expected. As noticed, part of the software required for the functioning of the TOL has to be developed by software houses hired by bar associations as in the case of the Access Points (PdAs) or bought by lawyers in the free market (as the External Users Interface). In addition, lawyers had to buy also digital signatures with further costs. Simply speaking, the quality and the costs of the products offered by the market were not in line with the demand of potential users: too little software providers and too high costs of their products. Two smart cards for authentication and digital signature, the dashboard for editing documents and for accessing the system, and need to built up a PdA at each bar association were too expensive for individual lawyers and for their associations. This was particularly true for the PdA since what was offering the market was too expensive.

Due to the lack of results and of the unclear perspectives; also the seven piloting courts began to disinvest. They were weary to participate on an ineffectual project. They had not then sufficient incentives to be part of it, but only increasing costs. In 2006, the TOL Labs gradually began to take off from the testing. They did not reach the organisational and technological level required to use TOL.

In almost six years, 12 million of Euro have been spent in feasibility studies, software and organisational development and testing: about 84% of the total investments in ICT projects in the civil sector.³⁵ Furthermore, as it is well known, the technologies are never plug n' play tools. The complexities generating from the technical, normative, and organizational components as well as of governance components generated huge problems to the project and led to the modification of its very nature.

4.2. *National PolisWeb: the "dark side" of TOL (2005-2011)*

Since 2001, the MJ-IT Directorate General began the development of TOL, but both lawyers and courts staff were asking for the old PolisWeb (see Section 4.3) the systems ready to enable the access to court CMSs databases. The MJ-IT Directorate General required the development of the TOL programme and consequently of the new PolisWeb necessary for fulfilling those functions: the TOL Polisweb. As mentioned above, however, the TOL PolisWeb was designed to operate in synchronous mode, querying directly the court databases (CMSs and document repository) for data and documents exchange. However, the legal security constraint and other technical and legal problems not allowed the direct access to court databases from outside. For this reason, in 2004, MJ-IT Directorate General decided to start the develop-

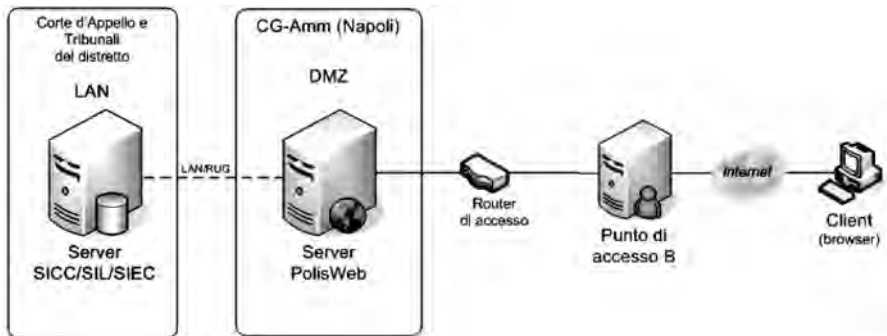
³⁵ Fabri, M. (2009), see footnote 1.

ment of a parallel system to meet these pressing requests coming from users. The state-wide National PolisWeb was introduced according to law and technical requirements. It was a system with the same name and functions of the old one but with a different architecture in asynchronous mode.

The new central system has been set up in Naples, where the TOL Central Gateway was already running. Simply speaking, in order to have a national database of local courts' CMS databases, during the night the data of all Italian courts was automatically copied batch, and sent via intranet (VPN of justice) to the national database in Naples. A DMZ at CG level protected the National PolisWeb server from external court users (see Figure 3).

As part of TOL system, lawyers should have access to the system through a "special" Access Point (PdA). Therefore, the bar association who required the service, in accordance with the court, had to provide this special PdA authorized by MJ-IT Directorate General for delivering the service. To access the National PolisWeb, the TOL procedure was already simplified. A lawyer just needed the certificate to allow the communication and data interchange and not for the digital signature.

Figure 3 - The National PolisWeb: a parallel system in TOL (source: DGSIA, 2005)



The deliver of the National PolisWeb in 2005 led a double track for TOL programme, which appeared very useful for the MJ-IT Directorate General from a political point of view.

The TOL project was not taking off. The piloting stage highlighted the high cost and the huge complexity of system deployment. Courts and lawyers wanted PolisWeb features rather strongly; however, they would have had it only through the TOL system in some how. For this reason, there was a growing numbers of lawyers asked to the MJ-IT Directorate General, through their own bar associations, to make a PdA to access finally the National PolisWeb.

The growing number of PdA installations allowed the MJ-IT Directorate General to argue that the TOL programme was still alive and going ahead.

The National PolisWeb, however, made use of only a small part of TOL infrastructure (the “special PdA”), but it was a very small part of the actual TOL architecture.

4.3. *TOL Light Version: starting to operate for payment order (2006-2011)*

In 2006, only the Tribunal of Catania TOL Lab with its bar association was still engaged in TOL development. Differently from the other Pilot courts, Catania did not rely on the market solution to get the PdA, but started an in house development. In the same years, the Tribunal of Milan took the lead of the TOL development. Thanks to the remarkable investments made by the bar association of the rich financial city, and the strong sponsorship of the court, Milan implemented the PdA and started the use of TOL but with a new architecture.

4.3.1. *TOL in Milan: the “new” TOL*

Thus, the TOL Milan Lab became the strongest chance for the Ministry of Justice to save the TOL programme, so the MJ-IT Directorate General decided to support it toughly. However, it was no longer the case to digitalise the entire set of civil proceedings and to push toward the “paperless office”. It was rather time to downsize the project, and to focus on its simplest procedure: the “payment order”. On December 2006 in Milan, the TOL Light Version for Payment Order became operational with “legal validity”, following the specific regulations on technical requirements for the “new” system. The management of this new experience of “TOL Milan Lab” was assigned to a so called “IT mixed commission” made up by judges, clerks, lawyers, court IT specialists, and afterward by specialists of MJ-IT Directorate General too.

In 2008, the TOL Light Version went on line also in Catania (with its in house solution) and then disseminated in Genoa, Naples, Padua and Vigevano. In 2009, other 8 courts of Lombardy Region (Brescia, Como, Lecco, Lodi, Monza, Pavia, Varese e Voghera) and also Rimini of Emilia-Romagna Region initiated the project. However, the development was not easy at all, with technical, financial and managerial problems going on for years. The IT specialists who were taking care the of the PdA’s development and of the lawyers’ dashboard, pointed out not only the general problems of costs, but also the difficulties to have the correct source code to prepare a functional interface. Moreover, they put in evidence several errors in the software, and a bad relationship with the MJ-IT specialists.³⁶

Therefore, the system operated only in Milan for years. In 2010, the lawyers entitled to the service were almost 80%. The payment orders online

³⁶ Zanga D (2008) La PA e quei software senza licenza. Punto informatico, 3 marzo 2008.

were 12% in 2007 and 40% in 2010[1]. In those years, the MJ-IT Directorate General improved the system with court communications and then with the exchange of written statements.³⁷ This first successful and milestone experience will be discussed in detail afterwards in Section 6.

4.3.2. *New dashboard for judges and XML makeover*

In the same period, the MJ-IT Directorate General promoted also a new “lighter version” of another key component of the TOL architecture: the Internal Users Interface. The implementation of TOL requires the engagement of judges that must write their procedural documents with tools integrated in the TOL system.

Since 2004, the Judge Console of original TOL architecture changed in a web based application called Judge Work-Desk (JWD). With the JWD the judge, instead of using a commercial word processor, should open a web application integrated in the CMSs of the court. The document in XML format could be digitally signed and transmitted to the registry that will take care of a distinct set of functions. Judges could also collect all the decisions and, therefore, set up databases of local jurisprudence. JWD should empower the managerial and bureaucratic functions of the judge that, using this system, should be much more and much better integrate with the organizational process. However, four years of the development process and a number of releases to align the judges’ needs produced a low adoption of JWD. Judge Console and JWD were too complex for many judges, accustomed to working with the comfort of the standard word processors. Therefore, the MJ decided to develop a simpler judges interface, called MagOffice, that was a simple customization of MS Office integrated into the CMS SICID and a calendar management system based on MS Outlook.³⁸ The original XML solution for editing the document was abandoned in favour of the PDF one, even though enclosed in XML envelope with the most important data for the identification (i.e. digital signature) and recording.

At the end of 2005, the so called Document Type Definition models were issued by a decree of the Ministry of Justice and, due to it, proceedings and documents based on TOL acquired legal validity. This can be considered another factor that hampered the TOL spread. Word processors in use by lawyers had to comply with these models requiring a software update. The registered growth in the use of MagOffice seemed to be a good indicator of a first concrete adoption of such systems for judges too.

³⁷ Sala M. (2010) Il processo telematico del 2010. Immobili & proprietà, 3/2010 (febbraio-marzo), pp 1-8.

³⁸ Rapporto ICT Giustizia, IT Directorate General, Ministry of Justice, 2011.

4.4. TOL New Shape: opening the doors to standard certified e-mail (2012)

As mentioned before, at the beginning of 2011 the MJ has issued a Ministerial Decree (DM February 21, 2011 n. 44) entailing a couple of major changes for TOL system. At first, the decree required the switch from the asynchronous (National Polisweb) to the synchronous mode (TOL PolisWeb). For this reason, it established the stop of the operation of the asynchronous National PolisWeb as of October 15, 2011. Then, the same decree also established the switch from the old ad hoc e-mail application used by TOL (CPEPT), to a new one based on standard of certified e-mail (CEM) (see Table 2).

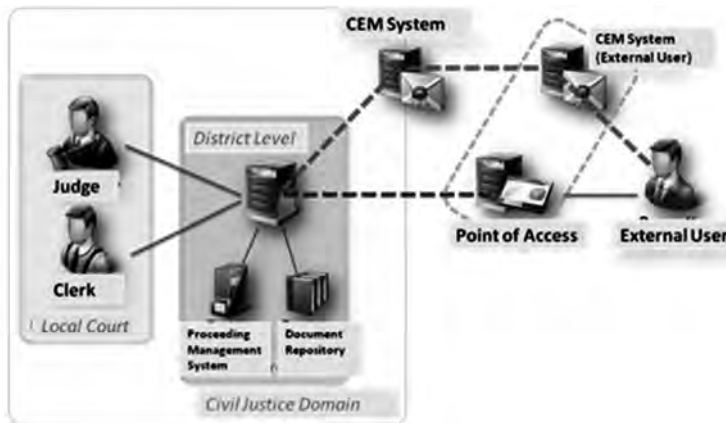
Table 2 - Main changes introduced by the law L. 44/2011

	Before	After
Access Point level	The “closed” TOL dedicated e-mail (CPEPT) was used for communications and e-filing between court users (lawyers) and the court through Access point (PdA) The PdA allowed the connection between lawyers and the court by court users identification and authorization.	The “open” certified e-mail (CEM) for communication and e-filing is introduced between court users (lawyers) and the court. The PdA is maintained to allow the CEM use by CEM personal e-mail identification and authorization. The PdA is maintained to access the current courts case management systems at district level.
Central level	The Central Gateway (CG-Amm) in Naples was used to manage the connection (identification and authorisation) among the PdA, the civil justice domain, and the court domain through the Local Gateway. The CG-Amm was used also to access the copy of courts case management systems at central level (National PolisWeb).	The CG-Amm with the National PolisWeb is abandoned. Central CEM System with Certified CEM Registry is introduced to identify and authorise the access and data exchange by lawyers. E-service Portal is planned to allow the access by general public.

The TOL architecture had to undertake a major reconfiguration. In particular, the new rule changes the system of communication of External Users Interface (EUI) component. The e-filing of the case is made by the lawyer through standard personal CEM e-mail purchased from a private provider instead of the TOL dedicated e-mail CPEPT given by MJ via PdA. Thus, the court CMSs databases at district level is accessed directly by the TOL PolisWeb (synchronous mode) instead of the National PolisWeb (asynchronous mode). Therefore, The Access Point (PdA) is maintained to allow the CEM use by personal CEM e-mail identification and authorization, to communicate each personal CEM e-mail to the MJ Central CEM Registry, to access the current courts case management systems at district level. Furthermore, the Central Gateway (CG-Amm in Naples) with National PolisWeb is

abandoned. Central CEM System with Certified CEM Registry (located in Milan) is introduced to control (identification and authorization) the access and to allow data exchange of data and documents between courts and lawyers (see Figure 4).

Figure 4 - TOL new architecture (source: Borsari, 2011)



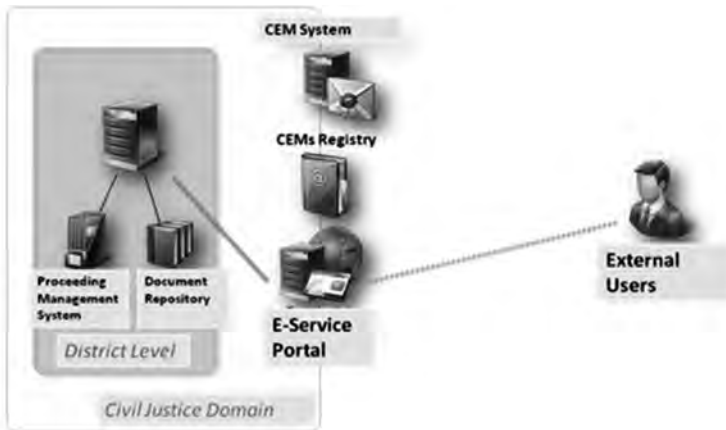
Considering PolisWeb at first, National PolisWeb later, then TOL and TOL PolisWeb CPEPT based, and now the introduction of CEM, different regimes have regulated interactions with the external of the judiciary. So, in few years, for several reasons, the characteristics of the public access to the judiciary have been modified several times forcing courts, bar associations and then lawyers and other professionals to run after this evolving situation. This continuous changeover produced an increase of costs (economic and organizational) to adapt the system at these different solutions.

At this point, the wonder is why policy makers provided for the public administration the use of CEM in the exchange of documents and information, but the judiciary turned to the PdA solution. The reason was the bias that CEM could not provide standards of security required in the judiciary so that a specific norm exempted it to adhere to the CEM adoption. Actually, the PdA solution governed the exchange of documents and information on the basis of an electronic mailing but within a closed system. Any single document or information can be accessed or exchanged only through this gateway. The introduction of the CEM also in the judiciary unsettled this system. Users should be no more forced to pass through the PdA interacting with courts, and it should be sufficient to buy a CEM service from one of the several vendors of these solutions to exchange procedural data and documents with the court.

After the introduction of CEM, the role of bar associations is reduced significantly since PdA is not needed anymore for sending and receiving procedural documents. However, they are still in charge of the legitimacy of their members to practice law and without their authorization CEMs cannot be activated. In the meanwhile, however, the PdA continues to be used for accessing the court CMSs databases, also through the new district architecture. Therefore, it is expected that bar associations will continue to play a role in this respect providing to their members software applications that integrate PdA and CEM functionalities.

Finally, another component is planned. The E-Service Portal of the Ministry of Justice should give the opportunity not only to lawyers and other professionals but also to any citizen equipped with a national smart card (at present not spread significantly), to access to data on judicial proceedings in which they are involved, to pay court fees, and to consult, without any restrictions, essential information of proceedings, jurisprudence of civil matters, and information and services related to TOL (see Figure 5), but it is not in place yet.

Figure 5 - E-Service Portal architecture (source: Borsari, 2011)



To sum up, e-filing services planned by the original TOL, and specifically the possibility to complete an entire judicial proceeding online, are not still in place. There are almost 150.000 CEM addresses in the Central CEM Registry. TOL Light Version for payment order (see Table 4) and court communications is present in 32 courts. The exchange of written statements between parties and the judge is limited, and available in 4 courts. However, in the Tribunal of Milan only large part of proceedings is digitalized by TOL project and already available in this form. Moreover, the Article 51 of the law L. 133/2008 modified the code of civil procedures introducing the possibility to send notifications to an electronic mail address rather than a traditional postal address. In case a

lawyer lacks it, it is up to him/her to verify their eventual presence in court as the delivery by normal mail is suppressed. This represents a significant incentive to abandon paper-based modalities in favour of the online ones. At present, 19 courts adopted this possibility, but it is believed that their number will increase considerably in a relative short time due to the spread of the system all over the country that supports this function by default (see Table 3 and 4).

Table 3 - Deeds and documents transmitted electronically till June 30, 2011 (including data of new TOL feature for enforcement and insolvency proceedings online, out of this study)

Courts	Number of deeds transmitted electronically
ABBIATEGRASSO (Detached Office of the Tribunal of Vigevano)	12
ACIREALE (D.O. of Trib. Catania)	4
BARI (Trib)	112
BERGAMO (Trib)	660
BOLOGNA (Trib)	215
BRESCIA (Trib)	7269
BUSTO ARSIZIO (Trib)	115
CARPI (D.O. of the trib. Modena)	149
CASSANO D'ADDA (D.O. of the trib. Milano)	29
CATANIA (Trib)	1414
CHIVASSO (D.O. trib. Torino)	1
COMO (Trib)	227
CREMA (Trib)	83
CREMONA (Trib)	94
DESIO (D.O. of the trib. Monza)	262
EMPOLI (D.O. trib. Firenze)	2
FIRENZE (Trib)	484
GALLARATE (D.O. of the trib. Busto Arsizio)	10
GENOVA (Trib)	2389
LECCO (Trib)	496
LEGNANO (D.O. of the trib. Milano)	35
LODI (Trib)	316
MANTOVA (Trib)	38
MILANO (Court of Appeal)	16
MILANO (Trib)	87988
MODENA (Trib)	5040
MONCALIERI (D.O. of the Torino)	1
MONZA (Trib)	3164
NAPOLI (Trib)	2679
PADOVA (Trib)	1051
PALERMO (Trib)	107
PAVIA (Trib)	242
PAVULLO NEL FRIGNANO (D.O. of the trib. Modena)	18
VARESE (Trib)	350
VERBANIA (Trib)	37
VERONA (Trib)	1928
VIGEVANO (Trib)	185
VOGHERA (Trib)	43
Totale	127402

Table 4 - Communications and notifications transmitted electronically till June 30, 2011

Type of Court	Courts	Number of communications transmitted electronically
<i>Courts of Appeal</i>	BRESCIA	4668
	MILANO	42140
	VENEZIA	21026
	Total	67834
<i>Courts</i>	BASSANO DEL GRAPPA	4492
	BELLUNO	4238
	BOLOGNA	39218
	BRESCIA	54718
	MILANO	687078
	MODENA	49046
	MONZA	43602
	PADOVA	26093
	RIMINI	19329
	TORINO	121453
	TREVISO	22888
	VENEZIA	18658
	VERONA	11535
	VICENZA	16398
	Total	1118746
Total	1186580	

5. TOL at the Tribunal of Milan

5.1. The description of deployed proceedings

5.1.1. The payment order

The TOL era started the 5th of December 2006 when the Tribunal of Milan tested the first issuing of a payment order. Few days later, December 11, the testing phase was over, and the electronic procedure acquired legal validity. The rate of adoption of this solution was relatively slow as in 2007 only 11% of total payment order decrees were run online even though in the last months of the same year the percentage reached 20%. This was due mainly to technical, juridical, and cultural problems to be handled. One of them was related to the difficulty to manage large scanned documents to be attached to the petition for a payment order. The TOL system allows uploading files up to 10 Mb, and this was not always sufficient. However, in order to deal with this problem, there is the possibility to go directly to the court and upload files up to 30 Mb through a memory stick. This service is available only once a week. However, at the end, this is only a marginal aspect. What was required to lawyers was to abandon consolidated practices in favour of new ones. With the TOL, lawyers' software suite (the External User Interface)

eventually integrated with the PdA of the bar association is the gateway to the court; documents are digitally signed by a smart card, and some of them have to be scanned. These are the main practices to be adopted in a petition for payment order online.

In 2010, the situation changed significantly. Lawyers realized that the time necessary to obtain a decree using the online solution was considerably shorter: 15 days rather than 60 days on average. So, the percentage of online orders increased to 65-70%. Further, it has to be taken into consideration that the total number of decrees passed from 42-44.000 in the previous years to 54.000 due to general economic difficulties of the country and the personnel dedicated to this proceeding was the same. It was also introduced a specific division of labour among judges so that some of them manage only online orders and some of them only traditional paper based ones.

The issue of a payment order is subject to a fee according to its value. This fee was collected by revenue stamps that were applied directly on the petition of a payment order. Given the current financial regulation, it was not an easy task to establish an online payment. Indeed, the use of credit/debit cards, or money order was not accepted at that time. Nevertheless, it was devised a tool that allows the entry of the revenue stamp code (each stamp is numbered) by lawyers and this problem was solved. In this way, all the same, it was necessary to buy revenue stamps. So, a further devise was designed that allows to debit this fee directly on lawyers bank accounts. In late 2010, this application was tested positively and then largely adopted as the scanned receipt of the fee payment can be attached to the petition.

When a lawyer sends a petition of a payment order to the court, the petition/reaches the records office. At this point, the clerk opens it to analyse its content. According to the typology of the petition, the assignment to a judge takes place. Then, the petition is entered into the CMS and validated from a formal point of view. This part of the procedure is the same in the case of a paper-based petition. The only difference is that, with a paper filing, the clerk delivers the paper-copy of the petition to the judge. In the case of the online submission of the petition, the judge will see it in the so-called "Judge's Console". The "Judge's Console" is an application that is used in order to formulate his/her concerning deeds such as sentences, orders, decrees etc. and sign them digitally by a smart card (see also Section 5.1.1). Once the petition is on the "Judge's Console", it is taken into examination, and the decree can be actually issued, it can be rejected or object of an order. In any case, the decision of the judge is written using the "Judge's Console" and sent to the records office. Here, it is downloaded and countersigned by the clerk digitally. At this point, a notification is sent to the lawyer by the CMS to inform him/her that a document was issued including its identification number and the document itself as attachment. Now, the electronic proceeding is considered over and starts the paper based one. Indeed, the digital document is not valid from a le-

Table 5 - Steps for the petition of payment order and the following issuing

Lawyer	Software application to be used	Operations
	Word processor (lawyer's software suite)	The formulation of the petition of payment order
		The expense account (list of the expenses to be supported for the petition)
		The file of the payment order decree and the expense account are transformed in PDF files.
	Scanner and related software	Various docs have to be scanned: power of attorney, expense accounts, receipt of the fee payment, document evidence (i.e. invoices)
	EUI (Lawyer workdesk) Bar Association web service (Point of access and related smart card for user's identification, authentication and digital signature)	A new file is created. This file is identified by parties' names, the type of file (in this case a petition of payment order), the type of act (sum payment), the court of destination, the value of the payment order and the related fee to be paid
		Details of the fee payment are entered
		Parties' details are entered as the type of payment order (i.e. enforceable payment order)
		Upload of the documents related to the payment order: petition, power of attorney, expense account, receipt of the fee payment, document evidence (i.e. invoices).
		An electronic XML envelop is created for document delivery
		Documents are signed digitally by smart card and indicating a PIN code in any of them
		The electronic envelop is sent to the court
Clerk	Case management system	Control of the petition and its eventual formal approval (the lawyer is informed about it electronically)
		Entry of the case data on the case management system (as consequence of the approval)
		The petition is assigned to a judge by a clerk
Judge	"Judge's console"	The petition is uploaded automatically on the "judge's console"
		The petition is elaborated and it can be rejected, object of an order or the decree is issued
		The judge's decision is signed digitally and sent electronically to the records office
Clerk	Case management system	Judge's decision is countersigned digitally
		The decision is notified to the layer electronically
	Printer	The decree is printed. Paper based procedure in case the payment order is issued (due to the deliver of the true copy to the other party and the payment of copy fee). The paper based procedure starts also in case of opposition to the payment order

gal point of view even though it was digitally signed and countersigned by the judge and the clerk. The document must be printed in order to summon the “true copy” to the defendant and to collect the copy fee.

The reason is related to the collection of this copying fee and to the fact that this type of documents must comply with the legislation. In this respect, a solution is seen in the integration of this fee with the court fees to be paid to file a case, but a specific norm is required. However, it was introduced the possibility to apply for “true copies” online. In this way, it is no more necessary to present him/herself to the court both to apply for copies and then to withdraw them but only once.

Mandatory payment order decrees follow a further procedure. They are writs of execution, and as such they require further stamps and attestations that state the uniqueness and originality of these documents. In case, the opposing party decides to object to the decree only the paper based proceeding is available (see Table 5).

5.1.2. The registration of deeds and documents

Procedures at the basis of deed submission or other documents online are in line with the petition of a payment order. Also in this case, the lawyer prepares, for instance, a deed on his/her computer by a word processor and then sends it to the court by the PdA. In this document, it is indicated the trial case number that allows to assign it directly to the specific case. However, clerks of the courts verify the deed prior to notify to the parties involved about its issuing and following registration.

From the 15th of March 2010, the registration of deeds online has legal validity and from the 26th of April 2010 also other documents that constitute TOL followed. The rate of adoption of these proceedings is relatively slow due to a specific policy followed by the Tribunal of Milan along with the local bar association. A step-by-step strategy is considered apt in order to deal with the so-called hybrid situations. Situations in which the lawyers involved in a suit are not all “online” or all “paper based”. In this case, the clerks’ work risks to be hindered, as it will be necessary to digitalised paper documents and to print digital documents.

5.1.3. Notification online

The Tribunal of Milan decided to take advantage of the possibility provided by the art. 51 of the law 133/2008 (see Section 5.4). As it was mentioned above, this norm shifts from clerks to lawyers the responsibility to be informed about a document or a communication issued by the court. In other words, the art. 51 provides for the communication of any deed related to a specific process only online. Now, it is the lawyer who has to worry if something is happened in the causes in which he/she is involved. At the basis of this norm, there are the characteristics of new CMS and the possibility to send

communications to parties, substantially, by default when a document is registered. It goes without saying that this solution was decisive for the spread of the PdA adoption. Lawyers with access to it can keep under control all their cases remotely. In contrast, layers are forced to visit the court.

5.1.4. *Proceedings under construction*

So far, the focus was set to the testing of TOL proceedings. However, experimentations are continuing as in the case of the “Judge’s Console”. It is considered a rather complicated application as its history suggests. Differently from the Tribunal of Bologna where the top management was not considered supportive, the President of the Tribunal of Milan investigates reasons that hamper the adoption of this application in order to deal with this issue. A specific training and the assistance of software experts was seen the solution to increase the adoption rate of this console that is determinant for TOL wide adoption as a source of digital documents. The fact that, in 2015, will take place the Universal Expo in Milan, allowed to obtain specific funds to dedicate to its improvement. Further, it is expected that the results obtained in this experimentation will be spread at the national level.

The adoption of the “Judge’s Console” is strictly related to the quality of clerks’ work. The possibility to manage digital documents signed electronically speed up their registration and notification to parties. Of course, results are more relevant if they are part of a completely automated proceeding. However, even though this is not the case sentences, orders, decrees etc. can be signed and countersigned digitally, and then printed as part of a paper based proceeding. Here, they have to be signed again manually to render them valid both by clerks and judges. Nevertheless, the fact to have at disposal digital documents allows their transmission to parties even though they are not valid from a legal point of view. In this way, parties are informed, in real-time, about the several steps of the case and then can behave accordingly. A sort of two ways procedure takes place at this point. The electronic way and paper based way overlap even though only the latter is legally valid. Nevertheless, it is considered a useful phase for the TOL implementation to behave as if the entire proceeding would be online. For instance, the request to paper based documents and the visit to courts is restricted to specific moments of the process.

If the document in question is not digital, let’s suppose that comes from another public administration (i.e. Police), it can be digitalised, and then it will follow the same double way above outlined. The document is registered electronically, notifications to parties are issued, and the document is attached.

Minutes of the hearing can be managed in the same way. They can be digital or paper based, but the latter can be digitalised. Clerks assigned to them the respective trial case number in order to be registered electronically and then notifications to parties can be issued with minutes attached.

5.1.5. *Lawyers' perspective of the proceedings: the Point of Access of the Milan Bar Association and the passage to the certified electronic mail*

As it was already mentioned above, the Point of Access (PdA) and the EUI allows to qualified external users (lawyers, expert witnesses) to access to court CMSs data and exchange procedural data and documents. The https is the protocol used as it lets to establish a reliable transmission channel. The PdA is managed by the bar association, and it can be provided by software houses or, in very few cases, made in house by bar associations themselves. Bar associations are in charge to give the authorization to practice law of its members, and communicates to the courts the eventual changes in this respect. Once a lawyer is authorized, and his/her master data are available to courts, he/she needs a smart card technology. The smart card supports both identification and authentication to access the PdA, and the digital signature to validate documents. In this way, users' traceability is supported, and operations carried out through the PdA are assigned to a specific lawyer.

The introduction of CEM signs an important innovation in the characteristics of the PdA. It is taking place a passage from a dedicating system to interact with the judiciary (PdA) to an open one that can be used to interact with other actors, as well. What is integrated into the lawyer's software suite could be separated due to the introduction of CEM. Updated software solutions for law firms combine the management information system with the word processor. In this solution, the PdA is incorporated allowing access to automated registries (i.e. CMS) and the exchange of electronic documents via the Internet. CEM could break this situation as it supports document exchanges. Then two solutions will be necessary: a solution for document exchange and communication; a solution for accessing automated registries (i.e. CMSs).

5.2. *TOL's project stakeholders*

5.2.1. *The innovation office*

The Innovation office has played a relevant role for the development of TOL at the Tribunal of Milan. This emerges clearly from the different interviews with clerks and members of the local office of the ICT department who share a similar perspective in this respect. Indeed, the Innovation office is the evolution of an office called "mixed group". "Mixed group" describes precisely the characteristics of this office. In fact, it was composed by two representatives of the local bar association, two representatives of judges, two representatives of clerks, and two representatives of CISIA, the detached office of the MJ-IT Directorate General. This office is considered a peculiar entity in the world of justice, in which professionalism is based on knowledge, interpretation and the application of the law. Here, things are different; there

are not only people with a background in law but also engineers and computer experts.

The “mixed group” took shape in 2006 under the leading role of the CISIA and immediately became a leading player of the TOL development. Even though, it is an informal entity it gained legitimacy and decisions made in this context became unchallenged both by judges, clerks and lawyers. It can be said that leading actors of the Court and the Bar delegated to the “mixed group” the management and the implementation of TOL as further organizational innovations.

In 2007, a new president of the Tribunal was appointed. This determined a risky situation as far the role of the “mixed group” and the potentialities of TOL are concerned. As time passed by, TOL value for streamlining proceedings was confirmed as the leading responsibility of this group. However, it is in this period that the mixed group was renamed innovation office and its guidance moved from the CISIA to the judge in charge of innovation. This leadership change did not provoke substantial transformations and this office still continue to be the meeting point of main players in charge of the TOL management and deployment.

In reality, the innovation office is also the result of the merge with the informatics office and the statistics office already active in the Tribunal of Milan so that also innovation projects related to these fields are under the supervision of this office. In consequence of these merges, further clerks and experts joined it. The origin of these offices is related to the requests of the Ministry of Justice to have structures to go beyond routine activities. In that case, since the middle of the '90, it becomes necessary to set up innovative practices supported by information technology. The advent of IT in the courts meant the introduction of a different way to work due to the necessary collaboration between engineers and clerks. The so-called millennium bug issue was a further opportunity in this respect. A different work culture took place in some corners of the Tribunal of Milan and, step-by-step; also new expertise emerged. Expertise that was not the typical one available in a court so that some employees changed literally job. Usual tasks were abandoned in favour of new ones that were considered apt in order to support innovative projects in progress.

What does exactly do the innovation office? It presents the different applications to court users and, it works also as an information centre for other courts. The leading role of Milan gained in the development of TOL created conditions for the other courts involved in TOL implementation to consider this office as a point of reference in order to trial specific innovation or running solutions. At first, these requests were met without any problem, but soon it became impossible, and a formal procedure was established so that visits to the Tribunal are regulated regrouping several instances at the same time.

Relationships between the innovation office and other courts, specifically those that are members of the Lombardy district, are governed by an additional rule. Particularly, it is required to courts to appoint an exclusive representative as a point of reference. Let's suppose that a specific court implements the new CMS and needs the support of the innovation office. The latter deals with the court representative who, in turn, will be in charge of the application's implementation. Its role is not only limited to courts, but it is also extended to bar associations in case of any issue related to the TOL implementation. The idea is that the characteristics of the innovation office are multiplied in the several courts connected to it. In some sense, this office becomes a node of a network represented by court representatives. According to members of the innovation office, this is a traditional top down solution in order to favour TOL or another project implementation. However, it is considered fundamental in order to establish a minimum level of coordination necessary to deal with relevant projects as the TOL one also in the smallest courts of the district.

Activities at the innovation office are not formalized. In other words, decisions made in this office are not converted into work orders or circulars that will be adopted at court or district level. There are not enough human resources in order to carry out this formalisation process, as it is preferred to intervene directly in the field rather than to look after regulatory aspects. This is seen as a serious issue. There is a risk that the new practices will not be adopted completely, will not cross the district boundaries or will spread over slowly. Nevertheless, it has been established a connection with the central office of the MJ-IT Directorate General that is kept updated about what is going on in the Tribunal of Milan and, in this way; also the approval of these practices at national level becomes possible.

The leadership role played by the judge in charge of innovation is considered important among members of the innovation office. He is a high-ranking judge and, during his career, he has acquired top-level experience both at the MJ and the Judicial Council. In a context in which peer relationships prevail, a clear division of labour and related responsibilities were established. In this office, there is a common understanding that the way followed is the right one in order to promote innovation. Further, a sense of freedom and involvement is shared so that creative solutions emerge from any member of the office. A clerk, for instance, can be the promoter of a specific solution that will be adopted as a measure by the President of the Tribunal in case it is formalized. A sense of initiative and also of temerity is present as the confidence to run risks. It can happen that solutions are introduced without any certainty that everything will go smoothly. This collaborative atmosphere is not so popular in other courts in which continue to prevail bureaucratic procedures that are believed as an obstacle for the introduction of innovations. Actually, this was an exception also in the Tribunal of Milan before of the establishment of the innovation office.

Clerks and the administrative staff in general represent the category that has played a pivotal role within the innovation office. They are in charge of a number of administrative tasks associated with the handling of judicial proceedings both the paper based ones and the online ones and maintain relationships with the external of the judiciary. Further, part of CISIA staff is represented by this category. In this way, its perspective tends to be prevalent. On the other hand, judges are involved only in specific, even though crucial, aspects of the proceedings in which innovation, at least in the civil one, consists, substantially, in a sophisticated word processor and in accessing databases.

Courts and mainly big courts as the Milan one have among its staff software assistants. They are not in their payroll as they are employed by private companies contracted to provide software and hardware assistance. However, their role is considered determinant in the everyday activity both of judges, clerks and other operators. For instance, in the introduction of the new CMS and other TOL applications it was possible to count on these assistants. It was a temporary activity, but it was considered crucial in order to go live with this application. The combination of formal training and service assistance in the field was seen as the appropriate answer in the implantation of large-scale projects.

The CISIA joins the innovation office with its staff composed by clerks as background. Nevertheless, it is considered by the court staff, to a certain extent, only an entity in charge of the technological support. Actually, its foremost duty is to implement software applications and other technological solutions, but it can be enlarged to the understanding and evaluation of their use. Members of the Milan local office believe that the monitoring level of systems is not appropriate at the moment. Conversely, capabilities developed in these offices can represent a possibility in this direction. They are not under the control of courts but of the central office of the MJ-IT Directorate General. So, it was prefigured a more articulate role played by these local offices as a sort of external agency in charge of the auditing of court information systems and not only as a technological support in their implementation. However, this passage would require the acquisition of further competences that, at present, are not available even though some steps in this direction have already been done.

5.2.2. The Milan Bar Association

The engine for the introduction of TOL is the Milan Bar Association. This role can be shared with the Lombardy Union of Bar Associations that regroups all the bar associations of such Region. According to interviews made, already at the beginning of '90s, it emerged a discrepancy between lawyers, on one hand, that had already installed software to automate significantly their work, and courts that continued to operate in a traditional way, on the other.

A lobbying activity in this respect was exercised mainly in the Tribunal of Milan but also other factors contributed to the creation of a promising environment for the TOL development. For instance, the Milan Bar Association uses to collaborate with the department of law and informatics at the University of Milan that is involved in the training of its members. In these training programs also members of the CISIA are part. These contributed to create a favourable context for the introduction of TOL. Human resources used to train lawyers, judges and clerks that came from this context.

A further factor at the basis of the TOL project in Milan is the preliminary organizational analysis carried out in the court. It was already mentioned that the Tribunal of Milan was not among the local laboratories, so there were not funds available for this proposal. At this point, the Milan Bar Association decided to finance itself this analysis as it was considered preparatory for implementing projects such as TOL.

The fact that in the so-called seven local laboratories, and specifically in the Tribunal of Bologna, a series of measures were taken toward automation of judicial proceedings represented an experience to be imitated also in the Tribunal of Milan. PolisWeb, as it was mentioned before, was one of them. The fact that already at the beginning of the last decade, lawyers in Bologna could have access to the registries of the civil trial from their offices represented an example to follow. Along with the Tribunal of Rome, Milan was one of the three venues where PolisWeb was available before the introduction of the central gateway. As in the case of the Tribunal of Bologna, soon lawyers realized that services provided by PolisWeb were not sufficient, and the objective was to introduce the possibility to exchange documents online still not supported by this application. Besides, there was another aspect to be taken into consideration. It took on average 60 days for the issuing of a payment order. Milan is the Italian financial capital and a sense of emergence arose for reducing this lapse of time: TOL was a solution.

5.2.3. The Court of Appeal of Milan and lawyers' master data alignment

Above, we already took into consideration the passage from the old CMS and the new CMS. Both of them are case-tracking systems even though the former is a court system, and the latter is a district or inter-district system. The new CMS, as a district system, shares data of several courts even though they are separated virtually. This virtual separation is not present as far as lawyers' master data concerns. A lawyer can be based in Milan but operate also in another city of the same district. Let's suppose a change of address. This has to be communicated not only to the own bar association but also to all bar associations with whom he/she operates. Otherwise, master data will not be aligned as these data are managed at court level and not at district level. This situation created a lot of difficulties in the management of

lawyers' master data. TOL, in some sense, recognizes users according to a series of data and, among them; the most important is the fiscal code that is used to identify them univocally. Any inaccuracy can create users' misidentification and related problems in the TOL's use. Only in a situation in which master data are assigned in an unambiguous way, lawyers and other users can access registries and exchange documents online without any risk. Otherwise, it cannot be excluded that they will not be able to get to concern information as wrongly addressed. This inaccuracy is far more than expected. The reason why is related to the fact that master data can be modified at court level.

In order to deal with this problem, a series of actions were taken. Half a dozen of software assistants were recruited for a 6-7 month period for clearing up master data and for avoiding the occurrence of lawyers' data overlapping. In other words, the same lawyer, for example, can be entered twice. This means that it is fundamental to introduce practices that allow the maintenance of appropriate management of master data. Therefore, any court of the district is invited to follow a series of steps in case of lawyers' master data change. Any variation in lawyers or other users' master data should be taken in charge by a specific clerk of the Court of Appeal, in consequence of a communication from his/her association. The Court of Appeal, as such, has a district competence. However, it is not always like this, and some courts prefer to intervene autonomously. In order to avoid further inaccuracies, always at the Court of Appeal level, a monitoring procedure was adopted, and there is also the intention to prevent courts from dealing with lawyers' master data modification. This issue is present at the national level, and a further solution is seen in the assignment of this task to the central office of the MJ-IT Directorate General. A simple regulation of this office would be sufficient to centralize this function and avoid a lot of mishaps.

5.2.4. *The unified front office: the Tribunal and Bar Association joint venture*

Lawyers registered at the PdA exceed 8.000 considering that, all together; members of the Milan Bar Association are around 12.000. Besides, they are more than the 90% of those who were involved in at least four cases in the last two years. Several reasons are at the basis of these figures. First of all, the Bar Association itself has made much effort disseminating among its members TOL characteristics and advantages that can be gained through its adoption. Along with this policy, large-scale training programs were and are still provided in order to initiate users to the different TOL applications. Then, the establishment of the so-called Unified Front Office contributed to this situation. This office is placed in the Tribunal of Milan, and it provides two critical services: a help desk for lawyers without PdA access (running by the court), and a help desk for lawyers about TOL applications (running by the Milan Bar Association). The intention is to pro-

vide, at the same time, a service to users on one hand and to promote TOL on the other.

At the basis of creation of the Unified Front Office, there is the introduction of the art. 51 of the law 133/2008 already above mentioned. According to this norm, it is the lawyer who has to check if procedural documents or communications have been issued. It was not like this before. Clerks informed parties that a step in the process took place. Now, clerks do not have to care anymore if a specific document has been picked up or not. At the basis of this norm, there are the characteristics of the new CMS and the possibility to send communications to parties, substantially, by default when a document is registered. It goes without saying that the introduction of this was decisive for the spread of the PdA adoption. Lawyers with access to it can keep under control all their cases remotely. In contrast, layers without this access are forced to visit the court.

We can presume what could happen if this norm would come into effect – this decision is in the hands of the Director of MJ-IT Directorate General – when only a restricted number of lawyers were enlisted in the PdA Lawyers would invade the records office of the court and its normal operations would be at risk. A significant number of lawyers enlisted in the PdA, on one hand, and the possibility to have access to the Unified Front Office, on the other hand, limited entries to the records office – after the visit to the Unified Front Office, lawyers will see if it is necessary to visit the records office or not.

6. Concluding remarks, discussion and evaluation

6.1. *The theoretical framework*

In order to discuss and evaluate TOL, the concept of information infrastructure³⁹ can be useful. To define information infrastructure we turn to Hanseth and Lyytinen⁴⁰ who identify it as “a shared, open (and unbounded), heterogeneous and evolving socio-technical system (which we called installed base) consisting of a set of IT capabilities and their user, operations and design communities”. There is no doubt that TOL is a shared system as it coordinates the activities of different players (judges, clerks, lawyers etc.). The question is crucial. TOL can be considered a closed system rather than an

³⁹ Ciborra C (2000) From Control to Drift: The Dynamics of Corporate Information Infrastructures. Oxford University Press.

⁴⁰ Hanseth O, Lyytinen K (2010) Design theory for dynamic complexity in information infrastructures: the case of building internet. *Journal of Information Technology*, 25(1), 1-19.

open one. In a sense, it is not characterized by flexibility. In order to modify or add new parts it requires a crucial adaptation of other parts. However, its configuration in these days is significantly different in comparison with what was designed at the beginning of the last decade. The evolution of the PdA is an example in this account but also the passage from the old CMS to the new CMS can be considered accordingly. Surely, TOL is a heterogeneous and evolving system. Why it is an evolving system was already mentioned above, and the different characteristics of its components (legal, technological and organisational) acknowledge its heterogeneity. As far as communities concern, the previous pages are evidence of user, operations and design communities that rally round TOL's solutions.

Hanseth and Lyytinen's work does not only propose a definition of the concept of information infrastructure (II) able to outline the characteristics of TOL, but also a series of principles for designing it. These principles are seen as an answer to two critical design challenges: the so-called "bootstrap problem" and the "adaptability problem". The "bootstrap problem" addresses the establishment of a novel II. The point is how to build a user community from scratch that can take advantage of the new system. The "adaptability problem" concerns the possibility to develop an II and its capability to deal with unforeseen demands, opportunities and barriers that can emerge during its growth.

The "bootstrap problem" can be addressed according to three fundamental principles: "design initially for direct usefulness"; "build upon existing installed base"; "expand the installed base by persuasive tactics to gain momentum". The first principle suggests that the designed II is able to persuade initial users due to the possibility to manage their needs and solve their problems. In this respect, it is considered crucial to provide current use value in view of the full development of the solution that will be achieved, eventually, later. The second principle is based on taking advantages from existing infrastructures, platforms and communication formats already in use. In this way, cost savings will be obtained and, above all, adoption barriers for the users will be smaller. A step-by-step logic defines the third principle. In other words, new functionalities will be added when the users base will be grown enough to support additional development and learning costs.

As far as the "adaptability problem" concerns, namely the building of flexible and adaptable information infrastructures, the principle of "making the IT capability as simple as possible" and the principle to "modularize the information infrastructure" are estimated appropriate for addressing it. Specifically, simplicity promotes the overlapping of IT capability and modularity allows to exploit gateways to connect different layers and maintain a loosely couple connection in the infrastructure (see Table 6).

Table 6 - Design problems and principles (Source: Hanseth and Lyytinen, 2010)

Design problem	Explanation	
Bootstrap problem	Design initially for direct usefulness	The solution must persuade the initial users through targeting their needs and solving their problems; easy to use and implement; useful without a larger user base
	Build upon existing installed base	Exploit existing infrastructures, platforms or communication formats already in use; no need for new support infrastructures
	Expand installed base by persuasive tactics to gain momentum	Generate positive network effects from extending the user base; before adding new technology, ensure that the user base has grown to sustain the added cost of development and learning
Adaptability problem	Make the IT capability as simple as possible	Make the information infrastructure as simple as possible (both technically and socially); promote overlapping IT capabilities
	Modularize the information infrastructure	Separate the layer of infrastructures from each other and exploit gateways to connect different lawyers

To identify design principles of an information infrastructure is not considered sufficient in order to build it. These principles do not take into consideration what takes place in IIs implementation as far as organizing, mobilizing and coordinating stakeholders concern. To say it differently, the point is to examine how stakeholders are involved and managed to promote a context in which agency is distributed, on one hand, and emerged and planned changes are supervised through a gradual transition of the installed base, on the other hand. The question, now, is to see how the “bootstrap problem”, the “adaptability problem”, and the stakeholder mobilization characterise the TOL project.

6.2. The design principles followed by the TOL project

The design principle n. 1 “design initially for direct usefulness” has not been followed in the TOL development as indicated in Section 5. The aim was to provide a whole system to be able to automate large part of civil proceedings, but it was not reached. Further, the decision not to provide a ministerial PdA as originally planned by the TOL project contributed to this situation. Leaving the establishment of PdAs to the 165 Bar Associations hampered the possibility to take advantage of TOL solutions in case courts’ TOL applications were ready. Things changed after 2006, when the Tribunal of Milan introduced the possibility to issue online payment orders, and an incremental strategy for TOL’s development was followed.

Thenceforth, step-by-step, a series of online proceedings of the TOL project have made their way. Changing the original objective, that proved to be too

ambitious and broad without providing a direct usefulness to users, and the introduction of relatively simple proceedings, such as the online payment order, are instances of a new project setting (see Section 5.4).

With respect to design principle n. 2 (“building upon existing installed base”), TOL was conceived as something completely new, with no relation with what was present before that had to be abandoned. Therefore, the existing installed base was not substantially used to build an infrastructure such as TOL. These considerations relate to the technological installed base and not to the legal installed base and the organizational installed base. Before the advent of TOL, there was not an infrastructure available at national level but only local and autonomous experiences. So, it raises the question if the existent installed base would be used. The legal installed base is represented by the civil proceeding law that was substantially left unchanged. This means that paper based proceedings constituted the backbone on which TOL developed and for this reason an obstacle in its way. As far as the organizational installed base concerns, the solution of laboratories was envisaged. The experience acquired by the 6 laboratories should have been transmitted at first to other 50 courts and then to the rest of them. This did not happen, and a disproportion between means available and the issue to deploy a large-scale project such as TOL came out. Therefore, the organizational installed base was not so crucial in the TOL’s development. Analysing a project that shares a lot of points with TOL, Aanestad & Jensen⁴¹ even say that it can be classified as “installed base hostile” (a bias against the use of the installed base). This can be considered also valid for the TOL case.

In terms of persuasive tactics (principle n. 3), the TOL initiative had received strong support from the ministerial level. A lot of financial resources have been allocated to this project. However, results were obtained only starting from the end of 2006 in the Tribunal of Milan. In this case, lawyers, through the online solution, could obtain a payment order decree in 15 days rather than in 60 days. This is believed a factor that led to the establishment of the user base. A critical mass of users was reached in order to go ahead in the TOL deployment.

The design principles n. 4 and n. 5 (see Table 7) are represented by simple and modular solutions that allow the IIs to grow flexibly. While the TOL project envisaged a comprehensive solution addressing multiple goals rather than minimal and simple answers, it has been conceived as based on several modules (see the Sections 4.1.1 and 4.3.1) and then according to the principle n. 5. Again, these modules are interdependent and tightly coupled. Only a closed integration of the several TOL components allows proceeding execution online suggesting the rigidity rather than the flexibility of this system (see Table 7).

⁴¹ Aanestad M, Jensen TB (2011) Building nation-wide information infrastructures in healthcare through modular implementation strategies. *The Journal of Strategic Information Systems*, 20(2), 161-176.

Table 7 - TOL design principles

Design principles	TOL
1. Design initially for direct usefulness	The TOL project, at least in the first long part of its implementation, did not provide immediate usefulness
2. Build upon existing installed base	The pre-existing technological installed base was abandoned but probably this was necessary in order to implement a large scale project such as TOL. In this respect, also the legal installed base (the civil proceeding law was left substantially unchanged) and the organizational installed base (6 laboratories) showed limits supporting it.
3. Expand installed base by persuasive tactics to gain momentum	Only in 2006, in the Tribunal of Milan, with injunctive decrees online a persuasive tactic was followed. Then this tactic have spread significantly.
4. Make the IT capability as simple as possible	At least originally, the objective was to envisage a comprehensive solution that reformulated completely court activities.
5. Modularize the information infrastructure	The fact that TOL modules are strictly interconnected prevents the flexibility of the entire system

6.3. The TOL project's approach to stakeholder mobilization

The TOL project did not require the mobilization of a large number of stakeholders. It is a traditional top-down government project even though it was promoted by the Tribunal and the Bar Association of Bologna. Its key components were figured out in two competitive tenders that led to the development of hardware, software and organisational support. As it was mentioned above, at the end of 2004, from a technical point of view, the project was officially ready except for the central system that was completed the following year. Therefore, at first, involved stakeholders could be relatively circumscribed: the MJ, courts, the players recruited through the tenders and users (layers and expert witnesses). Things changed due to the decision not to go ahead with the ministerial PdA. This could have represented an alternative solution to lawyers in case their Bar Associations were not able to establish their own PdA. But in this way all the 165 Bar Associations needed to be involved.

Besides, the management of PdAs has been particularly critical due to the fact that its characteristics changed three times in few years, requiring, of course, a further mobilization of the Legislative (this matter is subject to a specific normative), of the Ministry of Justice, of the Bar Associations, of software vendors etc.

Now, the wonder is what benefits the TOL project was able to realize in the meantime in order to drive stakeholders. In the beginning, benefits would

have been obtained only in case the different TOL's applications were in service and closely integrated. This objective is still far to be reached. So, the commitment to the TOL vision was related to the expectation that one-day soon everything will perform perfectly and to political and administrative pressures represented by national strategies and formal agreements. To sum up, in the TOL project there was not a balance between costs and benefits as the latter, in many cases, is to come. At present, we are still in a situation of limited reward to stakeholders and, rather, further efforts, and costs are required. An example in this respect is represented by the passage from the "old" PdA based on a closed electronic mail system and the new PdA based on an open one.

The "innovation office" at the Tribunal of Milan is a significant example of the level of stakeholders' mobilization that a project such as TOL requires at the local level. In this case, not only traditional players of the world of justice but also universities and consultant companies were involved. This suggests the inadequateness of the 6 laboratories as the solution envisaged for supporting the implementation of the TOL project. At this point, the question is how many courts at national level have the mobilization capacity of the Tribunal and of the Bar Association of Milan, considering also that activities in the courts have to continue independently from the TOL project.

Now, it is also clearer why the Tribunal of Milan was the first court that succeeded to introduce, at least, a TOL application (payment order decree online). Moreover, the "innovation office" has become a point of reference for TOL deployment not only at local and district level, but also at the national level. The "innovation office" as a laboratory where solutions are experimented evaluated and then spread in other courts.

The implementation strategy followed by the TOL project is characterized by a wide and long-term commitment of the stakeholders. This is not an easy task mainly when benefits are collective, rather than specific and local, and achievable in the future whereas, in the way, only few tangible outputs are available. Besides, the different technological solutions at the basis of TOL are in the circle of closely integrated functional modules. These solutions, leading to an asymmetry between investment and benefits, inevitably require a significant stakeholder mobilization.

Part 3

European case studies

Chapter 8

Experimenting with European Payment Order and of European Small Claims Procedure

Gar Yein Ng

1. Introduction¹

This chapter describes simulations which were conducted to gain some initial insights into how well trans-border civil claims at the EU level operate. The first simulation was for the European Small Claims Online Procedure (ESCP)² and the second was for the European Payment Order (EPO)³. This essay focuses on one actor in particular for both simulations: that of the claimant in relation to both of the proceedings, in terms of specific problems encountered in completing the forms, and what to expect from the final outcome itself.

2. Methodology

The simulations followed flow charts that were designed to lay out the steps provided for the by the two regulations in order to make an online claim. This was done by going through each step described by the e-justice website for the EPO and ESCP proceedings. The flow charts provide a picture of how the steps should work, and the simulation describes how it works. There were two parts to both simulations. One person followed the procedures as if making a claim under EPO and ESCP. This required the person to fill out the forms online, following the instructions on the one hand, and describing the process

¹ This essay is based on 2 earlier reports produced by Gar Yein Ng and Marco Mellone. With thanks to Marco Mellone and Francesco Contini for comments.

² This was conducted October 2011. This has been described in more detail in an unpublished manuscript.

³ This was conducted February 2012. This has been described in more detail in an unpublished manuscript, see www.irsig.cnr.it/biecpo. Since both simulations, the websites have had some slight alterations, but do not actually affect the insights in this essay.

based on the flow chart on the other, at the same time as describing any obstacles or difficulties (or not) to filling out the forms.

The other person followed the procedure once the claims arrived at the relevant court (in this case, the Justice of the Peace in Bologna). In a similar way, this person had to follow the procedure in court. This required an in person presence at the Justice of the Peace in Bologna, to interview and ask how this procedure was dealt with, also in light of the steps laid out in the flow chart, according to the directive.

A final section of the report, “problems” highlights the main obstacles to following the steps of the procedures by both parties. These are not grouped or clustered in any particular way, but are there only to stimulate a discussion on the interoperability problems from the users points of view. The ones for EPO are a starting point for further discussion in light of the broader project. However, they do form the basis for this essay, as they highlight the main difficulties for the claimant in this process. The reason for this focus is that these procedures are essentially there to serve claimants, rather than courts. In order to better advise the further technical development of the ESCP and EPO, it is best that they develop it around consumer needs.

The essay will look first at the problems for claimants with filling out the forms for both procedures, as the problems are common to both, and then with the problems after the claims are filed at court. This essay will not go in depth into either process, as they have been described in a manuscripts available at www.irsig.cnr.it/biecpo. Where the simulation showed similar problems for the same areas, they have been written about in one section; where the simulation showed different problems for same areas, I have given separate headings for the two different procedures.

3. Claimants under EPO and ESCP: main problems

Firstly, there is a problem of expectations generated by this procedure. It is somewhat unclear from the e-justice portal what EPO consists of: whether it is only a summary proceeding to confirm a claim, or if it includes enforcement. This actually is not a problem for the small claims procedure. It is clear that there is a claim for a certain amount that falls within the ESCP. What may not be altogether clear is the difference between the two and how a claimant should choose the appropriate procedure, especially if the amount claimed falls under the ESCP, but would be faster under a summary proceeding such as EPO.

Secondly, there is an issue of how easy it is to fill out the form itself. EPO is a friendlier site to fill than that of ESCP based on the experience of the simulation. However, issues such as deciding jurisdiction if the claimant is not a

lawyer, identifying attackable assets, calculating interest (if the claimant is not a banker), describing documents that support a claim, and any additional information in Italian are stumbling blocks to doing this without legal representation. The problem is deciding at which point to give up and at which point it is worthwhile pursuing a claim under this procedure. It was easy to forget during the simulation that at some point the form needed to be written in Italian. Thirdly, whilst not a large problem by itself, there is a technical difficulty with the website – more so with the ESCP than EPO, but with EPO there were other problems.

Lastly, communication with the court appears to be a problem, in terms of connectivity, and what to do after the ESCP application has been received or EPO has been issued. There appears to be no institutional support, although EPO does not declare that claimants do not need a lawyer in the same way that ESCP does, technically both websites could advise you to find a lawyer, and maybe give a list of lawyers able and willing to give a service on this procedure.

3.1. *Expectations*

This appears to be an EPO problem only. The opening page starts with an introduction to EPO, and outlines generally how the procedure works. What is interesting is that enforcement appears to be a separate procedure:

“A copy of the European Payment Order, and if necessary a translation, must be sent to the enforcement authorities of the Member State where it needs to be enforced. Enforcement takes place in accordance with the national rules and procedures of the Member State where the European Payment Order is being enforced. For details on the enforcement, please consult the relevant section”.⁴

This is interesting because the “intelligent reader” (not necessarily a lawyer) could expect this to be a “one stop shop” given its name “European Payment Order”, and its nature as a “summary proceeding” could lead one to believe that enforcement could be done at the same time. It is not assumed that one will need a separate proceeding, as according to the “relevant section” separate proceedings are only needed if judgment has not been complied with: “*If a court has decided that someone must pay you an amount of money or undertake a particular action (judgment) and this has not happened or you have not received the money, you may want to ask the court to enforce the decision.*”⁵

⁴ https://e-justice.europa.eu/content_european_payment_order-41-en.do last accessed 03/06/2013.

⁵ https://e-justice.europa.eu/content_enforcement_of_judgments-51-en.do last accessed 3/06/2013.

This may serve as a warning to the user that EPO may not be enough to claim a right under this proceeding, and that it could go further. However, at another part of the ejustice portal⁶ it is stated that:

“The judicial decision obtained as a result of this procedure will circulate freely in the other Member States; the creditor will not have to undertake intermediate steps to enforce the decision abroad.”

With several clicks of the mouse, a claimant may find conflicting information already as to what to expect from this procedure (i.e. whether one will be paid the amount under the judgment with or without enforcement, if the claim succeeds).⁷

3.2. *Ease of form filling*

The first form that must be filled is Form A to make the claim for both EPO and ESCP. When you click on this, it leads to a map, and you click on the country you wish to file the claim in.

a. Initial steps:

The information given on both sites when Italy is clicked tells a claimant how to communicate with the court (paper format-post), the language it needs to be in (Italian), and how long it will take (in this case, no more than 30 minutes). It also helpfully explains that data will be saved in case of inactivity for more than 30 minutes (which is actually not always true). From here, there is already a problem of language. If the claimant does not read or write in Italian they may get into trouble with filing the claim. If the information required in this form is very basic, one may be able to use internet translation tools to make the claim; if more information is required in clear legal language, this maybe problematic. This goes to who this procedure is really aimed at. If it is aimed at repeat players with a constant practice of cross-border transactions, it is possible that their knowledge of local language would be sufficient to fill out the form. If however it is a one shotter, someone who rarely conducts cross border transactions, it may be more difficult.

b. Scope and Jurisdiction:

Here there are two issues: what type of claims can be made (scope), and to which courts (jurisdiction).

⁶ http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm last accessed 3/06/2013.

⁷ During simulation, this was indeed problematic for the claimant. However, as it is not within scope of this essay to discuss enforcement proceedings outside the EPO proceeding, you are directed to read the unpublished manuscript elsewhere for more details on this issue.

Scope EPO/ESCP:

There is actually no monetary cap or limit on the amount possible to be claimed for EPO (unlike the ESCP - 2000 euro). The only reference to monetary limitation is which court you choose to apply for the EPO; less than 5000 euro a claimant must go to the Justice of the Peace, above that one must go to the ordinary tribunal. There is nothing here about rejecting complex or variety of cases, and therefore probably no limitation on the types of evidence submitted. However, this is an area which will require further research.

In terms of types of claim:

“If the application concerns a claim against a consumer relating to a consumer contract, it must be lodged with the competent court of the Member State in which the consumer is domiciled. In other cases, the application must be lodged with the court having jurisdiction in accordance with the rules of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Information on the rules of jurisdiction can be found on the European Judicial Atlas”

Furthermore⁸:

“The European order for payment procedure applies to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. A “cross-border case” is one in which at least one of the parties is domiciled or habitually resident in an EU country other than the country of the court hearing the action. The regulation applies to all EU countries except Denmark.

The procedure does not extend to revenue, customs or administrative matters or the liability of a state for acts and omissions in the exercise of state authority (“*acta iure imperii*”).

The following are also excluded:

matrimonial property regimes;

bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

social security;

claims arising from non-contractual obligations, unless they have been the subject of an agreement between the parties or there has been an admission of debt or they relate to liquidated debts arising from joint ownership of property.”

It is possible to follow these rules quite easily. If the claim fits within one of these excluded areas, then it is excluded from the scope of EPO procedure. Further rules of scope are found in the form itself in section 4 of EPO form:

⁸ http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/116023_en.htm last accessed 03/06/2013.

“4. Cross-border nature of the case

For you to be allowed to use this European order for payment procedure, at least two of the boxes in this field must refer to different States.”

This is easy, and somewhat different from ESCP, where they give a box and claimant fills in the story of the relationship and the nature of the dispute, and therefore how it is a cross border case as well as a legitimate “dispute” for the purposes of the ESCP. EPO gives a choice of countries from the EU, so one chooses where domiciled and where the defendant is domiciled and the jurisdiction chosen. If the plaintiff can choose neither, then she is once again excluded from scope of the EPO.

For **the ESCP**, the same regulation for scope applies as for EPO. However, the form offers only one choice for scope, and does not exclude any matters in the same way as EPO does. In describing the cross border nature of the case, the claimant needs to show the cross border nature of the transaction that took place, i.e. she/he ordered goods and/or services from Italy.

The scope of this is however not clear. What if the claimant was (living) in Italy when she ordered the goods/services, and discovered a breach of contract/tort only after he/she had left Italy etc. This is an added complexity and it is unclear what solutions they have to offer to the European trader.

Rules of jurisdiction EPO:

“The basic principle is that jurisdiction is to be exercised by the EU country in which the defendant is domiciled, regardless of his/her nationality. Domicile is determined in accordance with the domestic law of the EU country where the matter is brought before a court. If a party is not domiciled in the EU country of the court considering the matter, the court is to apply the law of another EU country to determine whether the party is domiciled in said state. In the case of legal persons or firms, domicile is determined by the country where they have their statutory seat, central administration or principal place of business. In the case of trusts, domicile is defined by the court that is considering the case by applying its own rules of private international law.”⁹

This leaves this claimant to assume that the court seized is that of the domicile.

For the specific claim made in Italy during the simulation, a link exists to Italy’s rules of jurisdiction, making a difference between “magistrates court” and ordinary tribunals (for the non-lawyer, it will not be clear that Giudice di Pace is the same as magistrates court). This has changed since the simulation took place in February 2012, and it is now called “Justice of the Peace” instead of Giudice de Pace (although it still may not be clear that this is the same as a magistrates court however).

⁹ http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/133054_en.htm#KeyTerms last accessed 03/06/2013.

It was assumed that because the claim under the simulation was 1000 euro only and was for moveable property (i.e. money), and did not fall under “claims relating to companies, banks and securities firms and loans for public works within the meaning of Section 1 of Legislative Order No 5 of 17 January 2003”, that the claim should go with the “magistrates court”.

Whilst this is dealt with in preliminary activities of the flow chart, Section 3 of the form also asks for grounds for jurisdiction and gives a list of possible reasons for jurisdictions. This is a bit odd given the information given earlier about using the defendants domicile as the basis for jurisdiction (and indeed it is the first one on this list). However, if one is uncertain, one may choose 5 out of up to 14 possibilities for grounds of jurisdiction, the last one being “other”:

- “01 Domicile of the defendant or co-defendant
- 02 Place of performance of the obligation in question
- 03 Place of the harmful event
- 04 Where a dispute arises out of the operations of a branch, agency or other establishment, the place in which the branch, agency or other establishment is situated
- 05 Domicile of the trust
- 06 Where a dispute arises concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, the place of the court under the authority of which the cargo or freight is or could have been arrested
- 07 Domicile of the policyholder, the insured or the beneficiary in insurance matters
- 08 Domicile of the consumer
- 09 Place where the employee carries out his work
- 10 Place where the business which engaged the employee is situated
- 11 Place where the immovable property is situated
- 12 Choice of court agreed by the parties
- 13 Domicile of the maintenance creditor
- 14 Other (please specify)”

Having identified the correct country, and the correct type of court, one must then find the address of the court to which one must send one’s form. One problem identified during the filling out of the ESCP form (that was not encountered in EPO) was the address given of the court with jurisdiction over the simulated case, was wrong. Without correct addresses, there is no point in going further with the claim, let alone the project in general.

It is suggested that more guidance to select the appropriate jurisdiction maybe helpful to the lay claimant. This could be in the form of FAQ section instead of more detailed regulations and links, which may open up the user to more confusion.

Rules of Jurisdiction ESCP:

The Court of the domicile of the defender is the main criteria of jurisdiction but in some cases it could be incorrect. This happens for instance when the Court of the where immovable property must be seized is situated or the Court chosen by the parties in the agreement.

Moreover, the criteria of jurisdiction's function of the ESCP form is to determine if an Italian Court is competent rather than a French Court, but in order to determine if the Italian Court of Bologna or Modena is competent other internal rules shall apply. Whilst this is for the High Council to decide, and internal rules on territorial competence contain other criteria of connection which are still interpreted not in the European way and that can cause complexity, there is actually explanation of which court to direct your application to within the form itself.

Furthermore, deciding jurisdiction is a bit trickier under ESCP. Here the claimant needs to explain why the forum that has chosen should capture jurisdiction. To a lawyer, these terms and criteria are quite clear. However, if one click on the links within the form to see the glossary for some of the legal terms employed, one can see that none of the terms within from s. 4.1 to s. 4.7 have been explained and the other website on rules of jurisdiction for other types of cases is also not helpful here. It takes the claimant back to an index of proceedings for different types of claims and jurisdictions. This is not easy for a lay person to do. Again, everything depends on target audience and who would want this service and their experience and connections.

c. Identifying attackable assets and representatives:**Assets:**

The first divergence from the guidelines of EPO and ESCP from the flow chart is on the preliminary activities of the debtor/claimant, in the "basic investigation on the debtor and the identification of attackable assets". It is a bit unclear what this means beyond identifying who is the debtor. However, identification of attackable assets is not easy if the claimant is foreign, and does not know how to investigate this. One would probably require a lawyer or court order to investigate private details of any possible assets. There are also issues of privacy involved, in terms of how far an individual citizen may investigate the assets of another citizen, especially of another country.

This step is logical from a procedural perspective so that the claimant is not wasting time suing someone or an entity that is bankrupt or has no valuable assets to cover the claim should the claimant win. However, as logical as this is, whether or not a defendant has attackable assets, should not detract from the fact that a claimant may have rights against him/her, and may indeed be able to enforce their claims in part, and/or over time. Another problematic item within both flow charts is "notice of warning". This does not appear in

any of the guidelines or the forms. This is apparently a basic courtesy to the alleged debtor that if he/she does not pay the debt owed within a certain amount of time, then the ESCP or EPO will be filed against him/her.

Persons:

Section 2 of the EPO and sections 2-3 of ESCP forms require identification of actors in the proceeding, including claimant, defendant and representatives. Identifying claimant and defendant are not difficult. However, identifying representatives in the EPO form appears to be somewhat complicated. The ESCP form does not require this information in any special format, only a name and any other contact details if known (possibly because ESCP claims that one does not need representation for this proceeding). Section 2 of EPO states that:

“The box [Identification code] should refer, where applicable, to the special number which solicitors have in certain Member States for the purposes of electronic communication with the court (see Art. 7(6), second subparagraph, of Regulation (EC) No 1896/2006), to the registration number for companies or organisations or to any applicable identification number for natural persons. The box [Other details] may contain any other information that helps to identify the person (e.g. date of birth, position of the named person in the company or organisation concerned). If there are more than four parties and/or representatives, please use field [11].”

If the claimant only fills the parts required for ‘claimant’ and ‘defendant’, it is quite easy. Otherwise the claimant needs to ask the representative as well as the defendant for the details requested about them in this field. It refers to identification codes, but gives no link as to where such codes may be found. This can be difficult, and it is unclear how important this information is until the court responds to the form.

d. Court fees

“... you may inform the court by what means you intend to pay the court fees. Please note that not all methods of payment in this field are necessarily available at the court to which you are making this application. You should verify which method of payment will be accepted by the court. You can do this by contacting the court concerned or by consulting the website of the European Judicial Network in civil and commercial matters (http://ec.europa.eu/civiljustice/homepage/homepage_ita_en.htm). If you choose to pay by credit card or to allow the court to collect the fees from your bank account, you should give the necessary credit card/bank account details in Appendix 1 to this form....”

This is the first major obstacle for both procedures: How to pay. As with the ESCP simulation, the information on how to pay is in Italian (In recent changes to the EPO site, there is a section in English now as well, but it is not very useful). This is a problem of access to information in relevant language

as well as important information for the case to be processed. In the simulation bank transfer was chosen, though we knew this to be impossible.

Further research has revealed that there is actually the possibility to pay court fees, by paying *Versamento in conto corrente postale n. 57152043 intestato a Tesoreria Provinciale di Viterbo – Versamento contributo unificato spese atti giudiziari DPR 126/2001*.¹⁰

The court fee can be paid online through www.poste.it, but the website requires a registration and it is available just in Italian. The registration procedure is not so simple, and a mobile phone is required to get a SMS with activation code.

Unfortunately, the Italian State did not transmit this kind of information to the Commission and, therefore, no information on this issue appears on the ATLAS web site. Therefore, that is quite problematic if one is claiming from abroad.

It is also possible that the court will send more information on court fees in its further communication with the claimant if it identifies this as a problem with the form itself.¹¹

One other common difficulty for both of these procedures is the guarantee of privacy of bank details once a claimant has submitted them. This is an interesting legal issue, but easy to solve with a classical statement, such as the data provided with this form will be used exclusively for the procedure. But they have to do it and they haven't since it has been running. Privacy on bank data details is actually a problem. According to the European legal framework, each Court should expressly state the treatment applied to these data. The issue is then, why they haven't.

e. Calculating interest

Section 7 of the EPO and ESCP forms deal with interest rates; during the simulation, random numbers were entered in order to move forward with filling out the form.

Again this is an impossible task for anyone not versed in calculating interest (i.e. lawyer/accountant/banker). Two options were randomly chosen. However, this section, even though it is written in English, appear to be somewhat unintelligible to the average user. The guidelines really are not helpful in this respect. This is another area in which more information or offer of guidance could be given by the website itself.¹²

¹⁰ See also <http://www.contributounificato.it/esenzioni.html> last accessed 03/06/2013.

¹¹ During simulation other problems with charging court fees were identified in terms of how to receive them without creating the danger of inappropriate behavior, such as corruption or bribery.

¹² "If interest is demanded, this should be specified for each claim as identified in field [6]

The calculation of interest is a real problem outside of these complicated instructions. First of all, there is a problem of applicable law: the citizen should assess which law is applicable to the situation, since the calculation of the interests is a problem of “substantial law” and not of “procedural law”. Of course, the assessment of the applicable law is a difficult operation which is based on a specific EU regulation and on specific legal criteria. Secondly, the material calculation can be difficult. Normally, an Italian lawyer calculates interest on the basis of specific software which is also available on internet. It is frankly doubted whether the existence of this software is known by all citizens and above all by a foreign citizen.

The European Union should facilitate the calculation of interests by providing common software which contains all the data of the interest rates of each EU country. This should be something they can do on their e-justice website.

f. Calculating Costs (if applicable) (EPO only)

If reimbursement of costs is demanded, these must be described using the codes indicated on the form. The box [specification] must be used only for code 02, i.e. when reimbursement of costs other than court fees is demanded. These other costs could include, for instance, fees of a claimant’s representative or pre-litigation costs. If the claimant requests reimbursement of the court fees but does not know the exact amount, they must fill in the box [Code] (01) but may leave the box [Amount] blank and it will be filled in by the court.

During simulation, only “court fees” were claimed and left the rest blank. As with the ESCP, we assumed in this simulation that a lawyer was not needed. It says at the beginning that once you submit the form, the procedure leads

in accordance with the codes indicated on the form. The code must contain both the relevant number (first row of the codes) and the letter (second row of the codes). For instance, if the interest rate has been agreed by contract and covers annual periods, the code is 02A. If interest is demanded up to the decision by the court, the last box [to] should be left blank. Code 01 refers to an interest rate laid down by statute. Code 02 refers to an interest rate agreed by the parties. If you use Code 03 (capitalisation of interest), the amount indicated should be the basis for the remainder of the term to be covered. Capitalisation of interest refers to the situation where the accrued interest is added to the principal and is taken into account for purposes of calculating further interest. Please note that in commercial transactions as referred to in Directive 2000/35/EC of 29 June 2000 on combating late payments, the statutory interest rate is the sum of the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question (‘the reference rate’), plus at least seven percentage points. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above is the equivalent rate set at national level (e.g. by the national central bank). In both cases the reference rate in force on the first calendar day of the half-year in question will apply for the following six months (see Art. 3(1)(d) of Directive 2000/35/EC). The “base rate (ECB)” refers to the interest rate applied by the European Central Bank to its main refinancing operations.”

its own life, and the claimant is not required in court. But unlike ESCP, EPO does not tell the claimant that a lawyer is not needed, and the claimant can have more than one. If it costs a fee to identify attackable assets at the beginning of this form (in which case it would have taken longer than 30 minutes to gather this type of information for filling in the form), the claimant may well be able to claim this as a prelitigation cost. The claimant probably will not know court fees, as information on how to pay it, let alone how much it costs, is not available directly through the e-justice portal.

It has been asked whether from a functional simplification perspective if all these details are needed and if the judge can accept all the requests as declared by the plaintiff. One may assume that the court will require evidence of receipts and bills in relation to the EPO proceeding, but further research needs to be done on this issue.

g. Providing Evidence available in support of the claim

This must specify the evidence available in support of each claim for both proceedings using the codes indicated on the form. The box [Description of evidence] will contain, for instance, the title, name, date, and/or reference number of the document concerned, the amount mentioned on the document concerned, and/or the name of the witness or expert.

One can assume a contract in this simulation. One should not forget to fill in this form in ITALIAN. This is the only part in both forms (along with additional statements) that appears to require foreign language knowledge. This is a barrier to those who do not write Italian and have not hired an Italian lawyer to do this work. It maybe that 1000 euro is not enough incentive to pay a lawyer to fill this in.

If the claimant can keep it simple, i.e. “I ordered goods in Italy to the sum 1800 euro and they were all faulty on arrival in England”, this may be easily translatable within internet translation tools. However, if the courts in Italy require more complex explanation, i.e. “The defendant is in breach of contract, s. XYZ, clause ABC, in which he agreed etc...” with a whole page of legal explanation, then an Italian lawyer may be needed. It does say that “If space is insufficient, you can add additional sheets”. It requires details of the claim in terms of facts of what happened. Again, if this can be kept simple, then may be using an internet translation tool would again be sufficient. Evidence is simple enough, if there is a contract, a receipt or witnesses.

It can be added at this point that Italian Justice of the Peace applies the principle “*dame mihi factum tibi dabo ius*” (You give me the facts, then I will give you the law): therefore, before the Italian Justice of the Peace normally a description of the facts is enough. However, the court may return the claim with form B (for both procedures) for incompleteness, requiring either more details or more legibility.

This is a semantic problem, which may be solved if it is possible to identify *ex ante* a certain number of options to choose from, given that the complexity and variety of these claims are quite limited. If a pre-established list of options, plus an “open” class (to be filled in by the plaintiff) solve the main semantic problem.

3.3. *Technical problems*

Given that it would be very difficult for any “intelligent” person to fill in this form in one sitting without all available information, it should be possible to save this form. The website for both forms remembers the answers in the fields if the claimant uses the same computer to fill out the form the second time around.

During simulation, saving the ESCP appeared to be possible, but when attempted, it failed. For the EPO it was also tried, and it saved as an xml document, and when an attempt was made to open it, it came out in code and many colours. We have no idea what went wrong. There is a feedback part of the website that you can complain to about any problems with the site.

One detail that did surprise the researchers was that of signature. At some point in the guidelines to the form A one is reminded to **date and sign** the last page. This means that identification is provided by personal data entered in the form and by signature: Copy of ID documents are not required. This is interesting within the broader project of interoperability, as there are problems in other similar cross border projects with accepting electronic identification.

3.4. *Communication with the court and responsibility for procedural steps*

EPO:

Based on the rules of EPO, once the form has been filled out and sent according to the rules of procedure, the whole thing should take on a life of its own without further interference from the claimant (unless the court requires more information). However, various problems with this were encountered in the second phase of the simulation, whereby a trip to the Justice of the Peace court of Bologna was made to verify what steps were taken with regards to an EPO application.

Based on the observations from that part of research, there are mainly problems of communication between the court and the claimant, which would not be a problem if the claimant did not have to take further steps (but in fact, under internal rules of the court, does have to take many further steps).

- a. EPO is a default judgment against a defendant unless the defendant challenges the claim. Once EPO has been issued, and once the foreign creditor acknowledges that a European order for payment has been issued, he/she has to serve it upon the debtor within 30 days after notice

has been served to enforce the EPO. This requires the claimant to know when the EPO has been issued and therefore for the claimant to contact the court by phone or letter (in Italian) as the court in Bologna will not inform a claimant of this.

- b. Furthermore, in order to serve the EPO upon the debtor, claimant must obtain an original copy of the EPO and to file the request for its service with the Italian judiciary service Authority (“*ufficiale giudiziario*”): these activities normally entail the physical presence of the creditor or of a person acting on his/her behalf. This requires further payment of court fees.¹³
- c. Moreover, the request for the original copy as well as the actual service of said EPO upon the debtor should be carried out in Italian language, being the seized Court normally competent to deal with requests in Italian language along with court fees.¹⁴
- d. Challenged EPO: If the debtor has challenged the EPO within the 30 days from receipt of notice, then the claimant should be informed about this circumstance: indeed, if the claimant did not choose to stop the proceedings in case of opposition by the debtor (within appendix 2 of EPO forms), then a ordinary civil proceeding shall start before the Court seized. Further information is unavailable about further proceedings at this stage. For this purpose, it seems that the court in Bologna does inform the claimant about the opposition by registered letter, unless the claimant fills out appendix 2 relinquishing the claim in case of a challenge. Moreover, the Court on its own motion fixes a hearing for the commencement of the ordinary proceedings: of course, the date of the hearing is communicated also to the debtor. It would be extremely useful if these standard communications would be made available also by letter translated in different languages. This is another area in which a case management system may help by providing a set of letters in different languages as with *e-curia*.

The communication is in Italian language and this is not helpful for the (foreign) claimant who may not be able to understand the content of the communication. Furthermore, it seems that the communication only informs the claimant about the date of the hearing, whilst at the same time not informing him/her about the basic procedural information about the Italian civil proceedings (i.e. his/her defensive rights; the faculty/need to appoint a lawyer etc.).

¹³ If you have somehow made it to this point, then it may mean that you have already successfully paid court fees once, and may know how to do it again at these various stages of the courts proceeding – if they inform you that further fees are required.

¹⁴ If you have again made it to this point by filling out the original form in Italian, it may well be possible to apply for this in Italian again – if you are informed of the need to do so.

- e. Non-challenge – If the EPO is not challenged within 30 days, then the claimant may start enforcement proceedings. As it is not within the scope of this essay to discuss the problems inherent with enforcement (as it is separate from EPO proceedings).

ESCP:

- a. Once received the court should process the ESCP petition. Council Regulation 861/2007 of 11 July 2007 establishes time limits for the parties and for the court in order to speed up litigation. There is a summary here of time limits, but as with all things European that affect court procedures it is left up to the courts as to how to do this.¹⁵
- b. As concerns the “timing” of the procedure, it must be remembered that time limits are compulsory for the parties, but not for the Courts. Therefore, time limits for the Courts are just an “indication”, a suggestion for best practices, but no effects are provided in case of non-fulfilment of the rules. This raises a question of breach of article 6 rights, as well as the practicality of following a court case from abroad and the facilities for that.
- c. Where the court has received a small claim, but is incomplete because it’s in the wrong language or documents are missing etc, they will send the form back to be properly filled. The only thing that isn’t here is the timeline in which that should take place. (There is no timeline for this aspect of the courts work described in the summary of the regulations)
- d. Communication with the Justice of the Peace in Bologna is in Italian. They do not appear to be aware of the translation of the form software on the e-justice portal, or if aware, do not seem willing to use it.
- e. If the court does return form B for incompleteness, Form A can either be rectified or withdrawn. If rectified and accepted by the court, notice will be given to the defendant. The key aspect at this time of the procedure is that it is always on the claimant whether domestic or cross border. It is for him/her to start the claim and therefore go to the trouble of doing the work and communicating with the court. However, there is one possible complexity, if the defendant is not actually Italian, but only resides in Italy, as Italians are not the only residents in Italy.
- f. In terms of actual proceedings, the ESCP should be conducted with written procedures (these are not in breach of article 6 fair trial rights). If an oral hearing is demanded, then both parties must be available to attend.¹⁶

¹⁵ http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l16028_en.htm last accessed 03/06/2013.

¹⁶ The steps the court can take are more variable under ESCP than EPO.

- g. After final judgment is given, if the claimant wins, normally, only a copy of the ESCP judgment will be enough in order to start the execution in Italy (that is to say to proceed with the preliminary seizure of the defender's assets). In practice, no bailiffs start the execution procedure if the local Court does not declare the ESCP judgment internally enforceable (there is a formula put on the ESCP judgment called "formula esecutiva"). This is a further step which implies basically the participation of a lawyer, since a normal citizen cannot be aware of a so technical step.

4. Conclusions

The complexity of this procedure varies depending on who is using it. In principle, this is an access to justice issue in order to support and develop the free market within the EU, so technically EVERYONE should be able to use it. However, not EVERYONE "lives" in the EU. People live in member states and rarely have cross border experiences with business or administration. Majority of people will buy locally. Only businesses and people with specific interests in buying goods/services (or travelling across borders) will have reason to sue. Also consider that if the claimant is a business or a repeat player in the market, he/she is likely to know the supplier, and therefore also probably has knowledge of the language of the country or knows someone who has knowledge.

Something for developers to consider is taking into account the real potential users of these proceedings, and how to give effective and efficient access to them.

Common problems:

From this simulation there appear to be various problems for the claimant: the type of information required, acquiring said information in an easy and efficient manner, and communication with the courts.

The way that the forms are set out is that if the fields are incorrectly filled out, the claimant may not continue with adding entries to the form or the form may not be processed and returned for corrections. Without the information that is problematic to obtain it will not be possible to complete this procedure, let alone fill out the form in 30 minutes.

Some information should be easily accessible through the e-justice portal website, such as how to pay court fees, easier ways to identify jurisdiction (both scope and territory), the type of documents one may need to support ones claims, and how to calculate interest. It should be possible for each country to provide access to information in different languages on how to identify attackable assets – e.g. through links to registries or services responsible for this (such as courts' services, or bailiffs offices, or notaries etc). It should al-

so be possible to provide a list of lawyers from each country willing to offer cheaper services for EPO/ESCP claims.

There should be technical support from the e-justice portal itself if a claimant becomes stuck in one place or if there is a problem with the form no matter what one enters into any given field. There is a feedback link at the bottom of the page of the e-justice portal, however further research should be done to see what type of assistance may be offered in the filing of the EPO.

As for language barriers in the form, there is only one place that really requires a claimant to fill out the form in Italian and that is in the description of the claim. It has been suggested that a list be made available of the possible bases for claims, especially if ESCP or EPO is only to provide (summary) judgment in uncomplex or simple cases (failure to pay rent or breach of contract for a one time service provided etc).

From a fair trial rights perspective, the main issue that is truly problematic is that of the language of communication. In a domestic court trial (civil or criminal) the court will provide translation services to ensure that no rights of witnesses or parties are breached. If we apply this principle to the written procedure, we can state that the burden/costs of the translation should be paid by the court itself, and by court fees, eventually.

Issues for EPO only:

There appear to be problems in terms of fulfilling procedural steps, and what to do after the application for the EPO has been made. There appears to be no institutional support from the court, even though it is the court's responsibility to fulfil the steps of EPO after a claim has been filed. Although EPO does not assert that a claimant does not need a lawyer in the same way that ESCP asserts, it is quite clear that most "intelligent users" would not be able to cope with the stress of these unforeseen procedural steps and external costs. To correct this, the e-justice website could advise potential users to find a lawyer, and maybe give a list of lawyers able and willing to give a service on this procedure.

Issues for ESCP only:

Another problem (aside from language) within the fair trial rights perspective is the timeline of this proceeding. It is not clear how long it should take, and what is "reasonable time" within this procedure. It is not really possible to impose a standard on all the countries taking part. However this is mostly an administrative task for routine cases, and should not take long for any judge to recognize whether private rights have been breached or not based on the evidence and claim at hand, unless there is complexity within the case itself. If there is no oral hearing demanded, one could say that this type of case should be done in a matter of days rather than months. Having checked the regulation, judgment, having obtained the correct forms and documents should take 30 days only. There are no legal effects in case of non-fulfilment of the said time limits for the courts. The regulation just tries to "push" national courts.

From an accessibility point of view, there is no actual link to this procedure within the English courts, as far as we could see at the time of the simulation, it was under maintenance at that time, and Italian procedures did not even show up in an Internet search during the simulation itself. It could indicate irrelevance for European judiciaries given its disconnected nature from national courts. This may create serious problems of access to this service and this specific analysis should be further expanded. One can assume that if normal citizens searches for a judicial remedy they will look first at their national judiciary (to check the possibility to sue the defendant in his national court), and then at the judiciary of the defendant. The expectation that to solve a dispute or identify a judicial remedy a person should look into the website of the European Commission seems to be unrealistic in general (depending again on the type of user this procedure is aimed at).

Institutional Support:

Given the language, semantic and technical barriers that may be experienced during these procedures, from filling out the form to filing it at court, it is suggested that some form of greater institutional support than a generic “feedback” link at the bottom of the e-justice portal be developed. This should be done not only in light of the preliminary findings of the experiences of these simulations, but one must also consider the people likeliest to use this service, and what their language skills will be. Further research is suggested to go deeper into the type of institutional support to be given, and who should be responsible for giving it, either at EU level or domestic level.

In discussing the issue of institutional support at domestic, the idea was also presented to set up a separate office within the court to deal with these cases, but apparently there are only 2-3 cases per month. In this case, maybe a clerk or paralegal can handle these cases specifically once a month (given the flexibility of timeliness standards).

Chapter 9

The case of e-Curia at the Court of Justice of the European Union

Francesco Contini

1. Introduction

This chapter provides a first description and analysis of the development and adoption of e-Curia, the e-justice system developed by the European Court of Justice and launched the 21th of November 2011. Even if data have been collected also on the first months of use of the system, the paper mainly considers its design and development stages. Further work has to be done to analyse the data already available, and collect new empirical evidences.

E-curia is an e-justice application designed and developed by the European Court of Justice. It provides various functions including e-filing, electronic document interchange, and online access to procedural document to the parties involved in proceedings before the Court. Given the multi-national and multi-lingual nature of the proceedings before the Court, e-Curia is the first trans-border and multi-lingual e-filing application running in Europe. It is, therefore, particularly relevant for the development of transborder civil proceedings.

The chapter considers mainly the data collected in two fact-finding visits to the Court, carried out in June 2011 and March 2012 for a total of 5 days. Data have been collected through open-ended interviews within the registries of the court and within the ICT department. Other data have been collected analysing the official documentation of the project. Finally, and not less important, IRSIG-CNR researchers have been informally involved in e-Curia development since 2005, with a first meeting with the court registries and a second one in 2008. Also, these meetings have provided useful information, and the possibility to have four different points of in-depth data collection spread during the almost 7 years of project development.

2. Institutional background: the Court of Justice of the European Union

The Court of Justice of the European Union has been established in 1952. Its institutional mission is to ensure the uniform application and interpretation

of the European Union law in cooperation with the judiciaries of the Member States. In particular, the Court of Justice of the European Union:

- Reviews the legality of the acts of the institutions of the European Union,
- Ensures that the Member States comply with obligations under the Treaties, and
- Interprets European Union law at the request of the national courts and tribunals.

The Court of Justice of the European Union is composed of three courts: the Court of Justice, the General Court (created in 1988) and the Civil Service Tribunal (created in 2004). In the chapter, the term Court is used to refer to the three different courts.

The Court is multilingual. Each of the official languages of the European Union can be the language of a case. French is the court's working language. As will be illustrated below, procedural documents are regularly translated in a number of documents to communicate with the parties in their own language. This, also, facilitate case-law dissemination throughout the Member States. Member States, European institutions, large companies, national courts, but also, in some cases "normal" European citizen, are the parties of the cases dealt with by the Court. Since 1952, the three courts issued about 15 000 judgments.

The Court is, therefore, a peculiar judicial institution. The number of judgments is low in comparison to other courts considered in this study, but at the same time, the Court handles conflicts between national legislation and EU treaties. Very often, the consequences of the decisions go beyond the single case, and the multilingualism makes the litigation extremely complex. Therefore, the level of complexity to be considered when developing e-justice applications is extremely high, and it is brought about by the entanglements of legal, procedural, administrative and linguistic factors.

2.1. *The Central Departments*

The organisation of the Court staff is articulated in 4 main units:

- The central departments
- The registry of the Court of Justice
- The registry of the General Court
- The registry of the Tribunal

The Central departments provide a variety of centralised services to the entire Court, as translation, ICT, personnel etc. It is headed by the Registrar of the Court of Justice, who is responsible (under the authority of the President of the Court) for all the "central" departments of the Court. Just the internal audit department is under the direct supervision of the President of the Court.

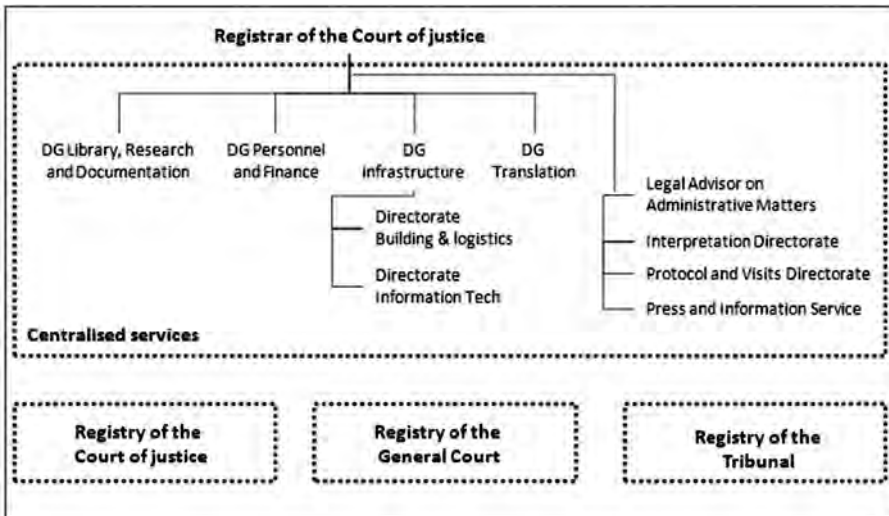
The registries of the three courts are responsible for:

- The efficient handling of cases,
- The receipt, notification and retention of all procedural documents,
- Maintaining the case-files of pending cases,
- Keeping the register in which all procedural documents are entered.

It is also responsible for receiving, sending and keeping documents, and for corresponding with the parties and others with regard to pending cases. The registries of the three courts and the ICT Department are the organisational units directly involved in the design, development and adoption of e-Curia.

As briefly mentioned, the Court of Justice of the European Union and the three distinct courts composing the Court are quite different from the traditional courts handling civil, administrative or even constitutional cases. Therefore, the following sections introduce the peculiarities of the three courts, of the cases they handle, and of the judicial procedures that must be followed.

Figure 1 - Organisational Chart



2.2. The Court of Justice

The Court of Justice is composed of 27 Judges (one per each member state) and eight “Advocates General”, appointed for a six years term that may be renewed. The Court has a specific jurisdiction in reference for preliminary rulings, as well as in the so-called “direct actions” for failure to fulfil obligations, for annulment, and for failure to act. It has also appeal jurisdiction (in the matter of law) for cases decided by the General Court.

2.2.1. *Jurisdiction*

Actions for failure to fulfil obligations: the Court of Justice, with these actions, determines whether a Member State has fulfilled its obligations under the European Union law. Before bringing the case before the Court of Justice, the Commission conducts a preliminary procedure in which the Member State concerned is given the opportunity to reply to the complaints addressed to it. If that the procedure does not result in a positive way, an action for infringement of EU law may be brought before the Court of Justice (as a rule by the Commission). Therefore, in this case the applicant is usually the Commission and the defendant a Member State.

- Action for annulment: by this action, the applicant seeks the annulment of a measure (in particular a regulation, directive or decision) adopted by an institution, body, office or agency of the European Union. The Court of Justice has exclusive jurisdiction over actions brought by a Member State against the European Parliament and/or against the Council (apart from Council measures in respect of State aid, dumping and implementing powers) or brought by one European Union institution against another. The General Court has jurisdiction, at first instance, in all other actions of this type and particularly in actions brought by individuals. Therefore, in this case the defendants are European Institutions while the applicants can be European Institution, member states, but also individuals.
- Actions for failure to act: it is through this procedure that the Court can control the inaction of various EU bodies. Member States, European Institutions or European Citizens can use this action against the inaction of Union's institutions, bodies, offices or agencies. If this inaction is illegal under European law, the Court shall confirm the failure to act, and the institution, body, office or agency concerned must take appropriate measures.
- Appeals and reviews: the Court of justice may act as appeal judge on point of law against judgments and orders of the General Court, and in particular circumstances it can review as court of third instance appeal decision of the General court against judgements of the European Union Civil Service Tribunal.

2.2.2. *Main procedural steps*

Whatever the type of case, there is always a written stage and usually an oral stage, which is public. From a procedural point of view, the differences between the procedures introduced above are mainly at the written stage. The court has also special forms of proceedings, namely the simplified procedure, the expedited procedure, and the application for interim measures (not discussed here).

At the *written stage*, the main steps of a reference for preliminary ruling are:

- The national court submits questions to the Court of Justice about the interpretation or validity of a provision of European Union law, generally in the form of a judicial decision in accordance with national procedural rules.
- When the request has been translated into all the European Union languages by the Court's translation service, the Registry notifies it to the parties to the national proceedings, and also to all the Member States and the institutions of the European Union.
- A notice is published in the Official Journal of the European Union stating, among other things, the content of the questions.
- The parties, the Member States and institutions have two months within which to submit written observations to the Court of Justice.

The procedure in case of "direct actions" is slightly different:

- The applicant files the case at the registry of the Court,
- The Registrar publishes a notice of the action in the Official Journal, setting out the applicant's claims and arguments, and serves the application to the party sued,
- The parties have one month to lodge a defence.
- The applicant may lodge a reply (time limit one month) and the defendant a rejoinder (time limit another month).
- In some circumstances, the President can grant an extension of time.

Preparatory inquiries and the report for the hearing: in both direct actions and reference for preliminary rulings, once the written procedure is closed the parties are asked to state, within one month, whether and why they wish a hearing to be held.

The Court decides, after reading *the report of the Judge-Rapporteur* and hearing the views of the Advocate General, whether any preparatory inquiries are needed, what type of formation the case should be assigned to, and whether a hearing should be held for oral argument, for which the President will fix the date. The Judge-Rapporteur summarises, in a report for the hearing, the facts alleged and the arguments of the parties and any interveners. The report is made public in the language of the case at the hearing.

Oral stage: the case is discussed at a public hearing, before the bench and the Advocate General. The Judges and the Advocate General may ask to the parties the questions they consider appropriate. Some weeks later, in a second public hearing, the Advocate General presents his or her opinion before the Court of Justice. At this stage, the Court can decide the case.

The Judges deliberate on the basis of a draft judgment drawn up by the Judge-Rapporteur. Each Judge of the panel may propose changes. The panel decides by majority without public record or dissenting opinions. Finally judgments are pronounced in open court. Judgments and Opinions of the Advocates General are available on the CURIA Internet site on the day they are delivered. They are, in most cases, subsequently published in the European Court Reports.

2.2.3. *Costs of proceedings and linguistic arrangements*

Differently from all the other cases considered in the study, cases are filed without having to pay a court fee. If is unable to meet all or part of the costs of the proceedings, a party may apply for legal aid. The application must be accompanied by all necessary evidence establishing the party's lack of means. In direct actions, the language used in the application (which may be one of the 23 official languages of the European Union) will become the 'language of the case' and will be used to conduct the proceedings. In references for preliminary rulings, the language of the case is that of the national court which made the reference to the Court of Justice. Simply speaking, in both cases the language of the applicant will be the language of the case. In passing, we notice that, in European Payment Orders and European Small Claim Procedures the language of the case is the language of the sized court, often corresponding to the language of the defendant. An interesting asymmetry with relevant implications for access to justice to be further considered by the research.

Oral proceedings at hearings are interpreted simultaneously (as required) into various official languages of the European Union. The Judges deliberate, without interpreters, in a common language, that as a rule is French.

2.3. *The General Court*

The General Court (previously known as the "Court of First Instance") has been established in 1988. It is composed of 27 judges, at least one from each Member State, plus a registrar. The Judges are appointed for a renewable term of six years with the consensus of the governments of the Member States. Depending on the types of case, the General Court sits in Chambers of five, Chambers or three Judges or, in some cases, as a single Judge. It may also sit as a Grand Chamber (thirteen Judges) or as a full court when this is justified by the legal complexity or importance of the case. A Panel of three Judges hears the majority of the cases dealt with by the General Court.

2.3.1. *Jurisdiction*

The General Court has jurisdiction to hear, as first instance court, actions brought

- by natural or legal persons against acts of the institutions, bodies, offices or agencies of the European Union (which are addressed to them, or are of direct and individual concern to them) and against regulatory acts (which concern them directly and which do not entail implementing measures) or against a failure to act on the part of those institutions, bodies, offices or agencies;
- by the Member States against the Commission;

- by the Member States against the Council relating to acts adopted in the field of State aid, ‘dumping’ and acts by which it exercises implementing powers;
- by natural or legal persons seeking compensation for damage caused by the institutions of the European Union or their staff;
- by natural or legal persons based on contracts made by the European Union which explicitly give jurisdiction to the General Court;
- by natural or legal persons relating to Community trade marks;

In addition, the court deals with appeals, limited to points of law, against the decisions of the European Union Civil Service Tribunal; and actions brought against decisions of other EU bodies. The rulings made by the General Court may, within two months, be subject to an appeal, limited to points of law, to the Court of Justice.

2.3.2. *Main procedural steps*

As with the Court of Justice, also the proceedings of the General Court include, as a rule, a written and an oral phase.

In general terms, the written phase is organised as follows:

- 1) The applicant (a lawyer or an agent acting for a member state or an EU institution) sends the application the Registry.
- 2) The main points of the action are translated in all the official languages.
- 3) The registry sends the application to the other party of the case, which then has a period within which to file a defence and publish the notice in the Official Journal of the European Union.
- 4) The applicant may file a reply, within a certain time-limit, during which the defendant may respond with a rejoinder.
- 5) Any person and anybody, office or agency of the European Union, who/which can prove an interest in the outcome of a case before the General Court, as well as the Member States and the institutions of the European Union may intervene in the proceedings. The intervener submits a statement of intervention, supporting or opposing the claims of one of the parties, to which the parties may then respond. In some cases, the intervener may also submit its observations at the oral phase.

At the public hearing stage, the Judge-Rapporteur summarises, in a report for the hearing, the facts and the arguments of each party and, eventually, of the interveners. This document is available to the public in the language of the case. The Judges then deliberate on the basis of a draft judgment prepared by the Judge-Rapporteur and the judgment is delivered at a public hearing.

2.3.3. *Court fees and linguistic arrangements*

As at the Court of justice, there are no court fees for procedures before the General Court. Individuals may apply for legal aid. Analogously the application can be in one of the 23 official languages of the European Union

that will be the language of the case while the working language is, as a rule, French.

2.4. *European Union Civil Service Tribunal*

The European Union Civil Service Tribunal, established in 2005, is the youngest court of the European Court of Justice. It is composed of seven Judges appointed by the Council for a period of six years, which may be renewed.

As a rule, it sits in Chambers of three Judges while the full court handles just important or complex cases. The Tribunal has its own Registry but takes advantage of the services of the Court of Justice for other administrative and linguistic needs.

2.4.1. *Jurisdiction*

The Civil Service Tribunal deals with disputes involving working relations and social security of civil servants working for the European Union institutions. The decisions can be appealed to the General Court limited to the matter of law.

2.4.2. *Main procedural steps*

The procedure before the Civil Service Tribunal is governed by the provisions of the Statute of the Court of Justice of the European Union. As in the previous cases, proceedings include a written and an oral phase.

The written phase is organised as follows:

- 1) A lawyer files the application to the Registry.
- 2) The Registrar sends the application to the opposing party.
- 3) The opposing party has two months to file a defence.
- 4) The Tribunal may decide that a second exchange of pleadings is necessary.
- 5) Any person, who can prove an interest in the outcome of a case before the Tribunal, as well as the Member States and the institutions of the European Union, may intervene in the proceedings. The intervener files a statement in intervention, supporting or opposing the claims of one of the parties, to which the latter may then respond. The intervener may also submit his observations at the oral phase.

Hearing phase: to prepare the public hearing, the Judge-Rapporteur draws up a preliminary report for the hearing, containing the essential points in the case and indicating the points on which the parties are to focus their arguments. This document is available to the public in the language of the case. The Judges deliberate on the basis of draft decision prepared by the Judge-Rapporteur. The judgment is delivered at a public hearing.

2.4.3. *Costs and linguistic arrangements*

The procedure before the Tribunal is free of court fees. Applications for legal aid are possible. The language used for the application, which may be one of the 23 official languages of the European Union, will be the language of the case.

The proceedings in the oral phase of the procedure are simultaneously interpreted, as necessary, into various official languages of the European Union. The judges deliberate without interpreters in a common language, French.

2.5. *Peculiarities and opportunities for e-Justice development*

We can now summarise the main peculiarities affecting judicial proceedings handled by the 3 courts composing the European Court of Justice.

- 1) Being a European court, it regularly works with European legal systems: lawyers practicing in different national jurisdictions, different institutional setting and different legal frameworks. The Court, therefore, has a long and well-established tradition of legal interoperability, and, as we will see, this has positively affected the design and the adoption of the system.
- 2) The Court deals mainly with complex and high profile cases. This often entails the production of complex documentation, and the need to engage specialized lawyers. Specialised “agents” (specialised State lawyers) represents Member states and European Institutions in the cases brought in front of the court, and each agent is supported by a specialised national organisation. At the same time, some procedures are open to citizens, and the Tribunal handles labour and social security cases for civil servants working for EU institutions. The development of an e-justice application as e-Curia has therefore to consider such varied set of potential users.
- 3) Member states and EU institutions are frequent players, and can immediately benefit from the development of an e-filing application. They may represent, therefore, the first target in order to create a “critical mass of users”. At the same time, e-Curia must be easily accessible to all the potential users.
- 4) The court has a unique location in Luxembourg. Also for this reason procedures are mainly written and based on exchanges of documentations traditionally carried out through postal services, without the involvement of bailiffs.
- 5) The Court regularly works with the 23 official languages of the European Union, and even if not all the procedural documents have to be translated in all the languages, this semantic issue further increases the procedural complexity. An excellent translation service takes care of this source of complexity. But also a well-rooted workflow is need-

ed to keep control and facilitate the rooting of the documents within the Court.

- 6) The Court and its registries have certainly a great capacity to handle procedural and organizational complexity. The same may apply to the specialized law firms and agents of the member states. Therefore, the threshold of maximum manageable complexity for key players is particularly high.
- 7) Last but not least, since all the procedures before the Court do not require court fees, e-filing application do not have to include also this component, thus reducing the overall complexity of the application.

3. History and development of e-curia

3.1. *The project background and the installed base*

The development of e-Curia can be divided in the three main stages described below.

3.1.1. *From the identification of opportunities to high level specifications*

The first stage starts with the identification of the opportunities offered by the use of ICT for exchanging data and documents in justice systems. Since 2003, the Registrar and one of the principal administrators of the Court have explored the opportunities offered by e-justice. In those years, there were few well running experiences, such as the Finnish system called Tuomas and Santra¹, Money Claims On Line (MCOL) in England² or ERV (Elektronischen Rechtsverkehr) in Austria.³ At the same time, many ambitious projects were stuck in design or piloting stage, as the Italian Trial On Line in which the use of digital signature and the development of a complex techno-legal architecture was considered a “*conditio sine qua non*” for the digitalisation of judicial proceedings. It was already clear that one of the main obstacles to the development of any e-filing application was their high technological and legal com-

¹ Kujanen K, Sarvilinna S (2001) Approaching Integration: ICT in the Finnish Judicial System. In: Fabri M, Contini F (eds) Justice and Technology in Europe: How ICT is Changing Judicial Business. Kluwer Law International, The Hague, The Netherlands.

² Kallinikos J (2009) Institutional complexities and functional simplification. The case of Money Claims Online. In: Contini F, Lanzara GF (eds) ICT and innovation in the public sector. European studies in the making of e-government. Palgrave Macmillan, Basingstoke (UK), pp 174-210.

³ Koch S, Bernoider E (2009) Alligning ICT and legal Frameworks in Austria's e-bureaucracy: from mainframe to the Internet. In: Francesco C, Giovan Francesco L (eds) ICT and innovation in the public sector. Palgrave, Basingstoke, pp 147-173.

plexity. The institutional and procedural features of the Court of Justice would have made even more difficult the e-justice implementations.

The idea of the project leaders was to develop a simple e-filing system, now called e-Curia, trying to turn around the complexity trap in which many European Judiciaries were locked. It has been at this preliminary stage that the author of this chapter and other IRSIG-CNR colleagues met for the first time the project leaders. Since then (2003), IRSIG-CNR researchers and e-Curia project leaders exchanged ideas about how to face the new challenge. In a research seminar held in 2003, called “Judicial Electronic Data Interchange in Europe”, and in a following meeting held in Bologna in 2005, IRSIG-CNR researchers suggested keeping the system as simple as possible, especially in terms of identification requirements.

Indeed, why simple identification mechanisms as those used in MCOL, in Finland and to a lesser extent in Austria were leading to successful (i.e. running) applications, the complex ones, and in particular those based on digital signature and public key infrastructure, were still facing overwhelming problems.⁴ Since that meeting, the project leaders and the project team started to outline the architecture of the application. In 2008, IRSIG-CNR researchers have been invited at the Court for presentation of the system. The main goal of e-Curia was the establishment of a digital channel of communication to exchange procedural documents between the Court and the parties of the cases. The system had to be:

- Simple,
- Accessible,
- Free of charge for users,
- And with a level of security equivalent to the level offered by the conventional court proceedings based on exchange of documents through European postal services.⁵

The peculiarities of the Court required smart ideas and possibly simple solutions. It was clear that the “standard PKI solution”, envisaged by the EU Directive and by various e-Government frameworks would have never worked for a court operating with legal representatives coming from the 27 member states and even more legal systems. This infrastructural component was neither ready nor running at the European level. It would have required or a European Certification Authority, or a seamless interoperability between the cer-

⁴ Fabri M (2009) E-justice in Finland and in Italy: Enabling versus Constraining Models. In: Contini F, G.F.Lanzara (eds) *ICT and Innovation in the Public Sector European Perspectives in the making of e-government.*, Palgrave, Basingstoke, pp 115-145.

⁵ Hewlett L, Lombaert M, Lenvers G e-Curia-dépôt et notification électronique des actes de procédures devant la Cour de justice des Communautés européennes. In: *Journées européennes d’informatique juridique*, Paris, 11 décembre 2008 2008.

tification authorities of the various member states. At the same time, picking up one of the solutions already running in a member state would have created unacceptable asymmetries in access to justice. Therefore the solution had to be self-contained, developed and managed by the Court, and tailored on its specific procedural and institutional features (see section 7.1 for the technological solutions).

One of the issues discussed in the 2008 meeting was the planning of the development and the deployment of the System.

A first option was to start with the development of the e-filing application, i.e. the external component of e-Curia (hereinafter “External e-Curia”). This would have undoubtedly improved the access to justice, but it would have created additional work for the registries, and limited benefits for the Court. Indeed, once received the docs in digital format, the court would have had to print and process them with the traditional paper-based workflow, without taking advantage of their digital format. At the same time, the Court would have been forced to scan the procedural documents to be served to the parties. To take a real advantage from such digital exchange, also the internal workflow had to be made digital.

Starting with the digitalisation of the internal workflow – i.e. the second option – would have had several advantages. At the development level, the main advantage was the possibility of testing the technological components within the registries and of opening the system to the external parties (users) in a further stage. In this way, the registries would have had more time to test technological components and set up smooth running routines. Given the procedural and linguistic complexity, the development of the digital workflow was expected to be long and difficult.

3.1.2. Development and internal adoption

From 2008 to 2011, the project team and the registries have developed, tested and adopted the various components of e-Curia. The new components, e-Curia and Prodoc, were integrated with pre-existing applications like *Registre* and *Litige*, providing various functionalities described below. In 2011 the new digital workflow – integrating the registries and the department of translation – was ready for testing. The use of this system has contributed to develop the skills (technological and administrative) required for the handling of complex electronic workflow, and to get the Court ready to handle the External e-Curia.

In June 2011, during the fact-finding visit, the three registries of the Court were testing and tuning the workflow. The technological platform was providing sophisticated case management functions, and document management facilities, but there were still some problems to be solved. The new digital workflow was not running smoothly. From a user perspective, the main problem was the control of the procedure through the new electronic application.

The switch from a paper based to a digital workflow, i.e. the digital leap (see Chapter 1), entails the translation of a number of procedural checks from one media to another one. The risk was to fail some important procedural control, with negative consequences on the judicial procedure such as not serving the document to parties, or serving a document in the wrong language.

From a technological perspective, there were still some system's breakdowns, and slow system response time. As discussed with the Project manager, one of the reasons of the problems faced in that days was the number of different applications to be made interoperable to enable the digital workflow. We will return on this analysing the technological components (section 6.3).

While the registries were testing, tuning and adopting the internal e-Curia, the project team developed the application for external users. A first release of "external e-Curia" has been tested to make a systematic check of the functionalities offered, and of the robustness of the exchange of data and documents with the case parties. During the tests' session, various suggestions have been collected, and some of them were implemented. Particularly important the creation of new types users profiles to meet the need of agents and law firms.

Finally, the project team prepared a communication strategy to inform the public and reach potential users. It included general information to agents and lawyers, as well as visits to the institutions often involved in cases at the Court as the European Parliament or the European Commission, but also agents of the member states. One of the first goals to achieve was the involvement of those users that, for institutional and procedural reasons, intervene more frequently in the procedure, to get as soon as possible a critical mass of notifications and procedural documents handled through e-Curia.

Particularly important are also the legal changes enacted to host e-justice applications at the Court of Justice. The changes are analysed in section 6.1 of this chapter.

3.1.3. *The soft launch of e-Curia for external users*

The Court opened the registration procedure 15 days before the launch of the external e-Curia. Indeed, as described below, the registration may require time, and the Court wants to check if prospected users have the prerequisites to get enrolled. This may require checks of various types including controls with local bar associations to ascertain the legal qualification. Therefore, since then it is possible to fill out the forms and follow the procedure for the users' registration since this procedure requires careful human controls and may take some days (see below).

Table 1 - Technological applications currently used by the European Court of Justice

Applications	Functions
ASP: Portal	It's a kind of "portal" that allows the access to various applications of the Court of Justice. The entire staff of the Court uses it.
Litige: Procedural Case Management	It's the Case Management System collecting all procedural data. It is managed by the Equipe Litige (4 units).
Fond Documentaire: Digital Archive	It is the digital archive collecting all the procedural documents scanned or transferred in digital format through e-Curia.
Registre électronique: Document registration	It is the registration system of every document received or served through various channel by the Court. It provides also a unique ID number to each document. It is managed by the <i>Equipe Litige</i> .
Prodoc: Document Management	It is the document management system. It allows the preparation of the documents based on templates of standard letters available in all the languages. It assembles the letter browsing the required data from Litige and from Registre Electronique, and prepares the list of documents to be annexed to the letter and to be served. It is managed by the assistants and by their supervisors (administrators).
Internal e-Curia	With this tool, the assistants prepare the "packages" to be served. Attached to the letter prepared with Prodoc, the procedural documents collected in Fond Documentaire. It facilitates controls, enables the validation and the signature by the "administrators" of the registries. Finally, it serves the packages to the various case parties.
External e-Curia: registered agents and lawyers	With this application, registered users can lodge procedural documents, as well as access and download of procedural document served by the Court.

E-Curia is open to external users since the 21th of November 2011. Once fixed the breakdown that affected the functioning of the system in the first days, e-Curia is running without problems. The communication strategy and the promotion of e-Curia are still going on since the registries want a regular increase of the number of users. This strategy is paying and at this writing the majority of member states, and various European institutions and agencies are using e-Curia. The end of 2012 expects a new release of e-Curia that will implement various functional improvements suggested by users.

4. The functioning of e-Curia within the registries of the Court of Justice

As stated, the first step of the digitalisation of the Court proceedings has been the switch from a paper based to a digitally enabled workflow. Digitally enabled does not means paperless, but a procedure based on switches between the two media.

To appreciate its functioning, we have to come back to the procedures to be followed by the Court and the registries, already introduced in section 3 and to the problems to be faced in the pre-existing paper based system.

4.1. *The paper based workflow*

As noticed, the largest majority of procedural documents, once received and registered, have to be translated in one or more languages as established by the procedural rules of the Court⁶. In French, being the working language, in the language of the case, in the languages of the case parties and of the MS that have an interest in the case. Some member states may even require the translation in different languages, and several documents must be translated in all the 23 official languages of the Union. It follows that a single procedural document will have in few weeks, a number of releases in different languages to be managed.

In simple terms, the workflow was the following:

- 1) The registry receives the procedural document and the annexes in paper form (post or fax) and records the procedural docs.
- 2) Based on the above mentioned linguistic regulation, the registry identifies the languages in which the document have to be translated and transmits a paper copy of the document to the Department of translation with a request of translation in one or more languages.
- 3) The department of translation takes care of this part of the work and sends the translated copies to the registry. In various occurrences, the original documents have to be made available in 23 languages.
- 4) The registry transmits the translations to the judges' cabinet in all the languages available so that each judge can choose the preferred language.
- 5) Then the registry serves the documents to the interested parties, always following the linguistic rules. This latter step is described more in details below.

Afterward, any document is printed (if received by fax), copied, and transferred in paper format.⁷ Given the size and the number of procedural documents and of the related annexes (such as detailed contracts), the overall amount of paper to be managed by this procedure is really impressive. Serv-

⁶ Chapter 6 Rules of procedures of the Court of Justice http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-07/rp_cjue_en.pdf and similar regulation for the other courts.

⁷ Documents received by fax are not copied, merely circulated (to Litige, the administrator and then the section). The registry only makes copies of original documents once they have been registered. The Court registry doesn't register faxed versions because, should the original not arrive within the 10 days deadline after the fax has been received, then it will be considered out of time. The only value of the fax is for the purpose of procedural deadlines.

ing the the right procedural document to each case party can be difficult and time consuming. In addition, when a procedural document is received by fax, the registry has to wait the delivery by post of original documents, and controls its correspondence with the document sent by fax. Since the eighties, Court procedures have been supported by a growing number of technological applications, in particular *Registre* and *Litige*.

Being the procedure is extremely complex, what follows is a summary representation. It simply helps the identification of key workflow management issues.

4.2. *The digitally enabled workflow*

The idea of the Project team was that the digitalisation would have granted an easier workflow, particularly in the internal processing of procedural documents as those needed for the translations.

To face this challenge, the Court has developed a complex technological architecture made of various applications. The functions of these applications are briefly described in the Table 1.

The procedural case management system, called *Litige*, and the “*Registre*”, tracking all the documents received or delivered by the court have been made interoperable with a digital repository of the procedural documents (and their annexes) called *Fond Documentaire*. A Document management system, called *Prodoc*, has been developed to prepare the accompanying letters, attach the documents, and control the workflow. Internal and External e-*Curia* are just the last components of the architecture, those who enable the exchange of documents with external parties.

This high number of applications has suggested creating another system working as an entry point or a portal to access to the various applications.

E-*Curia*, therefore, relies on a number of different applications to be kept well running and interoperable. A problem in one of the systems may generate malfunctioning on other systems, especially when *Prodoc* or Internal e-*Curia* checks and assemble the documents to be served.

4.2.1. *Handling procedural documents received by post and fax*

The *Equipe Litige* is the first unit in handling cases. Once it receives a procedural document (in paper copy) it registers the date of deposit, and makes an entry in *Litige*, the procedural case management system. This first record is not the filing since the document can be filed just after the control and the instructions of the Administrator that may require a regularisation to the party, i.e. the delivery of a new amended procedural document or further annexes.

Once the Administrator gives the “green light,” the *Equipe Gestion Affaires* registers the required procedural data in *Litige*, and index the documents with a unique identification numbers using *Registre Electronique*.

At this stage, the unit called Archive scans the document, stores the paper copy into the traditional paper file of the case, and saves the scanned copy (in pdf format) into the Fond Documentaire, the digital document repository of the Court.

This first procedural stage reflects two functional needs: guarantee the procedural fairness and the respect of all the legal provisions and generate a digital copy of paper-based documents. Since this stage, the document will circulate within the court in digital format and will be sent accordingly to the Department of Translation. If the scanning requires additional work by the court staff, it leads to various advantages that can be better appreciated later on.

4.2.2. *Handling procedural document received by e-Curia*

As noticed above, the development and the adoption of the digital workflow have been long and have required a careful design of ICT applications and organisational procedures. Once the systems and the registries were ready, the launch of external e-Curia has been quite simple. Indeed, at that point, e-Curia was just another channel to receive (and send) procedural documents.

From a registry point of view the filing of a procedural document with e-Curia entails a very similar procedure. The document is recorded in Registre, the Administrator makes the juridical checks, then Equipe Gestion Affaires manages the procedure with Litige, Prodoc etc. as already described. The advantage is that the document has not to be scanned and can be directly archived in Fond Documentaire. At the same time, the document is also printed to keep the paper file of the case in the archive.

4.2.3. *Preparing the documents to be served*

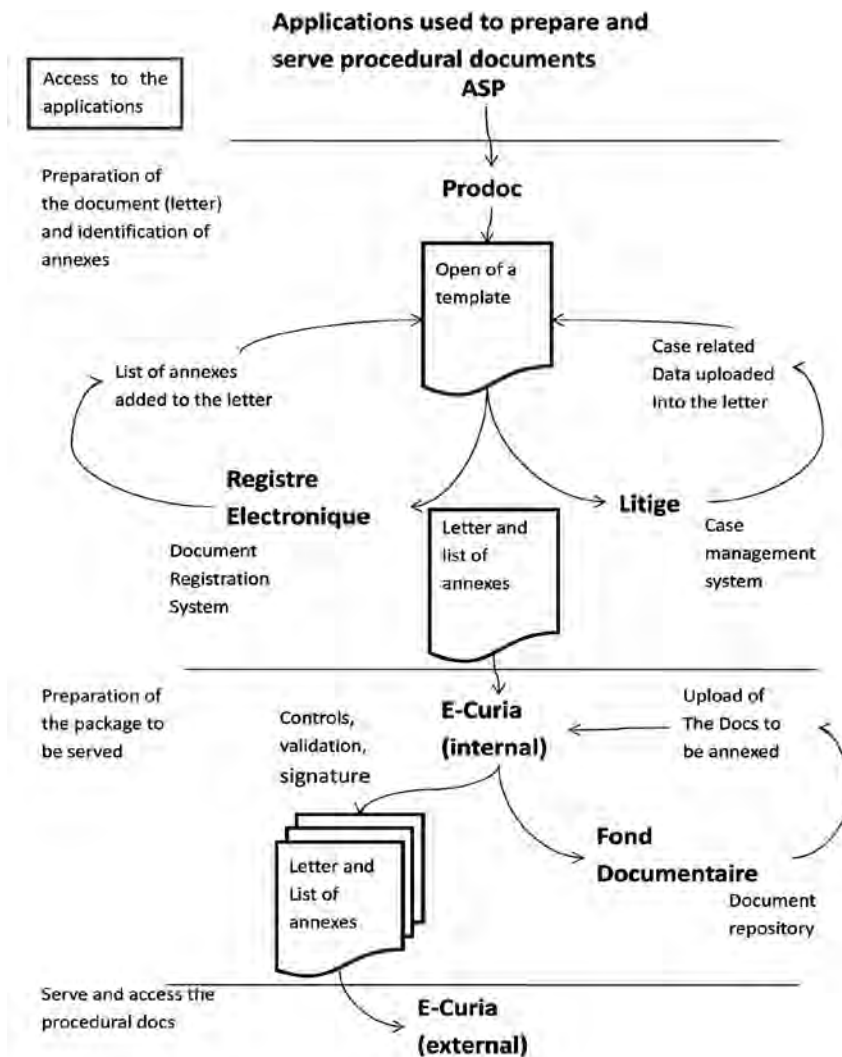
The filing channels (post or e-Curia) do not affect the procedure to be followed to serve the documents. For this purpose, the Equipe Gestion Affaires works with two different applications: Prodoc, and Internal e-Curia.

Once received the translations, the Equipe Gestion Affaires is ready to serve (or “signify” using the jargon of the Court) the procedural documents and the various annexes in the requested languages. Typically, the “package” to be served consists of a letter prepared by the Equipe Gestion Affaires and signed by the administrator, the procedural documents, and other attachments.

The assistant logs in and opens the ASP, the internal “web page” that grants access to all the different applications of the court. From ASP the assistant opens Prodoc, to prepare the letters and identify procedural documents to be attached. Prodoc uploads data previously entered into Litige, such as the name and the address of the representatives and the language in which they want (or are entitled) to receive the documents, and from the Registre Electronique creating the list of annexes to be served. Prodoc automatically merges these data into the letters in preparation. Since Curia is multilingual, Prodoc auto-

matically produces the documentation in all the languages required by any specific procedural step. The linguistic rules of the Court are consistently inscribed into the system. Therefore the system “knows” in which languages the documents must be produced and the assistant can work and control the workflow just in French (or in his/her preferred language). The Equipe Gestion Affairs can use Registre to make various controls, enter interim decisions taken by the judges, or register the letter; through Prodoc, it can check the addresses of the parties, and the means of notification.

Figure 2 - Serving procedural documents



If necessary, the letters prepared with Prodoc can be modified with MS Word and saved in a common repository.

At this stage, the additional work done to digitalise case documentation starts generating positive returns since the handling of a multilanguage procedure is much easier and faster with the new procedure.

4.2.4. *Serving the document in paper and digital format*

This application is composed of two parts. The internal e-Curia used by the registry of the Court, while lawyers and agents use the external e-Curia's to lodge and access procedural documents.

In e-Curia, the assistant and the administrators finalize the preparation of the "package" of documents to be served and serve such documents in paper or digital format. Once these documents are ready, the assistant "assembles" the full package. E-curia uploads the various documents to be served from the Fond Documentaire; then the assistant checks the procedure, the letters and the annexes. Once the package is ready, the assistant save it and pass it to the Administrator. E-Curia communicates to the administrator the pending tasks. The administrator controls the full package, signs the letter, and validates the procedure. At this point, the package is ready to be served and comes back to the Equipe Gestion Affaires.

Until November 2011, i.e. before the launch of "external e-Curia", the "package" was printed out and sent by post to all the case parties. Since when external e-Curia has been launched, the procedure is split in two. Indeed the package must be served in paper form to the parties not enrolled in e-Curia, and through e-Curia to the parties enrolled.

It is clear now, why the staff of the registries is particularly active in promoting the use of e-Curia among "frequent users" as European institutions and member states. The more frequent users will be enrolled in e-Curia the less the Registries have to use traditional postal services.

5. Functioning of e-Curia for "external users"

We can now consider the "External e-Curia": the component used by lawyers and agents to lodge and receive online procedural documents.

The simple technical precondition to use to e-Curia area are a valid e-mail address and an Internet connection to access at the secure website <https://curia.europa.eu/e-Curia>. Access to e-Curia is free of charge and does not require any particular software application.

5.1. *Users' registration and personal data management*

The first step is the enrolment as user of the system. In order to get the account, the applicant must follow the instructions provided by the web appli-

cation and enter personal identification data into web forms. Once entered the data, the system sends a pdf with the request of registration to the e-mail address entered during the application. The pdf has to be printed, signed, and sent by post to the registry of the Court with supporting documentation, such as a copy of the ID card/passport, of practicing certificate etc.. The hand written signature in the application is the unique signature required in the entire process.

In this first stage, e-Curia is just guiding the preparation of the request of account. The transmission of the documentation is based on the pre-existing paper-based procedure to be followed for official exchanges of communications with the court.

It is what happens with many e-banking services, where “contractual” documentation has to be provided in paper, with hand written signature and copies of documents proofing the identity. Once the account has been granted, the digital identity is associated with the physical one, and the exchange of procedural documents becomes completely digital.

It must be observed as the legal principle of mutual recognition works effectively with the Court. Indeed, article 6 of the “conditions of use” states that “Agents and lawyers authorised to practice before a court of a Member State or of another State party to the Agreement on the European Economic Area may apply for an account to be opened giving them access to all the functionalities of e-Curia”. Once such an account has been opened, they may use e-Curia in every case in which they have been appointed as a representative”. Problems of “legal interoperability” affecting national jurisdictions in Europe do not affect the litigation at the court. This observation is important if we consider the difficulties of identifying common criteria to access to the legal practice in the European Union judiciaries. Indeed, the definition of what a lawyer is, and what should be the professional qualifications to practice in court are not yet shared. This is one of the practical problems making challenging the implementation of trans-border civil proceedings.

As with the conventional proceedings, the Registries will then check the request. The procedure may require several days. If the request is approved, the new user will receive an ID and a temporary password (in separate emails) to be changed at the first log in, and at least every six months (art. 8 of terms of use).

Once having changed the temporary password, the user is entitled to lodge, receive and check procedural (i.e. case related) document(s) with e-Curia.

In addition, the representative can register one or more assistants and manage personal details (e-mail address, password, ...).

5.2. *Types of users*

Before the piloting stage, the External e-Curia was providing just the profile of the agent/lawyer, i.e. the authorised representative of the member states,

of the European institutions and agencies and of the parties. But the piloting highlighted the need to profile the type of users to tune up the functionalities offered by the application with the organisational features of the legal offices working with the court. As a result, two new profiles have been established.

One is the profile of the “*assistant partie*”, and the other the profile of the “assistant”.

The creation of the *assistant partie* is an answer to a specific procedural peculiarity of the cases head by the Court of Justice. The *assistant partie* is the subject that, in each member state or European institution, receives the notification of new complaints brought before the Court. As noticed, in the written stage of the proceeding member states and EU institutions have the right to be informed of new cases so to consider the possibility to have a representative in the litigation. It is this “entry point” that forward the information to the office in charge of this kind of of litigation (for instance a specialised board of State Lawyers’, or a department within the Ministry of Foreign or of European Affairs). The profile offers limited functionalities related with the receiving of the new case.

The other two roles are the representative (i.e. the lawyer or agent representing a party in the case) and the assistant(s) of the representative. While the representative has access to the full functionalities of e-Curia, including the possibility to set up profiles for the assistant, the latter has just the possibility to prepare and have access to the documentation, but cannot transmit procedural documents to the Court.

The two profiles reflect the division of labour within large law firms (and state lawyers’ offices), in which the lawyer (representative) is responsible of the case, but the handling of the case is supported by several activities, mainly administrative, carried out by assistants. It allows the assistant to receive the documents served, to consult procedural documents lodged or served by means of e-Curia, and to prepare the lodgement of a document. Once prepared the lodgement, the assistant must involve the representative to “validate” the lodging. The representative is responsible for the use of this account and is required regularly to update the list of his assistants and, in particular, in the event of a change in professional responsibilities or termination of activity to cancel any account that he assigned to his assistant(s).

Each profile is regulated by detailed conditions of use.⁸

Since e-Curia (and all the technological applications) is common to the three registries of the Court, an account opened by one of the three Registries is valid also for the other two (conditions of use 5).

⁸ http://curia.europa.eu/jcms/jcms/P_81900/ and http://curia.europa.eu/jcms/jcms/P_81905/.

5.3. Lodging a procedural document with e-Curia

The lodging of a procedural document is a two steps procedure. The first step entails the preparation of the documentation to be sent. As noticed, it can be carried out by the representative of the party (i.e. the lawyer or the agent with the mandate) but more frequently by the “assistant”. All the procedural documents and annexes must be prepared following the practice directions of the courts at which the document has to be lodged.⁹ The three courts have not changed the practice directions in this regard. The user prepares the documents following the traditional paper based procedure. The difference is that users do not have to print and sign the documents and send it by post with all the annexes, but just to log in, upload the documents, the annexes and send them to the Court in pdf format via e-Curia.

Here, we can observe a relevant case of functional simplification. Indeed, the “original signature in the manuscript” is not needed. As in the US Federal Court, it is sufficient to type the name of the lawyer/agent. In this way, the users do not have to print and scan the document signed.

More in detail, the user must select the function ‘Lodge a document’, then identify the Court at which the document is to be lodged, the type of procedural document, the language, the name of the party on whose behalf the document is being lodged, and the case number (if the document has to be lodged in a case already filed). In a following web form, the user must specify the types of documents to be attached (procedural document and annexes, covering letter, practicing certificate, mandate etc.) and their number.

It is at this stage that the legal qualification of the representative and of his/her capacity to act in the name of a given party is provided through scanned copies of practising certificate, proof of existence in law of a legal person governed by private law, proof that the authority has been properly conferred by someone authorised for that purpose. Then the files have to be selected from the computer systems (document repository) of the representative, uploaded and sent to the Court. Also, additional information such as the size of file, number of pages, hash code can be viewed. The hash code is particularly important. It is generated automatically by the system through an algorithm that reduces the document to a code (or function). If the document is changed by someone and for any reason, the hash code will be different, in-somuch allowing the identification of changes to the document. In this way, it becomes easy to establish the authenticity of the document filed and stored into the digital archives of the court.

If the lodgement as been prepared by an assistant, the representative must enter his password and validate the transaction to send the procedural document to the Court, since the assistant cannot deliver the document.

⁹ Files must be in PDF format and not exceed 30 MB. It is possible to lodge up to 50 files of annexes.

A summary of the activity carried out is sent by e-mail to the representative and to the assistant (if the assistant prepared the lodgement) and may be saved selecting this option in the web page of e-Curia.

The users can lodge also other procedural documents such as documents to accompany a request for confidential treatment following the procedure already described.

5.4. *The “acceptance of service” with e-Curia*

In this case, e-Curia displays the list of the documents served which have been sent to the user. This list is sorted on the basis of the date of availability of the document, and it provides also other data, in particular the status of each document: awaiting acceptance, accepted (with an indication of the name of the person who accepted service and the date of acceptance), and acceptance presumed (with an indication of the date of presumed acceptance). A document is accepted and is deemed to have been served the first time the users click on the icon.

But the document may have also the status of “acceptance presumed” when the court has served the document, and the user has not yet clicked on the icon. Based on the conditions of use, the documents served and not accepted by the users are “presumed as accepted” seven days after their delivery. Also this procedural detail requires a comment.

One of the lasting problems of e-justice is the so-called issue of “non repudiation” of the document served. Indeed, there is the risk that a party could make a complaint stating that a document has not been properly delivered or delivered at all, hampering therefore the fairness of the proceedings. With e-Curia, it is the user that, accepting the conditions of service, acknowledges that he/she is responsible to check e-Curia, verify the delivery of the documents and “accepting the service”. Public Key Infrastructure and digital signature are usually justified also with the need to solve the problem of non-repudiation. In this case, a legal (contractual) solution has made possible the development of a relatively simple technological solution. This is another instance of smart mediations and functional simplification between law and technology.

5.5. *Consulting the documents lodged and served*

The third main functionality offered by e-Curia is the possibility to consult the history of the documents lodged and served.

The web page provides the full list of all the documents (lodged or served), and the possibility of searching and filtering documents per date. By clicking on a specific document, other data are made available as well as the document itself. E-Curia works, therefore, also as an official document repository for the case parties.

6. How interoperability has been pursued in e-Curia

This section briefly discusses how legal, semantic and institutional interoperability have been pursued in the case of e-Curia.

6.1. Legal

Given the context and goals of the research (identifying the conditions to support European trans-border civil proceeding) the following issues are particularly relevant.

We can identify three main steps followed by the Court to host e-justice development and make performative the exchanges of documents by means of e-Curia:

The first step dates back to 2005 and was an amendment to Rules of procedure of the Court of Justice. Up to 2005, the Rules of procedure designed a typical paper based procedure, and the signature of “The original of every pleading [...] by the party’s agent or lawyer” (Article 37 prescribes at paragraph 1), a typical functional requirement of paper-based procedure difficult to translate in digital ones. The 2005 amendment introduced a new paragraph (7) stating that

*“Without prejudice to the first subparagraph of paragraph 1 [signature] or to paragraphs 2 to 5, the Court may by decision determine the criteria for a procedural document sent to the Registry by electronic means to be deemed to be the original of that document. That decision shall be published in the Official Journal of the European Union”.*¹⁰

This new paragraph provided a good starting point for e-justice development at the Court, creating the legal preconditions required to e-Curia development and a healthy framework for ICT development. Rules were not dictating to the project team how the systems should work (as in the case of the Italian Civil Trial online) but just created a framework in which e-justice could be developed.

Developing e-justice applications in a general framework as the one provided by this legal change may pose problems of accountability. Is the project team inscribing the right procedural safeguard in the technological application? Are the security measures sufficient? Is the system too simple for the complex and high value of the cases dealt with by the Court?

This issue has been faced through a dialogue between the Court and the stakeholders in the “Curia working group”. This group is composed by official representatives of the Member states and European institutions in charge

¹⁰ http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-07/rp_cjue_en.pdf.

of observing the functioning of the court and discuss with the Court's representatives about various organisational issues. The Working Group did not ask for more detailed regulations about e-Curia, but expressed interest to be regularly informed of the development process. This has been sufficient to give the green light to the project.

The project team started to work on the identification of high-level specification of e-Curia in the same year (2005). After 6 years of work, software development, piloting within the registries, organisational adoption, and piloting with external parties, and meetings with the "Curia working group" the Court was ready to take the second step, making performative (legally valid) the use of e-Curia for exchanging procedural documents.

The 13 September 2011 the Official Journal of the EU published the Decision of the Court of Justice on lodging and service of procedural documents by means of e-Curia.¹¹ This Decision represents the legitimization of e-Curia and of the procedures embedded in its functioning as a valid means for lodging and serving procedural documents. It is, therefore, an ex-post legitimization, i.e. a legitimization of an existing, and well running technology. The decision states (among other issues) that

"The information technology application known as 'e-Curia', common to the three constituent courts of the Court of Justice of the European Union, allows the lodging and service of procedural documents by electronic means under the conditions laid down by this Decision" (Art. 1).

And that

"This application, which is based on an electronic authentication system using a combination of a user identification and a password, meets the requirements of authenticity, integrity and confidentiality of documents exchanged".

But there was also the problem of signature of original copies of procedural documents as indicated in paragraph 1 of article 37. The solution used to solve this legal issue is a remarkable example of functional simplification and a smart mediation between law and technology. Article 3 states that

"A procedural document lodged by means of e-Curia shall be deemed to be the original of that document for the purposes of the first subparagraph of Article 37(1) of the Rules of Procedure where the representative's user identification and password have been used to effect that lodgement. Such identification shall constitute the signature of the document concerned".

In a paper based procedure, the signature is a means to check the identity of the signatory, his/her intention to make a signature, and that the signatory

¹¹ 6 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:289:0007:0008:EN:PDF>.

adopts the contents of the document. The rule assumes that a log in into e-Curia based on user name and password, and the subsequent lodgement of procedural documents verified by the same credentials fulfils such functional and legal requirements. It is thanks to this techno-legal solution that the Project team has been able to set up a self-contained identification mechanism, easily accessible to the potential users all over Europe.

The third step is the definition of the conditions of use applicable to parties' representatives¹² and to assistants.¹³ The 11th of October 2011, the chief registrars of the three courts approved the conditions of use that have to be accepted by expected users. Just if they explicitly accept these terms of use, they will be authorised to lodge procedural documents with e-Curia.

Precise legal changes have been able to keep the architectural (and procedural) complexity of e-Curia near the threshold of the maximum feasible simplicity. No ad hoc identification technology is needed. The functional simplification and closure of the procedure to be followed by external users may even reduce the risks of error at the filing procedure. Law and procedural changes can work as powerful means of simplification.

6.2. *Semantic*

The Court of Justice of the European Union is a multilingual institution. While French is the working language, cases can be dealt with in each one of the 23 official languages of the Union. This linguistic and semantic complexity is faced mainly with organisational arrangements. The Directorate general is responsible for the translation, from and into any of the EU languages, of the procedural documents required by the proceedings dealt with by the Court. The Directorate-General for Translation, which employs almost half of the staff of the Court is organised in multiple language units (one for each official language) and four support units in charge of coordination, research, documentation, terminology and training. The Directorate general has identified also pivot languages (and translators). For instance, English serves as "pivot" translators from Czech, Danish, Lithuanian and Swedish, for the benefit of the other translation units. Based on the information collected so far, technological tools providing automatic translation are not used (at least officially). Consistently with the rules of the Court, also e-Curia is a multilingual application, and each user can select his/her own working language among the 23 official ones.

¹² http://curia.europa.eu/jcms/jcms/P_81900/.

¹³ http://curia.europa.eu/jcms/jcms/P_81905/.

6.3. *Technological*

From a technological point of view, e-Curia (and Prodoc) has been developed on the top of pre-existing data-bases and applications: Registre and Litige. First of all, this has been a functional need: such applications were running for years and were exactly tailored on the procedures of the Court. At this writing, one of the problems affecting e-Curia is to grant the interoperability between these old systems and the new ones developed to manage the digital workflow.

Building systems taking advantage of the installed base seems to be a design principle with a dual effect. In the short term, it can speed up the development and deployment and keep the development under the threshold of maximum manageable complexity, but in the mid-long term it may slow down or hamper the evolution of the technological platform. The modularity of the technological platform may help to face this problem, but this must be empirically ascertained.

Another issue to be considered is the tight coupling between ICT applications and procedures of the Court. Just to clarify the issue with a simple example, the thousands of standard templates available in Prodoc, are full of references to the current rules of procedures. If new rules of procedures will be approved¹⁴, all the templates have to be checked and modified. As a consequence, the new rules of procedures cannot enter into force if the Court until when the Court has updated their systems. Therefore, also the coupling between law and technology may hamper the evolution not just of technology, but also of the law.

It is simpler the evaluation of the decision to develop e-Curia taking advantage of the standard protocols and technological components currently used in e-commerce and e-banking such as individual users' registration (with a paper based support) SSL, and Https. The simple identification mechanisms have allowed a fast grow of users, in particular of key users as Member States, European Institutions, and law firms regularly working with the court. At the same time, being an inexpensive solution, it is not hampering access to less resourced parties.

6.4. *Organisational*

It should be clear that the Court is an extremely well developed organization, with extensive know-how in legal, technological and organisational domains. This results in a great capacity to run complex procedures and even

¹⁴ The 25 of May 2011, the President of the Court has submitted to the President of the Council of the European Union the draft Rules of Procedure of the Court of Justice. http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-05/en_rp_cjue.pdf.

more complex projects. The threshold of maximum manageable complexity in the case of the court is very high, as well as the capacity of the Court to absorb procedural complexity.

The registry provides a high level support to court proceedings. It is common that, in case of problems, the same registry call the case parties to address the issue. This can be done due to the organisational features of the Court, but also due to the number of cases to be dealt with, that is relatively low in comparison to other courts. This kind of approach cannot be followed by courts dealing with a high number of standardised cases, as ordinary courts dealing with the European Small Claims Proceedings. The department of translation solves the problems of semantic interoperability. Also the registries are organised to face the linguistic complexity. Indeed, each registry is organised in sub-unites based on linguistic criteria because clerks must be able to read and write in different languages to register documents and prepare replies. Therefore, the organisational features of the Court are very effective in absorbing procedural complexity and facilitating the circulation of agency.

Chapter 10

The Schengen Information Systems and the European Arrest Warrant

Marco Velicogna

1. Introduction¹

The *European Arrest Warrant* (EAW, see also the acronyms list at the end of the chapter) and the surrender procedures between Member States is a mechanism designed to replace, simplify and speed up, the pre-existing “extradition system by requiring each national judicial authority (the executing judicial authority) to recognise, *ipso facto*, and with a minimum of formalities, requests for the surrender of a person made by the judicial authority of another Member State (the issuing judicial authority)”.² Through the introduction of the European Arrest Warrant “the whole political and administrative phase is replaced by a judicial mechanism”.³

From a different perspective, the EAW mechanism can be described as a normative, technological and organizational assemblage⁴ allowing interoperability of judicial decision issued by a EU Member State in relation to the arrest and surrender by another EU Member State of a requested person, for the purposes of conducting a criminal prosecution, executing a custodial sentence or a detention order.

¹ Thanks go to all the experts and practitioners who have provided the data and the information for the research. Special thanks go to Guido Coppola, Giuseppe Lanzillotti and Andrea Lievre of the Italian SIRENE Bureau for the additional data and information provided within the Building interoperability for European civil proceedings online preliminary investigation, which helped writing up the EAW-SIS introductory report. A special thanks goes to Daniele Maria Marcoaldi of the Italian SIRENE Bureau for the support provided to the Building interoperability for European civil proceedings online research effort.

² http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm.

³ http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/133167_en.htm.

⁴ Lanzara GF (2009) Building digital institutions: ICT and the rise of assemblages in government. In: Contini F, Lanzara GF (eds) *ICT and Innovation in the Public Sectors*. Palgrave, Basingstoke, pp 9-47.

In spite of the difficulties which characterized both the adoption of the EAW Framework Decision both its initial implementation (including consistency between national norms, lack of operative practices, of a shared understanding of roles and competences of the relevant actors), legal interpretations have progressively stabilized, and organizational and inter-organizational learning both of national and of other Member States norms and practices has taken place. At the same time, during the implementation process, both national norms and EAW Framework Decision have been amended to support the long term functioning of the EAW mechanism and smoothen some of the tensions it introduced. Indeed, a high level of legal, organizational and technological adaptation has been required to align, and keeping aligned, the components of the assemblage. The result is a system that is technically and organizationally sound, and that has proved to be a quite effective tool of criminal cooperation.

The analysis of the EAW in action has highlighted how one of the constitutive components, which allow the mechanism to function, is the Schengen Information System (SIS). The latter is an EU Large Scale Information System which became operational in 1995⁵ and which was “created as a compensatory measure following the abolition of controls at internal borders within the Schengen area. The SIS allows competent authorities in Member States to exchange information that is used for performing controls on persons and objects at the external borders or on the territory, as well as for the issuance of visas and residence permits”.⁶

As a consequence, this chapter focuses on three aspects of the SIS as a component of the EAW assemblage: 1) The institutional context, including the creation of the Schengen Area and the rise of the European Arrest Warrant; 2) the Schengen Information System’s features and its long evolution as the information infrastructure backbone which enables the EAW to operate; and 3) the SIS in action throughout the EAW procedure in one Member State, Italy. Some preliminary reflections on the SIS case study lessons for interoperability at EU level are provided in the conclusions.

The case study builds on the results of a research carried out by IRSIG-CNR (Research Institute on Judicial Systems of the Italian National Research Council) researchers within the research project “The European Arrest Warrant in Law and in Practice: a comparative study for the consolidation of the European law-enforcement area”.⁷ The research focused on the analysis of the normative framework, the case law, organizational practices, in depth

⁵ COM(2010)385 final, p 5.

⁶ European Data Protection Supervisor opinion 2006/C 91/11, p 1.

⁷ The project was coordinated by the Center for Social Studies at the University of Coimbra and co-funded by the European Commission.

EAW case files, and judicial actors' perceptions. Within the *Building interoperability for European civil proceedings online* project this initial research effort has been integrated with further research and analysis of EU official documents related to SIS and SIS II and of the literature on the subject which has begun to be published in the last years. Indeed, the fact that several working documents have been recently declassified has been quite helpful. Contacts have also been renewed and communication exchanged with the Italian SIRENE Bureau, which, within the security and limits imposed by the nature of the task and by the existing laws and regulations, had already supported the *European Arrest Warrant in Law and in Practice* research with a very positive attitude.

I have to state that the findings and interpretations expressed in this case study are entirely those of the author and should not be attributed in any manner to the above-mentioned people and institutions.

2. Institutional Background

2.1. European Union: integration, security and criminal Justice Cooperation

The European Union (EU), with its components, evolutions and dynamics, provides the institutional context in which the EAW and its technological backbone, SIS, have been created and have evolved. In particular, focus is posed on the situation and events that took place starting from the '90s as they more directly affected the EAW and SIS, with just a glance at previous relevant happenings.

The EU is the result of a long process, which has taken place in over 60 years. It traces its origins from the Treaty of Paris (1951), where France, West Germany, Italy, Belgium, Luxembourg and the Netherlands established the European Coal and Steel Community; and from the Treaty of Rome (1957), where the same six States created the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). In 1967, the Merger Treaty (1965) entered into force and rationalised the institutional structure of the three Communities, establishing a single Council and a Single Commission. As a results, "under the Treaty, the Communities shared the same institutions, although they remain legally independent".⁸

In the following years, the EU grew in size by the accession of new Member States, with UK, Ireland and Denmark joining in 1973, Greece in 1981 and Portugal and Spain in 1986; and in competences, with the addition of new policy areas. In 1993, the Maastricht Treaty, which established the European

⁸ Kaczorowska A (2008) European Union Law. Routledge Cavendish, New York, p 13.

Union under its current name, provided for “an institutional change, establishing the ‘three pillar’ structure for what was henceforth to be the European Union”.⁹ The first pillar grouped the three European communities and was “subject to the normal supranational methods of decision-making, characterised by the central role of the Commission and European Court of Justice”.¹⁰ As the second and third Pillars deal with “important and sensitive areas of policy hitherto considered to be at the core of national sovereignty”,¹¹ EU member States developed a more intergovernmental decision-making structure “setting up ad hoc meetings to discuss such matters is the cumbersome, time consuming, and involves heavy transaction costs, more especially as the number of players expands”.¹²

The number of Member States has kept raising first from twelve to fifteen in 1995, to 25 in 2004 to the actual 27 in 2007. At the same time, also the constitutional basis of the EU has kept changing, with the Treaties of Amsterdam in 1997, Nice in 2001 and the Treaty of Lisbon, which came into force in 2009.

In the period in question the EU operated “through a hybrid system of supranational independent institutions and intergovernmentally made decisions negotiated by the member States”.¹³ Key EU institutions include the European Commission, the Council of Ministers of the European Union (the Council),¹⁴ the European Council,¹⁵ the European Parliament, the Court of Justice of the European Union, and the European Central Bank.

2.1.1. *European Union Law*

The structure of EU law sources provides the Institutional background for understanding the normative components of the EAW and of the SIS assemblage. There are three sources of EU law: primary, secondary and supplementary.¹⁶ Primary law comes mainly from the treaties, which constitute “the basis or ground rules for all EU action. Secondary (standard) legislation derives from the principles and objectives set out in the treaties, and includes

⁹ Craig P, De Búrca, G (2008) EU law: text, cases, and materials. OUP, Oxford, p 15.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ http://en.wikipedia.org/wiki/European_Union.

¹⁴ Representing the executives of member states.

¹⁵ Including the President of the European Commission, the President of the European Council and the heads of state or government of the EU member states.

¹⁶ http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/114534_en.htm.

regulations, directives, decisions, opinions and recommendations.¹⁷ Supplementary law includes case law of the Court of Justice, international law which inspires the Court of Justice decisions and the general principles of law developed by the case law of the Court of Justice.¹⁸

The EU standards decision-making mechanisms changed during the time-period analyzed in the study. This has implications for the legislation activity concerning the normative component of the assemblage. “Between 1993 and 2009, the European Union (EU) legally consisted of three pillars. This structure was introduced with the Treaty of Maastricht on 1 November 1993, and was eventually abandoned on 1 December 2009 with the entry into force of the Treaty of Lisbon, when the EU obtained a consolidated legal personality.”¹⁹

The three Pillars were: the Community pillar, corresponding to the three Communities (first pillar); the common foreign, defence and security policy (second pillar); and the justice and Home affairs pillar, devoted to police and judicial cooperation in criminal matters (third pillar).²⁰

The three pillars worked on the basis of two different decision-making procedures: “the Community procedure for the first pillar, and the intergovernmental procedure for the second and third pillars. In the case of the first pillar, only the Commission could submit proposals to the Council and Parliament, and a qualified majority was sufficient for a Council act to be adopted. In the case of the second and third pillars, this right of initiative was shared between the Commission and the Member States, and unanimity in the Council was generally necessary”.²¹

The Treaty of Lisbon, “amending the Treaty on European Union and the Treaty establishing the European Community was signed in the Portuguese capital on 13 December 2007 by the representatives of the twenty-seven Member States. It entered into force on 1 December 2009, after being ratified by all the Member States.”²²

Relevant changes introduced by the treaty includes “the move from required unanimity to double majority voting in several policy areas in the Council of Ministers; a more powerful European Parliament as its role of forming a bicameral legislature alongside the Council of Ministers becomes

¹⁷ http://europa.eu/about-eu/basic-information/decision-making/index_en.htm.

¹⁸ http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/114534_en.htm.

¹⁹ http://en.wikipedia.org/wiki/Three_pillars_of_the_European_Union.

²⁰ “The Treaty of Amsterdam transferred some of the fields covered by the third pillar to the first pillar (free movement of persons)” http://europa.eu/legislation_summaries/glossary/eu_pillars_en.htm.

²¹ http://europa.eu/legislation_summaries/glossary/eu_pillars_en.htm.

²² <http://www.consilium.europa.eu/treaty-of-lisbon.aspx?lang=en>.

the ordinary procedure; a single legal personality formally given to the EU and the creation of a long-term President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy. The Treaty also made the Union's bill of rights, the Charter of Fundamental Rights, legally binding".²³

2.1.2. *The Area of freedom, security and justice*

"The creation of the area of freedom, security and justice is based on the Tampere (1999-04), Hague (2004-09) and Stockholm (2010-14) programmes. It derives from Title V of the Treaty on the Functioning of the European Union, which regulates the 'Area of freedom, security and justice'".²⁴

In practice, the AFSJ "is a collection of European Union (EU) policies designed to ensure security, rights and free movement within the EU".²⁵ On the one hand, internal borders were removed within the EU, increasing freedom of movement but also security risks. On the other hand cross-border judicial and police cooperation were increased, to tackle cross-border crime and terrorism and to make it easier to identify, arrest and transfer suspected criminals from the country where they were arrested to the country where they were wanted for questioning or to stand trial, reducing such security risk increment.²⁶

From an EU institutional perspective, "the area comes under the purview of the European Commissioner for Justice, Fundamental Rights and Citizenship and the European Commissioner for Home Affairs".²⁷ "The relevant European Commission departments are the DG for Justice and DG Home Affairs. However there is also Eurojust and Europol, which develop judicial and police cooperation respectively. Related to the latter there is also the European Police College, the European Police Chiefs Task Force and Frontex".²⁸

"The area of freedom, security and justice ... covers policy areas that range from the management of the European Union's external borders to judicial cooperation in civil and criminal matters. It includes asylum and immigration policies, police cooperation, and the fight against crime (terrorism, organised crime, trafficking in human beings, drugs, etc.)".²⁹ "Some notable projects related to the area are the European Arrest Warrant, the Schengen Area and Frontex patrols".³⁰

²³ http://en.wikipedia.org/wiki/Lisbon_Treaty.

²⁴ http://europa.eu/legislation_summaries/justice_freedom_security/index_en.htm.

²⁵ http://en.wikipedia.org/wiki/Area_of_freedom,_security_and_justice.

²⁶ http://ec.europa.eu/publications/booklets/eu_glance/79/en.pdf.

²⁷ http://en.wikipedia.org/wiki/Area_of_freedom,_security_and_justice.

²⁸ *Ibid.*

²⁹ http://europa.eu/legislation_summaries/justice_freedom_security/index_en.htm.

³⁰ http://en.wikipedia.org/wiki/Area_of_freedom,_security_and_justice.

2.2. *The Schengen Agreement, Convention and Schengen Area*

“The Schengen area is based on a body of rules (the Schengen *acquis*) which encompasses not only the abolition of border control at internal borders and common rules on the control of external borders but also a common visa policy, police and judicial cooperation, common rules on the return of irregular migrants and the establishment of common data-bases such as the Schengen Information System (SIS)”.³¹ The Schengen Implementation Agreement (SIA), which may be considered as a “laboratory” for the European Internal Market (Art. 7A EC) became operative on the 26 March 1995, ten years after the Schengen Agreement was signed (14 June 1985).³² With this step, the decades-old vision of a Europe without internal border controls was brought to life. In fact, since its entry into force, the common borders of the active signatory States can be crossed at any point (also) by citizens of any third country within the Schengen territory, without any form of identity control (art. 2.1 SIA).³³

At the same time, it should be noted that the focus of the Schengen Agreement and of the Convention implementing the Schengen Agreement are quite different. The Schengen Agreement can be seen as “an expression of the will to create a common area of circulation of goods and persons, in order to avoid a remake of incidents that had occurred a year earlier due to overzealous action of Italian customs officers (foreign trucks stopped at the border, protest road blocks set up in France, the entire European road network disrupted)”.³⁴ Its “priority was a gradual elimination of customs checks at common frontiers of the signatory States. As a matter of fact, only 7 out of the agreement’s 33 articles concern police cooperation and the struggle against immigration. On the opposite, the Schengen Convention of the Schengen agreement, signed on June 19, 1990 by the same contracting parties, developed police, customs and judicial cooperation for purposes of common outer frontier control”.³⁵ The Schengen Convention was created to provide a counterbalance to the reduction of checks to the movement in the ‘common area’ and address insecurity and immigration issues, which had increased in Schengen Agreement signatory States public debates. One of the fundamental components of this increased cooperation “was the creation of a common computerized information system, the Schengen Information System (title IV of the Convention)”.³⁶

³¹ COM(2011) 561 final, p 2.

³² Hailbronner K, Thierry C (1997) Schengen II and Dublin: responsibility for asylum application in Europe, *Common Market Law Review* 34, pp 957-958.

³³ *Ibidem*, pp 958-959.

³⁴ Schengen Convention Joint Supervisory Authority (1997), *First Annual Activity Report*, March 95-March 97.

³⁵ *Ibid.*

³⁶ *Ibid.*

2.2.1. *The Schengen Area expansion*

An important element to consider looking at the SIS story is the growth of the Schengen Area. The first agreement between creating a Schengen area was signed in 1985 by its five original members (France, Germany, Belgium, Luxembourg and the Netherlands). From there, the Schengen area gradually expanded to include Italy on 27 November 1990, Spain and Portugal on 25 June 1991, Greece on 6 November 1992. Austria joined on 28 April 1995 and Denmark, Finland and Sweden on 19 December 1996. Iceland and Norway (non-UE Member States but members of the Nordic Passport Union) also joined on 19 December 1996.

The United Kingdom, while declining to join Schengen Convention in relation to passport controls, in 1999 expressed its intention to commence the implementation of the parts of the Schengen *acquis* related to Judicial cooperation, Drugs cooperation, Article 26 and Article 27 of the Schengen Convention, and Police cooperation. This request was approved by a Council Decision of 29 May 2000 (2000/365/EC) and put into effect by a 2004 Council Decision (2004/926/EC) from 1 January 2005. In 2002 Ireland also submitted a request for partial participation in the Schengen *acquis* with the exclusion of the provisions concerning passport controls. The request was approved by the Council Decision 2002/192/EC, but the decision has not yet been put into effect.

The Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia joined on 21 December 2007 while the non-UE Switzerland joined on 12 December 2008.³⁷ “A protocol on the participation of Liechtenstein in the Schengen area was signed on 28 February 2008”.³⁸

In May 2012, “Bulgaria, Cyprus and Romania also apply only parts of the Schengen *acquis*, as a decision of the Council of the European Union is still required before controls at their borders can be lifted”.³⁹ Specifically, for what regards Cyprus, the implementation of the Schengen Agreement in this country has been delayed because of the Cyprus dispute. Finally, Liechtenstein joined the Schengen Area in December 2011.⁴⁰

2.3. *The European Arrest Warrant Framework Decision*

Describing the rise of the European Arrest Warrant from a normative perspective, this section provides also an insight on the complex interplay that

³⁷ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm.

³⁸ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm.

³⁹ http://europa.eu/legislation_summaries/glossary/schengen_agreement_en.htm.

⁴⁰ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1566>.

characterized the governance of this process. As mentioned in the introduction, the EAW was introduced with the purpose of replacing the extradition procedure between EU countries with a faster and simpler surrender procedure that removes the political and administrative phases of decision-making. “Until the adoption of the EAW, extradition between EU member states was based on several different intergovernmental measures, themselves based on international law (Peers 2001) – for example, the 1957 Council of Europe European Convention on Extradition, the 1975 and 1978 protocols to the convention, the 1977 Council of Europe European Convention on terrorism, the Schengen Implementing Convention of 1990, a convention in 1995 [on simplified extradition procedure between the Member States of the European Union] supplementing the aforementioned conventions, as well as a 1996 convention”⁴¹ relating to extradition between the Member States of the European Union.

The EAW stands on the assumption of a high level of mutual trust and cooperation between EU countries and of the existence of common minimum standards of rule of law. This is provided, for the European Commission, by the fact that “Member States and national courts have to respect the provisions of the European Convention on Human Rights and to ensure that it is respected. Anyone arrested under an EAW may have a lawyer and, if necessary, an interpreter, as provided by the law of the country where he or she has been arrested. If judgement was given in his absence against anyone later arrested under an EAW, he has to be retried in the country requiring his return”.⁴² At the same time, much still needs to be done if National authorities involved in EAW activities stress keep stressing the “need to introduce a new judicial culture based on mutual trust, as a condition for the EAW system to deploy all its potential”.⁴³

An EAW can be issued by a national issuing judicial authority for the purposes of conducting a criminal prosecution (for offences carrying a maximum penalty of at least 12 months) or enforcing a custodial sentence (for sentences of four months or more). At the same time, an EAW can not be issued for investigation purposes.

In relation to EAW cases, the double criminality principle is abolished for 32 serious categories of offences. This means that for those 32 categories of offences (as defined by the issuing country) the alleged action does not need to be a crime in the surrendering country but only in the issuing one.

⁴¹ Kaunert C (2007) “Without the Power of Purse or Sword”: The European Arrest Warrant and the Role of the Commission, *Journal of European Integration* 29 (4), p 389.

⁴² http://ec.europa.eu/justice/policies/criminal/extradition/policies_criminal_extradition_en.htm.

⁴³ Council of the European Union 8302/4/09 REV 4 p 6.

In the Commission EAW FD evaluation report (COM(2005)63), issued at the beginning of 2005, the Commission “provisionally estimated that, as a result of the entry into force of the Framework Decision, the average time taken to execute a warrant has fallen from more than nine months to 43 days. This does not include those frequent cases where the person consents to his surrender, for which the average time taken is 13 days”.⁴⁴

To sum up, here is a list of the functional simplifications introduced through the EAW FD in comparison with the previous extradition system:⁴⁵

- The EAW is issued and executed directly by judicial authorities – the role of the executive branch (ministries, etc.) has been abolished or reduced to that of a transmission facilitator.
- The EAW is issued on the same simple form in all Member States, so that it is easy to use and translate.
- The EAW effectively addresses the issue of dual criminality for a list of 32 categories of specified serious crimes under certain conditions, thereby overcoming the problems stemming from different criminal codes in Member States.
- Grounds for refusal are strictly limited by the Framework Decision, that distinguishes between mandatory and optional grounds. The surrender of Member States’ citizens can, for instance, no longer be refused on the grounds of their citizenship. However some Member States have added some grounds for refusal when implementing the Framework Decision into their national law.
- The time-limits for deciding on and executing an EAW are explicit, making the surrender procedure much faster than the previous extradition procedure.
- A SIS alert has the same status as the original EAW, thereby simplifying the distribution of the warrants.

The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States has in previous years been the subject of in-depth mutual evaluations,⁴⁶ “Pursuant to Article 8(5) of the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime”.⁴⁷

The information gathered during the evaluation exercise shows that, “in general, the EAW is operating efficiently. The basis for this conclusion is the

⁴⁴ http://ec.europa.eu/justice/doc_centre/criminal/doc/com_2005_063_en.pdf.

⁴⁵ <http://www.consilium.europa.eu/policies/council-configurations/justice-et-affaires-interieures-%28jai%29/sirene-schengen-information-system/sirene/european-arrest-warrant-%28eaw%29.aspx?lang=en>.

⁴⁶ See for example Council of the European Union 8302/4/09 REV 4.

⁴⁷ Council of the European Union 8302/4/09 REV 4 p 4.

increasing volume of requests, the percentage of them that result in effective surrender and the fact that the surrender deadlines are generally met. The improvement is even more striking when these variables are compared with those existing under the previous extradition regime”.⁴⁸

2.3.1. *The EAW Roadmap*

The first relevant event in the rise of the EAW can be considered the European Council special meeting held in Tampere on 15 and 16 October 1999 on the creation of an area of freedom, security and justice in the European Union. In this meeting it was declared that the formal extradition procedures were to be abolished among the Member States “as far as persons are concerned who are fleeing from justice after having been finally sentenced...”⁴⁹ and for other cases (i.e. prosecution of crimes) it was expressed the need for “fast track extradition procedures, without prejudice to the principle of fair trial”.⁵⁰ The following step was the Programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters, adopted by the Council on 30 November 2000,⁵¹ addressing the mutual enforcement of arrest warrants, as envisaged in point 37 of the Tampere European Council Conclusions.

The events of 11 September 2001 are turnaround point for a process that was moving only slowly forward. The need to support the war against terrorism increased the peer pressure on EU member States to go toward a deeper integration in the criminal area.⁵² Just a few days after, the conclusions and plan of action of the extraordinary European Council meeting on 21 September 2001 states: “the European Council signifies its agreement to the introduction of a European arrest warrant and the adoption of a common definition of terrorism. The warrant will supplant the current system of extradition between Member States. Extradition procedures do not at present reflect the level of integration and confidence between Member States of the European Union. Accordingly, the European arrest warrant will allow wanted persons to be handed over directly from one judicial authority to another. In parallel, fundamental rights and freedoms will be guaranteed”.⁵³ In his speech of the 4 October 2001 to the Parliament, Tony Blair, refers to the firm action taken

⁴⁸ *Ibid.*, p 6.

⁴⁹ Tampere European Council, 15 and 16 October 1999: Conclusions of the Presidency, as published in Bulletin EU nr. 10/1999.

⁵⁰ *Ibid.*

⁵¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:012:0010:0022:EN:PDF>.

⁵² Kaunert C (2007) p 395, see footnote 41.

⁵³ http://ec.europa.eu/justice_home/news/terrorism/documents/concl_council_21sep_en.pdf.

by the European Union: "Transport, interior, finance and foreign ministers have all met to concert an ambitious and effective European response: enhancing police cooperation; speeding up extradition; putting an end to the funding of terrorism; and strengthening air security".⁵⁴

Some countries initially opposed parts of the EAW proposal. The strongest opposition came from Italy. The Italian position was in particular aimed to reduce the extensive list of crimes (32) specifically addressed by the new legal instrument and not requiring double criminality check to six. "The same six descriptions were contained in the Treaty of extradition recently signed by Italy and Spain, namely terrorism, organized crime, drug trafficking, arms smuggling, people trafficking and sexual abuse of minors".⁵⁵ After an intense political and media struggle, and under the mounting pressure coming from the other EU Member States, the Italian government dropped this position at the Laeken Summit on December 11 2001.⁵⁶ The agreement on the introduction of the European Arrest Warrant reached at the Laeken Summit resulted in the adoption of the Framework Decision on 13 June 2002. The Framework Decision then entered into force on 7 August 2003, with a 31 December 2003 deadline for the Member States to comply with its provisions.

At the same time though, while all EU governments ratified the Framework Decision, some of the tension at the basis concerning fundamental rights protection and mutual trust were still unresolved. Indeed, "The Framework Decision was the outcome of the climate created by the terrorist attacks of 11 September 2001, with emotion and the need to send a strong signal to the public taking the place of measured reflection, and it was signed in record time. However, one crucial aspect that is often overlooked is that this Framework Decision is *not just about terrorism*, it is about *all criminal offences* punishable under the criminal laws of the 25 Member States".⁵⁷

As a consequence, the implementation laws introducing and regulating the EAW in the MSs systems were often complex processes and took longer than anticipated. Only half Member states complied with the time limit laid down in the FD (BE, DK, ES, IE, CY, LT, HU, PL, PT, SI, FI, SE, UK). The remaining MSs, with the exception of Italy, implemented the FD within an 8

⁵⁴ Tony Blair's speech to parliament - The full text of the prime minister's statement to parliament concerning the terrorist attacks in the US. The Guardian 04 October 2001 <http://www.guardian.co.uk/world/2001/oct/04/september11.usa3>.

⁵⁵ Impalà F (2005) The European Arrest Warrant in the Italian legal system Between mutual recognition and mutual fear within the European area of Freedom, Security and Justice. Utrecht Law Review 1 (2) p 58.

⁵⁶ Black I (2001) Italy agrees to EU arrest warran. The Guardian, 12 December 2001, <http://www.guardian.co.uk/world/2001/dec/12/september11.usa>.

⁵⁷ Impalà F (2005) p 59, see footnote 55.

months delay.⁵⁸ The Italian implementation law was approved last on April 22 2005 and entered into force on 14 May 2005.

Time delay was not the only issue. Several Member States had to revise their constitutions in order to adopt specific legislation transposing the Framework Decision.⁵⁹ Furthermore, although Member States largely implemented properly the Framework Decision, in some cases national implementing law failed to fully transpose it. In some cases implementing laws have been amended by parliaments and Constitutional Courts have been required to intervene (i.e. Belgium, Germany, Poland and Cyprus, Italy). In others courts jurisprudence have found viable compromises.

Not all problems and tension have been solved, though. An indication of the partially unsolved issues generated by the EAW and of the on-going struggle to solve them can be read, for example, in the Council observation that, during the EAW mutual evaluations, “No small number [of National authorities involved in EAW activities] ... stressed the need to take further steps to approximate legislation and identify common procedural standards as a means of enhancing mutual trust”.⁶⁰

Another indication comes from the still on-going adjustments to the EAW Framework Decision, such as the Framework Decision 2009/299/JHA of 26 February 2009 which, revising part of it, states that the “*solution provided by the EAW Framework decision was not deemed satisfactory as regards cases where the person could not be informed of the proceedings*”⁶¹.

3. The Schengen Information System

As mentioned in the introduction, the Schengen Information System (SIS) can be considered the information infrastructure that allowed the EAW to be relatively swiftly implemented from an operational perspective. From a normative perspective, after the EAW FD has been implemented within the Schengen area, if a person is “wanted for arrest for extradition or surrender purposes (Schengen Convention, Art. 95) – the alert in SIS is equivalent to a European Arrest Warrant or a request for provisional arrest pursuant to the European Convention on Extradition”.⁶² At the same time, until the SIS will be capable of transmitting all the information described in Article 8 of the

⁵⁸ http://ec.europa.eu/justice/doc_centre/criminal/doc/com_2005_063_en.pdf.

⁵⁹ http://ec.europa.eu/justice/doc_centre/criminal/doc/com_2005_063_en.pdf.

⁶⁰ Council of the European Union 8302/4/09 REV 4 p 6.

⁶¹ Point 3 of the Preamble of the Framework Decision 2009/299/JHA.

⁶² <http://www.consilium.europa.eu/policies/council-configurations/justice-et-affaires-interieures-%28jai%29/sirene-schengen-information-system/sis.aspx?lang=en>.

EAW FD, the alert is the equivalent to a European arrest warrant only “pending the receipt of the original in due and proper form by the executing judicial authority”.⁶³

While the Schengen Information System is an integral part of the European Arrest Warrant, SIS predates the EAW and has a broader field of application. SIS is the European “largest shared database on maintaining public security, support police and judicial co-operation and managing external border control. Participating States provide entries, called “alerts”, on wanted and missing persons, lost and stolen property and entry bans”.⁶⁴

From a normative perspective, the Schengen Information System finds its roots in the Convention on the Implementation of the Schengen Agreement signed on 19 June 1990.⁶⁵ When it took effect in 1995, the Convention on the Implementation of the Schengen Agreement “abolished checks at the internal borders of the signatory states and created a single external border where immigration checks for the Schengen area are carried out in accordance with identical procedures. Common rules regarding visas, right of asylum and checks at external borders were adopted to allow the free movement of persons within the signatory states without disrupting law and order”.⁶⁶ The abolition of obstacles to the free movement of goods, persons, services and capital between Schengen States was coupled with the introduction of ‘compensatory measures’ – increased cross border cooperation and coordination – in order to uphold security, fight against organized crime and ensure justice. Accordingly, the Schengen Implementing Convention of 1990 “created a multinational database [the Schengen Information System] for the use of immigration, border control, judicial and police authorities in any of the States which fully apply the Schengen Convention”.⁶⁷ SIS contains data (alerts) on certain categories of people (wanted, to be controlled or with refusal of entry) and goods, with the objectives ranging from border control, to “issuing of visas, residence permits, driver’s licenses, customs regime, police and judicial activities, and also to guarantee public order, national and European security”.⁶⁸

⁶³ Art. 9 EAW FD, 2002/584/JHA.

⁶⁴ <http://www.consilium.europa.eu/policies/council-configurations/justice-et-affaires-interieures-%28jai%29/sirene-schengen-information-system.aspx?lang=en>.

⁶⁵ Brouwer E (2008) Digital borders and real rights: effective remedies for third-country nationals in the Schengen Information System. Martinus Nijhoff, p 1.

⁶⁶ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm.

⁶⁷ House of Lords European Union Committee (2007) Schengen Information System II (SIS II), 9th Report of Session 2006-07, HL Paper 49, 2 March 2007.

⁶⁸ <https://www.privacyinternational.org/article/austria-privacy-profile>.

While initially SIS was created only for alerting authorities of other Schengen countries on certain categories of people and goods in order for them to take ‘concrete measures’ and ‘compensate’ for the removal of internal borders, with time, its nature and scope began to shift. Especially after the 9/11, Madrid and London terrorist attacks, the system started to change in order to seize its investigation support functions potentials. Indeed, already in 2002, a note from the Presidency of the Council of the European Union to the Working Party on SIS stated that “the idea of using the SIS data for other purposes than those initially foreseen, and especially for police information purposes in a broad sense, is now widely agreed upon and even follows from the Council conclusions after the events of 11 September 2001”.⁶⁹ This idea included both the proposals to extend the access to SIS to other authorities than those initially foreseen, both the proposals for new functionalities.⁷⁰ The shift generated by this idea resulted in changes both in the rules regulating the use of the database, both in the modification of the database and of the information infrastructure (e.g. Council Regulation (EC) No 871/2004 and Council Decision 2005/451/JHA).

3.1. *SIS Legal Basis*

From an EU legal perspective, SIS was established both on the first and the third pillar.⁷¹ The first-pillar aspects of SIS cover alerts for refusal of entry as well as access by Member States’ services responsible for issuing vehicle registration certificates. The third-pillar aspects of SIS cover all the alerts falling under Title VI of the EU Treaty, i.e. provisions on police and judicial cooperation in criminal matters.⁷² One of the results of this double nature was the need to have parallel EU norms regulating the (same) aspects of SIS pertaining to each pillar. As described in Section 2, changes introduced by the treaty of Lisbon in 2009 eliminated this dualism.

The 1990 Convention on the Implementation of the Schengen Agreement dedicates twenty-eight out of 142 articles to the Schengen information system in its Title IV. Going into quite some detail, the Schengen Convention provides for SIS establishment (Art. 92-93), operation and use (Art. 94-101), for protection of personal data and security of data contained in it (Art. 102-118) and for the apportionment for the costs (Art. 119). In particular, “Articles 94 to 100 divide the data entered in the SIS into a number of different categories

⁶⁹ Presidency of the Council of the European Union “Requirements for SIS” note 5968/02 LIMITE - SIS 6 COMIX 78.

⁷⁰ *Ibid.*

⁷¹ See Section 2.1.1. of this chapter.

⁷² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0292:FIN:EN:HTML>.

of ‘alerts’”.⁷³ An alert is a set of data entered in SIS allowing the competent authorities to identify a person or an object/vehicle with a view to taking specific action.

The six alert categories, corresponding with the specific article are:

1. (Article 95) persons wanted for extradition to a Schengen State;
2. (Article 96) a list of non-EU citizens (“third-country nationals”) who should in principle be denied entry to any of the Schengen States;
3. (Article 97) missing persons or persons to be placed under police protection;
4. (Article 98) persons wanted as witnesses, or for the purposes of prosecution or the enforcement of sentences;
5. (Article 99) persons or vehicles to be placed under surveillance or subjected to specific checks;
6. (Article 100) objects sought for the purpose of seizure or use in criminal proceedings.

With the years the articles of Title IV of the Convention on the Implementation of the Schengen Agreement have undergone a number of amendments (not all of them applicable given the two pillars nature of the Convention).⁷⁴ Furthermore, some provisions will be replaced only once SIS II will become operational.⁷⁵

3.2. *Some Governance elements*

This section presents some information on a few of the bodies which played an active role in the development of SIS I and SIS II.

⁷³ House of Lords European Union Committee (2007), see footnote 67.

⁷⁴ Here is a list of relevant EU legislation just to provide an idea of the normative complexity from the Convention amendment perspective: Council Regulation (EC) No 871/2004, Council Decision 2005/211/JHA, Council Decision 2005/719/JHA, Council Decision 2005/727/JHA, Council Decision 2005/728/JHA, Regulation (EC) No 1160/2005 of the European Parliament and of the Council, Council Decision 2006/229/JHA, Council Decision 2006/228/JHA, Council Decision 2006/628/EC, Council Decision 2006/631/JHA, Council Regulation (EC) No 1104/2008, Council Decision 2008/839/JHA.

⁷⁵ In particular, “The provisions of the Title IV, with the exception of Article 102A, will be replaced by Regulation (EC) No 1987/2006 of the European parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) once they come into force. Article 102A will be replaced by Regulation (EC) No 1986/2006 of the European parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates from the same date” CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT Consolidated version June 2009 p 48.

3.2.1. SIS I

For the implementation of the Schengen Convention, contracting Parties (States) created two bodies: Art. 131 establishes an Executive Committee, consisting of one Minister in charge of the Convention's implementation in each party/State. The Executive Committee has "the general mission of supervising the correct implementation of the Convention and has specific additional competencies".⁷⁶ Art. 115 establishes a Joint Supervisory Authority (JSA) with "the task of verifying the good execution of the Convention's provisions with respect to the function of the technical medium of the SIS",⁷⁷ and consisting of two representatives from each parties/States National Supervisory Authority.⁷⁸ Furthermore, the JSA has also "a number of more general competencies in the field of data protection".⁷⁹

Beside these two bodies, "the Schengen organization is structured around a Central Group, with the subordinate SIS Steering committee and various working groups, some of which have been set up by the Convention".⁸⁰ The Schengen bodies are assisted by a secretariat, a task initially "fulfilled by the General Secretariat of the Economic Union of Benelux, based in Brussels".⁸¹ Following the Protocol of the Treaty of Amsterdam (1997) integrating of the Schengen *acquis* into the framework of the European Union, "With its Decision 1999/307/EC of 1 May 1999, the Council established a procedure for incorporating the Schengen Secretariat into the General Secretariat of the Council".⁸²

Coordination between the various bodies has not been always smooth, as shown by JSA reports, for example: "On several occasions ... with increasing insistence ... the JSA has requested a number of documents essential to its knowledge of the Convention's implementation and of the operation of the SIS, so that it could carry out its mission effectively. It often encountered difficulties in obtaining these in due time and, in spite of its complaints, did not succeed yet in becoming an addressee of some of these documents as they are being worked out, in particular documents from the Steering committee and the Permanent Working Party (PWP)".⁸³

⁷⁶ Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

⁷⁷ Ibid.

⁷⁸ Art. 115 Schengen Convention.

⁷⁹ Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm.

⁸³ Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

3.2.2. SIS II

Council Regulation (EC) 2424/2001 and the Council Decision 2001/886/JHA on the development of the second generation Schengen Information System (SIS II) entrusted the competence for the development of SIS II to the European Commission with the assistance of a regulatory committee composed of the representatives of the Member States and chaired by a representative of the Commission. This committee in particular is involved on issues such as the design of the physical architecture of the system, technical aspects that have a bearing on personal data protection, serious financial implications for the budgets or for the national systems of the Member States; and for the development of security requirements. At the same time, “During the past decade, a complex arrangement of groups, committees, boards and task forces have emerged within the governance framework of SIS II. These groups consist of members of police boards, national technical experts, civil servants representing national ministries of interior and security bodies, and provide a platform on which a network of expertise has been constructed on SIS II.”⁸⁴

According to the legal instruments governing the various versions of SIS, the Commission is entrusted with the operational management of SIS II during a transitional period. “This period should be no longer than five years from the date from which the SIS II legal instruments apply. The Commission currently entrusts the operational management of SIS II to national public-sector bodies in France. It is, however, not the Commission’s core task to operate such large-scale IT system. Hence, the need to establish a Management Authority in the long term, mainly to ensure continuity and operational management of the respective systems and the permanent flow of data”.⁸⁵ The new Regulatory Agency should carry out the tasks of the ‘Management Authority’ not only for SIS II, but also for the Visa Information System (VIS) and EURODAC.

3.3. Some technical and organizational features

From a technical perspective, the countries participating in the 1990 Schengen Convention “adopted a data-processing star architecture made up of a central site containing the reference database”,⁸⁶ the *technical support function of the Schengen Information System*, known as C-SIS, and *national sections*, known as N-SIS, containing a copy of the database. The French Re-

⁸⁴ Parkin J (2011) The Difficult Road to the Schengen Information System II: The legacy of ‘laboratories’ and the cost for fundamental rights and the rule of law. CEPS Paper in Liberty and Security in Europe, <http://www.ceps.eu/>.

⁸⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0292:FIN:EN:HTML>.

⁸⁶ <http://en.wikipedia.org/wiki/SIRENE>.

public is responsible for C-SIS, which is located in Strasbourg. At the same time, C-SIS set up and maintaining costs are shared by the Schengen member States, as is liability.⁸⁷ N-SIS are set up and maintained individually by each State. In theory, the national data file should be “materially identical to the data files of the national sections of each of the other contracting parties”.⁸⁸ When setting up its national section, each State must observe the protocols and procedures, which have been jointly established for the C-SIS. Each national section’s data file is used for searches in the territory of each State. It is not possible to search the data files of other N-SIS.⁸⁹ Maintenance and service level commitments for hardware and software must be provided for by each State to ensure the 24/7 operation of N-SIS and to guarantee data integrity both of N-SIS. Similar performance levels and guarantees needs to be provided for any national copies, where these exist (including real-time synchronisation of copies and regular database comparisons).⁹⁰

“All national systems are connected on-line with the central system via a secured communication network”.⁹¹ The system conceived with an architecture that should ensure that national databases contain identical information.⁹² All together, C-SIS, N-SISs and the linking Network, constitute the SIS. The system became fully operational by the end of 1994, with the first technical link between the then seven participant States taking place the 30 November 1994.⁹³

So, for example, in case of escape of a prisoner, the competent authority immediately report that a SIS alert need to be issued on that specific individual and the relevant data is entered in the National SIS database. The N-SIS in turn transmits immediately the data to C-SIS. The central system will then send this data to the other N-SIS so that all N-SIS are updated in real time and (almost) simultaneously.⁹⁴

⁸⁷ Art. 92.3. of the Convention Implementing the Schengen Agreement.

⁸⁸ Art. 92.2. of the Convention Implementing the Schengen Agreement.

⁸⁹ Ibid.

⁹⁰ Council of the European Union (2002) Schengen Information System, Sirene: Recommendations and best practices. EU Schengen Catalogue 2.

⁹¹ <http://www.consilium.europa.eu/policies/council-configurations/justice-et-affaires-interieures-%28jai%29/sirene-schengen-information-system/sis.aspx?lang=en>.

⁹² In particular, according to art 92.3. of the Convention Implementing the Schengen Agreement, C-SIS comprises a data file which will ensure via on-line transmission that the data files of the national sections contain identical information.

⁹³ Yung R (2005) Legislative report to the French Senate: ‘Proposition de résolution Le système d’information Schengen’. Annex to the *procès-verbal* of the meeting of 25 January 2006, p. 8 <http://www.senat.fr/rap/105-174/105-1740.html>. Accessed Jan 22, 2013.

⁹⁴ Ibid., p 9.

“The SIS operates on the principle that the national systems cannot exchange computerised data directly between themselves, but instead only via the central system (C.SIS). However, it is necessary for the Member States to be able to exchange supplementary information, either on a bilateral or multilateral basis, as required for implementing certain provisions of the Schengen Convention, and to ensure full application of Title IV of the Schengen Convention for the SIS as a whole”.⁹⁵ This supplementary information, which cannot be inserted in SIS records but needs to be exchanged for allowing the appropriate action to be taken in case people and objects are found as a result of a search on SIS, is provided by a network of Member States central authorities known as SIRENE Bureaux,⁹⁶ which are the human interface of the SIS.⁹⁷ SIRENE Bureaux (see par. 2.4) were not foreseen in the initial version of the Convention Implementing the Schengen Agreement but have been established later. Article 92.4. of the Schengen Convention, which took effect according to Article 1.1. of Council Regulation (EC) No 871/2004 and Art. 2.1. of Council Decision 2005/211/JHA, provides that “Member States shall, in accordance with national legislation, exchange through the authorities designated for that purpose (Sirene) all supplementary information necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in this system.”⁹⁸

While in theory everything should run smoothly and as provided for by the normative framework, this is not always the case. For example, in its first control mission in 1996, the Schengen Convention Joint Supervisory Authority (JSA) discovered that the databases of the N-SISs were not identical⁹⁹ as provided for in Art. 92.2. of the Convention and that due to design feature could never be; the procedure for detecting differences currently followed was too infrequent¹⁰⁰ and too long;¹⁰¹ the technical measures necessary to safeguard established security standards were not always applied; that the set rules were

⁹⁵ European Commission Implementing Decision 2011/406/EU p 9.

⁹⁶ SIRENE stands for Supplementary Information Request at the National Entry.

⁹⁷ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33020_en.htm.

⁹⁸ Council Decision 2005/211/JHA.

⁹⁹ A large number of disparities were detected between the databases of France and Luxembourg and those of other countries; these differences date back to April 1996 and had not been rectified six months later (Schengen Convention Joint Supervisory Authority (1997), see footnote 34).

¹⁰⁰ Approximately once every six months (*ibid.*).

¹⁰¹ Taking up several months to be carried out (*ibid.*).

too vague and had not been properly issued; too many people were granted super user access to the system;¹⁰² tracing functions¹⁰³ were not satisfactorily applied; and security for the management and transport of the magnetic media containing the SIS data was lacking.¹⁰⁴

The next subsection focuses on specific elements of SIS and in particular on the data, the forms and the network.

3.3.1. *The Data*

Creation, update and deletion

The feeding of new data into the SIS (EAWs, stolen vehicles, wanted persons etc.), and their update and deletion is done in a decentralized manner. Each Member State supplies the SIS freely within the definitions and limits established by the Convention on the Implementation of the Schengen Agreement,¹⁰⁵ and in accordance to the indications of the SIRENE Manual.¹⁰⁶

According to the SIRENE Manual, “Automatic transfer to N.SIS of the national alerts that fulfil the criteria for introduction into the SIS shall be the preferred way to introduce SIS alerts. This automatic transfer, including data quality checks, should also be transparent and not require additional action from the authority entering the alert ... [Furthermore,] where the national system enables the automatic transfer of national alerts to SIS, ... the deletion of a SIS-related alert in the national database should also lead to an automatic deletion of its SIS equivalent”.¹⁰⁷

While other alerts can be entered by authorised personnel at nationally decentralized level, given the relevance of the issues at stake, Article 95 alerts (EAWs) are entered, modified and deleted by SIRENE bureaux personnel. In relation to “the introduction of alerts in the SIS, the underlying basic principle is to find a balance between inserting as much as possible alerts in the SIS, within the framework of the provisions of the Convention, and ensuring that the alerts inserted in the SIS are of good quality”.¹⁰⁸ In theory, every national alert that is “Schengen-relevant” should “be introduced in the SIS. However, in order to be able to execute the alert, it is necessary that the alert

¹⁰² “enabling them to access and change the contents of any file in the computer system (operating system, database and network) and to erase any trace of their action” (ibid.).

¹⁰³ “to verify in retrospect the operations carried out by the users, regardless of priority (date, time, terminal, user ID, type of operation)” (ibid.).

¹⁰⁴ Ibid.

¹⁰⁵ Yung R (2005), see footnote 93.

¹⁰⁶ European Commission Implementing Decision 2011/406/EU.

¹⁰⁷ European Commission Implementing Decision 2011/406/EU p 13.

¹⁰⁸ Council of the European Union (2002), see footnote 90.

is correct, as complete as possible and traceable. Finally, it should be borne in mind that when a Schengen State executes an alert, it has the right to expect that the issuing Schengen State will follow up the hit. Not "doing so without a valid (legal) reason will negatively impact on the willingness of (local) authorities to use the SIS and maximise its potential."¹⁰⁹ At the same time, "Each Schengen State decides which of its law enforcement and immigration control authorities are to have access to some or all categories of SIS alerts, and for which purposes. If a national authority finds that a particular individual or object is listed in the SIS, this is known as a "hit".¹¹⁰

According to Art. 106.1. of the Convention Implementing the Schengen Agreement, only the State issuing the alert is authorised to modify, add to, correct or delete data which it has entered. The SIRENE Manual specifies that an alert can be deleted by the service that entered it once the condition to maintain it no longer applies or by C.SIS once its expiry date has passed.¹¹¹

The Convention provides for different life time-spans for different data categories. Personal data should be kept only for the time required to meet the purposes for which they were supplied. The need for continued storage of such data must be reviewed by the issuing Member State no later than three years after they were entered, or one year in the case of the alerts referred to in Article 99. C.SIS automatically informs N.SISs of scheduled deletion of data from the system one month in advance. The issuing authority can decide to keep the alert should this prove necessary for the purposes for which the alert was issued. Any extension of the alert must be communicated to the C.SIS.¹¹² Other data can be kept for a maximum of three years if they concern motor vehicles, trailers and caravans five years if they concern issued identity papers and suspect banknotes and 10 years for other categories.¹¹³

If an authority of another State has evidence suggesting that an item of data is incorrect or has been unlawfully stored according to it should inform the issuing State as soon as possible; and the latter is legally "obliged to check the communication and, if necessary, correct or delete the item in question immediately".¹¹⁴ C.SIS keep deleted for one year for checks on accuracy and lawfully data enter, after which period they must be destroyed.¹¹⁵

¹⁰⁹ Ibid.

¹¹⁰ House of Lords European Union Committee (2007), see footnote 73.

¹¹¹ European Commission Implementing Decision 2011/406/EU.

¹¹² Art. 112 of the Convention Implementing the Schengen Agreement.

¹¹³ Art. 112 of the Convention Implementing the Schengen Agreement.

¹¹⁴ Art. 106.2. of the Convention Implementing the Schengen Agreement.

¹¹⁵ Art. 113 of the Convention Implementing the Schengen Agreement.

Access

The Convention Implementing the Schengen Agreement regulates access to SIS data. According to Art. 101.1 of the original version of the Convention, access to data entered in the SIS and the right to search such data directly is reserved to the Schengen States authorities responsible for border checks and other police and customs checks carried out within the country, and the co-ordination of such checks.¹¹⁶ These end-users may only search data which they require for the performance of their tasks (Art. 101.3).

To have an example and an order of magnitude, in France at the beginning of 2005 there were about 15000 computer terminals allowing access to SIS data to authorized officers distributed among the national police, gendarmerie, customs, consulates and prefectures. Furthermore, in 2005 SIS was consulted by French users nearly 35 million times.¹¹⁷

As to the modality of access by end users, “the system is based on a ‘hit/no hit’ query function which indicates whether information on a person or object exists within the system, thus alerting police officers, border guards and customs officials across the Schengen area to persons and items that may pose an immigration or security risk”.¹¹⁸ Furthermore, SIS data¹¹⁹ can be used only for the purposes laid down for each category of alert referred to in the articles 95 to 100. Furthermore, as a general rule, SIS data may not be used for administrative purposes.¹²⁰

Council Regulation (EC) No 871/2004 and Council Decision 2005/451/JHA concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism add to Art. 101.1. that “access to data entered in the SIS and the right to search such data directly may also be exercised by national judicial authorities, inter alia, those responsible for the initiation of public prosecutions in criminal proceedings and judicial inquiries prior to indictment, in the performance of their tasks, as set out in national legislation.” They also set up a legal framework for the European Police Office (Europol) and for the European Union’s Judicial Cooper-

¹¹⁶ In addition, access to data entered in accordance with Article 96 and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on aliens in the context of the application of the provisions of this convention relating to the movement of persons. Access to data is governed by the national law of each contracting party. (Art. 101.2.).

¹¹⁷ Yung R (2005), pp 9-11, see footnote 93.

¹¹⁸ Parkin J. (2011), see footnote 84.

¹¹⁹ Provided for in Articles 95 to 100 of the Convention implementing the Schengen Agreement.

¹²⁰ Art 102 of the Convention implementing the Schengen Agreement.

ation Unit (Eurojust) access to SIS. In particular, according to Art. 101A “The European Police Office (Europol) shall within its mandate and at its own expense have the right to have access to, and to search directly, data entered into the Schengen Information System in accordance with Articles 95, 99 and 100 ...”, and according to Art. 101B “The national members of Eurojust and their assistants shall have the right to have access to, and search, data entered in accordance with Articles 95 and 98 into the Schengen Information System...”¹²¹

Volumes

The number of SIS records greatly increased since its launch in March 1995 and during the over 15 years of activity of the system, from about 4 million “alerts” (record entries) in 1995¹²² to over 35 million in 2010. These figures are simply based on the total number of “alerts” held in the SIS on a single day, they do not reflect the numbers deleted or added during the course of a year. Alerts held on the SIS include persons (for example, those wanted for arrest, extradition, to be refused entry, for discrete surveillance) and objects (vehicles, arms, documents including passports and identity cards, bank notes).

In January 2005, the SIS database contained over 13 million valid records divided approximately as follows: 1.2 million concerning people (of which about $\frac{3}{4}$ main records and $\frac{1}{4}$ aliases) of which about 15 thousand were Art. 95 requests.¹²³ By December 2010 data, the volume of valid records (not expired including aliases) reached over 35 million. Of these, 1.2 million concerned wanted persons (of which about $\frac{3}{4}$ main records and $\frac{1}{4}$ aliases) and over 31 thousand were Art. 95 requests (persons wanted for extradition to a Schengen State). As to 2011, according to the Council of the European Union website, “the number of alerts is rising by approximately 3% per month”.¹²⁴

3.3.2. *The Forms*

Data is entered in SIS through several forms. The main forms used in EAW cases are four: A, M, F and G. The EAW correspond to a SIS alert 95¹²⁵ and requires the filing of A+M SIS Forms. Form A corresponds to “Supplemen-

¹²¹ Council Regulation (EC) No 871/2004 and Council Decision 2005/451/JHA.

¹²² <http://database.statewatch.org/article.asp?aid=2662>.

¹²³ House of Lords European Union Committee (2007), see footnote 67.

¹²⁴ <http://www.consilium.europa.eu/policies/council-configurations/justice-et-affaires-internationales-%28jai%29/sirene-schengen-information-system/sis.aspx?lang=en>.

¹²⁵ According to Art. 95 of the Convention Implementing the Schengen Agreement (Chapter on Operation And Use Of The Schengen Information System).

itary information (Article 95(2)). Form M corresponds to “Miscellaneous information”. Schengen alerts take precedence over Interpol alerts and “Interpol alert should include a note for the Schengen States indicating the Schengen IDnumber of the alert”.¹²⁶ It is important to note that if a person is “wanted for arrest for extradition or surrender purposes (Schengen Convention, Art. 95) – the alert in SIS is equivalent to a European Arrest Warrant or a request for provisional arrest pursuant to the European Convention on Extradition”.¹²⁷ The M Form can be used also to exchange further information following a hit, for example to inform the SIRENE Bureau of the issuing Member State on whether the surrender may take place. The F Form, Flag, is sent by a SIRENE Bureau to which an Alert is addressed. It is a request to the issuing SIRENE Bureau to ‘flag’ the alert for that specific country. A flagged Art 95 Alert is considered as being issued for the purpose of communicating the place of residence of the person concerned in the Countries for which it has been flagged.¹²⁸ The G Form, Matching an Alert (hit) is filled by the SIRENE Bureau personnel in the executing Country when the requested person has been identified/arrested in order to inform the issuing country that the alert is matched.

Finally, “before a country is incorporated actively into the Schengen area, one of the requirements is to review the SIRENE “A” forms of the operational countries to provide for the requesting of validity flags”.¹²⁹

3.3.3. *The Network*

At present SIS is connected through a virtual private network with TCP/IP protocol¹³⁰ called SISNET, which was introduced between 2001 and 2002 to substitute the previous network, the SIRENE Network Phase II, based on X.25.

SIRENE Network Phase II installation, management and related supplying services were regulated by an agreement concluded in August 1996

¹²⁶ Council of the European Union (2002), see footnote 90.

¹²⁷ <http://www.consilium.europa.eu/showPage.aspx?id=1178&lang=en>.

¹²⁸ European Commission Implementing Decision 2011/406/EU. Article 25 of the Council Decision 2007/533/JHA provides that: “1. Where Framework Decision 2002/584/JHA applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of a European Arrest Warrant has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been required. 2. However, at the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European Arrest Warrant will have to be refused”.

¹²⁹ “Connection of new States to SISNET” Note 12465/04 LIMITE SIRIS 92 COMIX 557.

¹³⁰ *Ibidem*.

between the Secretary-General of the Benelux Economic Union (replaced by the Secretary-General of the Council of the European Union in 1999) on behalf of these Member States concerned and France Telecom Network Services Belgium (afterward become Global One Belgium).¹³¹ The contract terminated on August 2001.¹³² The network lines were leased by the French Government between C.SIS and the French border and by each Member State from the French border to the Member State. At the same time, each Member State had purchased and was the owner of the crypto devices (Kryptoguards) used on the network.¹³³

SISNET - The decision to introduce a new network was formally taken at the end of 1999 with the Council Decision 1999/870/EC authorising the Deputy Secretary-General of the Council of the European Union to execute a call for tenders and conclude contracts for the development installation and management of a communication infrastructure for the Schengen environment, 'SISNET', and to manage such contracts. SISNET budget, based on the financial contributions of the concerned States, is regulated by Council Decision 2000/265/EC and following amendments.¹³⁴

The introduction of the new network was not without problems. When on 13th of September 2002 the Council Secretariat (SISNET Project Team) gave Final Acceptance of the Network to the supplier, some problems such as a number of un-availabilities of the network service and a high failure rate of the new crypto-devices had been recorded.¹³⁵ These issues were monitored by the SIS-TECH WG "in close cooperation with the suppliers". Furthermore, problems emerged in relation to SISNET Service Level Agreement (SLA) which needed to be renegotiated (with Belgacom) as LSA definitions and actual network statistics did not correspond.¹³⁶

The contract for SISNET was stipulated to terminate automatically on 13 November 2008 and could not be renewed or extended through direct negotiation with the contractor. This deadline was conceived as for that time SIS II (See Section 2.5.2.) and its network were supposed to be operational. As SIS II was not, the States concerned had to authorise the Deputy Secretary-General of the Council to the execution of a call for tender for

¹³¹ See: Council Decision 1999/322/EC.

¹³² Council Decision 1999/870/EC.

¹³³ SIS-TECH Working Group - EU/Iceland and Norway Mixed Committee - (2002) "Information about the SISNET" Note 12436/1/02 REV 1 LIMITE SIS-TECH 137 COMIX 539.

¹³⁴ SISNET 2011 estimated expenditure are about 4 Million Euros (16963/10 SIRIS 172 COMIX 785).

¹³⁵ SIS-TECH Working Group - EU/Iceland and Norway Mixed Committee - (2002) op. cit.

¹³⁶ "Service credits SISNET agreement" Note 5066/1/04 REV 1 LIMITE SIS-TECH 1 COMIX 5.

the provision of services concerning the communication infrastructure for the Schengen environment, pending its migration to a communication infrastructure at the charge of the European Community; and the conclusion and management of the contracts for the provision of such services (including budget issues).¹³⁷ The possibility to migrate SIS and SIRENE onto the s-TESTA network¹³⁸ by 13 November 2008 was considered,¹³⁹ and taken as a fall back options given the inherent risks involved in the tendering for a new SISNET contract.¹⁴⁰ These events intertwined with the Portugal proposal to extend SIS (and therefore SISNET) to the new EU Member States (See Section 3.5.4.). Concerns for possible delays in SIS II as a result of changing the topology of SISNET were expressed. Changes were nevertheless introduced. As to 2011, the extended SISNET is still operating, providing the communication infrastructure for the still growing SIS and SIRENE.

Additional Services on SISNET:

Indeed, in its ten years of life, SISNET showed characteristics of a service enabling and experimenting system. Here are two cases:

SISNET e-mail system “On 1 June 2004 the SISNET e-mail system, for use among Schengen entities, N-SISes and SIRENEs, came into operation. It also provides the possibility of secure exchanges of information which hitherto circulated through traditional channels such as fax, mail or internet. Types of information exchange possible include the exchange of photographs, prints or background documents for court decisions”.¹⁴¹ Countries were allowed to

¹³⁷ Council Decision 2007/149/EC.

¹³⁸ s-TESTA is the European Community’s own private, IP-based network dedicated to inter-administrative requirements and providing guaranteed performance levels. s-TESTA has been created to offer a telecommunications interconnection platform that responds to the growing need for secure information exchange between European public administrations. s-TESTA build on the experience of a preceding network (TESTA). Its kick-off was in mid 2007, and full migration was achieved by end of April 2008. <http://ec.europa.eu/idabc/en/document/2097/5644.html>.

¹³⁹ The Council of the European Union of 15 February 2007 asked “the Commission to make proposals as soon as possible to provide for the possibility of migrating the SIS, Sirene and Vision onto the s-TESTA network by 13 November 2008, under its responsibility” (Council Decision (2007/149/EC)).

¹⁴⁰ Commission Staff Working Document Accompanying document to the: Proposal for a Council Decision on the installation, operation and management of a Communication Infrastructure for the Schengen Information System (SIS) environment; Proposal for a Council Regulation on the installation, operation and management of a Communication Infrastructure for the Schengen Information System (SIS) environment. Summary of the Impact Assessment. (SEC(2007) 810).

¹⁴¹ “Connection of new States to SISNET” Note 12465/04 LIMITE SIRIS 92 COMIX 557.

decide between setting up their own server or use a server managed by C.SIS.¹⁴²

SIS II tests - while in the end not actually carried out, there have been ongoing discussion of experimenting C-SIS II and N-SIS II data transmission on SISNET.¹⁴³

3.4. SIRENE Bureau

The SIRENE Bureaux (Supplementary Information Requested to the National / Entry Supplément d'Informations Requis à l'Entrée Nationale) is a creation of the Schengen States that was "not explicitly foreseen by the Convention. Charged with the exchange of complementary information within each Schengen State, they also act as intermediaries in the course of various State to State consultations on the attitude to adopt in the event of the execution of a SIS entry".¹⁴⁴ Indeed, SIRENE Bureaux were created responding to an organizational and coordination need and affirmed themselves as "an essential feature of the SIS system, without which it could scarcely function."¹⁴⁵

According to a research carried out by the Schengen Convention provisional Joint Supervisory Authority (PJSA)¹⁴⁶ in the initial stages of the Schengen Convention implementation, with exception of Belgium, the States then "enforcing the Convention (Germany, Spain, France, Luxembourg, the Netherlands, Portugal) did not allocate the central competency for the N.SIS to their SIRENE Bureau on the grounds of article 108, but rather created it on the grounds of a national text (France, the Netherlands, Portugal) or considered that a number of national texts on police matters or texts in relation with the Schengen Convention were sufficient to establish its juridical existence (Germany, Spain, Luxembourg)".¹⁴⁷ Furthermore, the PJSA reported that, with only two exceptions, "Belgium (where the SIRENE office, as an instance with central competency for the N.SIS, is linked to the Ministry of

¹⁴² "E-mail on SISNET: summary of the proposal" Note 11546/03 LIMITE SIS-TECH 73 COMIX 466.

¹⁴³ "Connection of new States to SISNET" Note 12465/04 LIMITE SIRIS 92 COMIX 557.

¹⁴⁴ Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

¹⁴⁵ House of Lords European Union Committee (2007), see footnote 67.

¹⁴⁶ "The Joint Supervisory Authority was officially established upon enforcement of the Convention on March 26, 1995. Its composition is attached as an enclosure. However, under the impulse of Mr. Faber, data protection commissioner of Luxembourg and first chairman of the JSA, a provisional Joint Supervisory Authority was set up as early as the month of June, 1992 with the agreement of the Schengen ministers" (Schengen Convention Joint Supervisory Authority (1997) op. cit.

¹⁴⁷ Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

Justice) and of Portugal (where the central instance is distinct from the SIRENE office and linked to the Ministerial Department of foreigners and frontiers of the Ministry of the Interior), the other Schengen States had entrusted the central competency for the N.SIS to their police or gendarmerie (state police corps) departments and linked their SIRENE office to these departments".¹⁴⁸

Only ten years after the Schengen Convention implementation Art. 92.4 was added to it, providing a common legal basis for the SIRENE Bureaux to all Schengen States.¹⁴⁹ According to Art. 92.4, "Member States shall in accordance with national legislation exchange through the authorities designated for that purpose (Sirene) all supplementary information necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in this System. Such information shall be used only for the purpose for which it was transmitted".

In practice, the SIRENE Bureaux act as the human interfaces of the Schengen Information System¹⁵⁰. They are "set up and designated as the single point of contact for each Schengen State in respect of SIS alerts and post-hit procedure",¹⁵¹ reducing the complexity of cross border communication and coordination. In particular, the SIRENE network of national contact points carries out the exchange of additional information not included in the SIS after a "hit" has taken place. More in general, these activities "consist in consultations prior to the creation of a SIS entry, exchanges of information, surveillance of multiple entries and setting up priority orders".¹⁵² In other terms, "The SIRENE bureau is responsible for holding supplementary information in relation to all its own national entries and making it available to the bureau of other Schengen States".¹⁵³ In this way, all offices responsible for international police co-operation, can "be accessed through a single point of contact, be contained within the same management structure and located at the same site".¹⁵⁴ Such contact point must be fully operational on a 24/7 basis.¹⁵⁵

¹⁴⁸ Ibid.

¹⁴⁹ Art 92.4 of the Schengen convention was added through Article 1.1. of Council Regulation (EC) No 871/2004 and Art. 2.1. of Council Decision 2005/211/JHA.

¹⁵⁰ Council of the European Union (2002), see footnote 90.

¹⁵¹ Ibid., p 14.

¹⁵² Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

¹⁵³ House of Lords European Union Committee (2007), see footnote 67.

¹⁵⁴ Council of the European Union (2002), see footnote 90.

¹⁵⁵ European Commission Implementing Decision 2011/406/EU p 9.

The SIRENE bureau has also the responsibility “to perform the role of data quality assurance coordinator for the information that is introduced in the SIS”.¹⁵⁶

SIRENE Bureaux “missions and acts are defined in a concrete way in a common manual designated as ‘SIRENE manual’”.¹⁵⁷ The SIRENE Manual is an important element of coordination in the performance of SIRENE bureaux activities. It consists of a set of instructions to operators in the SIRENE bureaux of each Member State, describing “in detail the rules and procedures governing the bilateral or multilateral exchange of the supplementary information which is required to implement correctly certain provisions of the Convention of 1990 implementing the Schengen Agreement”.¹⁵⁸ It is interesting to note that the document has needed to be frequently updated and has been only recently fully declassified.

In the Italian case, for example, the SIRENE Bureau is part of the Service for International Cooperation, within the Central Directorate of Criminal Police of the Public Security Department of the Ministry of Interior. It is a multi-agency office, manned by personnel of the three main Italian Police Forces: Carabinieri, Polizia di Stato and Guardia di Finanza. Its main task “is to reduce the time needed for the information exchange between the Member Countries’ law enforcement agencies, without prejudice to the competence of the Interpol Service regarding the Countries which are not party to the Schengen Agreement”.¹⁵⁹

3.5. *A long evolution path*

While in 1995 SIS began officially to perform its tasks, this date should be seen more as a beginning of a long process of development than an end of it. This is due to several factors, including new contracting parties (States) to the Schengen Convention, changes in the political context (such as the rise of the terrorism issue in the European political agenda) and in the EU law framework, evolution of technologies, misalignments between components that needed to be worked on. The following paragraphs try to describe some of the main steps that characterized this process of development.

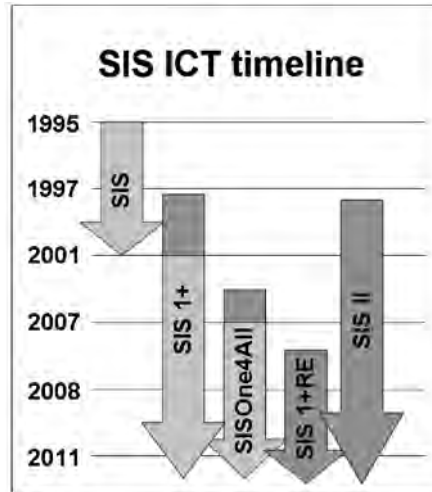
¹⁵⁶ Ibidem, p 11.

¹⁵⁷ Schengen Convention Joint Supervisory Authority (1997), see footnote 34.

¹⁵⁸ European Commission Implementing Decision 2011/406/EU p. 9.

¹⁵⁹ National Presentation of SIRENE Italy <http://www.consilium.europa.eu/uedocs/cmsUpload/Sirene-Italy.pdf>.

Figure 1 - SIS timeline



3.5.1. The first step, from SIS I to SIS I+

Starting from 1998 a more up-to-date version of the SIS was developed (SIS 1+) to allow the Nordic countries joined Schengen (Denmark, Sweden, Finland, Norway and Iceland). SIS 1+ “included the possibility of linking two or three additional countries to the system. The upgrade was also meant to improve the performance of the SIS and make it easier to manage and maintain”.¹⁶⁰ SIS1+ became operational in 2001, at the end of the SIRENE Network Phase II phase. JSA considered SIS1+ to be an improvement on the previous system in so far as compliance with the relevant data protection principles was concerned.¹⁶¹

3.5.2. SIS II

Given some design limitations – the initial design of the SIS had not provided for the participation of more than 18 States-, and as the Schengen Area kept growing, it emerged the need for a new version of the SIS to accommodate the inclusion of the EU’s new Member States. According to Hayes “The Schengen Executive took the decision to create SIS II in late 1996 after Italy,

¹⁶⁰ Coelho, C. (2006) Report on the proposal for a council regulation amending Regulation (EC) No. 2424/2001 on the development of the second generation Schengen Information System (SIS II). Committee on Civil Liberties, Justice and Home Affairs.

¹⁶¹ Schengen Convention Joint Supervisory Authority (2003), Sixth report, January 2002 - December 2003.

Austria and Greece joined the SIS. This took the number of participating state to ten – two more than originally planned – and with the prospect of up to 25 countries eventually joining it was agreed that the existing SIS simply could not cope”.¹⁶² This need was also seen as an opportunity to benefit from the developments in the field of information technology and to allow for the introduction of new functionalities such as the inclusion of biometric data.¹⁶³

Figure 2 - SIS II timetable in 2003-2004 Source: B. Hayes 2004

Timetable for SIS II development
<i>June 2003 – Definite list of functionalities and decision on the architecture [document not publicly available],</i>
<i>August 2003 – Launch of the call for tender of SIS II,</i>
<i>Mid-May – June 2004 – Final agreement of functions and presentation to [Article 36 Committee], Council Conclusions as required,</i>
<i>June 2004 – Signature of the contract for the detailed design and the development of SIS II and subsequent draft of the detailed design,</i>
<i>January 2005 – Start of SIS II development,</i>
<i>Spring 2005 – Start of Schengen States/Member States national system adaptation,</i>
<i>Autumn 2006 – Start migrating current Contracting Parties,</i>
<i>End 2006 – Ready for integration of new Contracting Parties (the issue of whether acceding countries could integrate in parallel with present Parties is still under discussion).</i>
[6387/02, 25.2.03 and 5117/04, 7.2.04]

The preparatory work on the concept of SIS II was carried out by the SIS Steering Committee and the Permanent Working Party (PWP) at the end of the 90s and the preliminary study was carried out by IBM.¹⁶⁴ The JSA became involved in it by mid 1998. Following this initial work, on 6 December 2001 the Council adopted two legislative instruments (the Council Regulation (EC) No 2424/2001 and the Council Decision 2001/886/JHA), making the Commission responsible for developing SIS II and providing for the related expendi-

¹⁶² Hayes B. (2004) Statewatch analysis - From the Schengen Information System to SIS II and the Visa Information (VIS): the proposals explained. STATEWATCH REPORT.

¹⁶³ House of Lords European Union Committee (2007), see footnote 67.

¹⁶⁴ Schengen Convention Joint Supervisory Authority (1999), Third Annual Activity Report, March 98 - February 99.

ture to be covered by the general budget of the EU.¹⁶⁵ The Commission published a communication [COM(2001) 720] on 18 December 2001 examining ways of creating and developing SIS II. “The Commission launched the technical implementation in October 2004 by signing a contract with a budget of up to 40 million EUR for the development of the SIS II and the VIS (Visa Information System), which shares the same technical platform. The target date set for the delivery of the SIS II was March 2007. In parallel to the technical implementation, discussions on new requirements of the SIS have been on the agenda of the Council, which adopted a number of conclusions on the functionalities of the SIS II in 2003 and 2004. The European Parliament contributed also to the debate and expressed its views at the end of 2003”.¹⁶⁶

To provide an appropriate legal framework describing SIS II operation and use, following studies and discussions relating to the architecture and functionalities of the future system, the Commission presented three proposals for legislative instruments in 2005. Two of the instruments in this package (Regulation (EC) No 1987/2006 of the European parliament and of the Council of 20 December 2006 on 1st pillar aspects of the establishment, operation and use of SIS II and Regulation (EC) No 1986/2006 on access to SIS II by the services responsible for issuing vehicle registration certificates) were adopted on 20 December 2006. The third instrument, Council Decision 2007/533/JHA determining 3rd pillar aspects of the establishment, operation and use of SIS II) was adopted on 12 June 2007.¹⁶⁷ As a consequence, the provisions of the Schengen *acquis* governing SIS I+, with the exception of Article 102A of the Schengen Convention, will be replaced by Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA once they come into force. Article 102A will be replaced by Regulation (EC) No 1986/2006. In particular, in the EAW perspective, Article 31 of Council Decision 2007/533/JHA – Execution of action based on an alert on a person wanted for arrest with a view to surrender or extradition – foresee that “1. An alert entered in SIS II in accordance with Article 26 in conjunction with the additional data referred to in Article 27, shall constitute and have the same effect as a European Arrest Warrant issued in accordance with Framework Decision 2002/584/JHA where this Framework Decision applies”. In other words, while after an arrest based on an Art. 95 alert on SIS I a paper copy of the EAW must be sent from the issuing Country to the executing one, this will not be necessary any more for an Art. 95 alert on SIS II as the electronic one will be sufficient.

¹⁶⁵ These instruments were modified in 2006, extending the period of their validity until 31 December 2008.

¹⁶⁶ Coelho, C. (2006), see footnote 160.

¹⁶⁷ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm.

SIS II Technical architecture

SIS II high level architecture is similar to that of SIS I. Such architecture has been normatively regulated in quite some detail since an early stage of development. According to Art 4 of Regulation (EC) No 1987/2006 and of Council Decision 2007/533/JHA, SIS II is composed of a central system (Central SIS II), a national system (the 'N.SIS II') in each of the Schengen Member States, and a communication infrastructure connecting them. Central SIS II is composed of a technical support function (CS-SIS) containing a database (SIS II database) and a uniform national interface (NI-SIS which include a Local National Interface in each Member State and a Central National Interface securing access to CS-SIS with separate logical access points for each State¹⁶⁸); CS-SIS performs technical supervision and administration functions. It is located in Strasbourg (France) and a backup CS-SIS, capable of ensuring all functionalities of the principal CS-SIS in the event of failure of this system, is located in Sankt Johann im Pongau (Austria). CS-SIS should provide the services necessary for the entry and processing of SIS II data, including searches in the SIS II database. For the Member States which use a national copy, CS-SIS should provide the on-line update of the national copies; ensure the synchronisation of and consistency between the national copies and the SIS II database; provide the operations for initialisation and restoration of the national copies.¹⁶⁹

N.SISs II consist of a national data systems which communicate with Central SIS II. An N.SIS II may contain a data file (a 'national copy'), containing a complete or partial copy of the SIS II database. SIS II data is entered, updated, deleted and searched via the various N.SIS II systems. A national copy should be available for the purpose of carrying out automated searches in the territory of each of the Member States using such a copy. It should not be possible to search the data files of other Member States' N.SIS II.¹⁷⁰

Network - Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA provide a first description of SIS II network as a Communication Infrastructure between CS-SIS and NI-SIS "that provides an encrypted virtual network dedicated to SIS II data and the exchange of data between SIRENE Bureaux".¹⁷¹ The Annexes to Commission Decision 2007/170/EC¹⁷² and 2007/171/EC¹⁷³ further specify that SIS II secured private communica-

¹⁶⁸ NI-SIS description is provided in the annexes of Commission Decision 2007/170/EC (1st pillar) and Commission Decision 2007/170171/EC (3rd pillar).

¹⁶⁹ Art 4 of Regulation (EC) No 1987/2006 and of Council Decision 2007/533/JHA.

¹⁷⁰ Art 4 of Regulation (EC) No 1987/2006 and of Council Decision 2007/533/JHA.

¹⁷¹ Art 4.1.c. Regulation (EC) No 1987/2006 and Art Council Decision 2007/533/JH.

¹⁷² (1st pillar).

¹⁷³ (3rd pillar).

tions infrastructure should be provided by the Secured Trans-European Services for Telematics between Administrations (s-TESTA). The delivery and management of such services is provided for under a Framework Contract concluded by the Commission on its own behalf and on behalf of the Council, EUROPOL and the European Railway Agency.¹⁷⁴ SIS II network SOC (network operation centre) in Bratislava.¹⁷⁵

Budget - The cost of developing SIS II is a charge on the budget of the EU. By 2007, according to the House of Lords, a total of over €26 million had been committed to this project from the EU budget. At the time, “according to the Commission’s proposed SIS II legislation, the EU budget will be charged a further €114 million between 2007 and 2012 to get SIS II up and running.”¹⁷⁶ By December 2010 the total budgetary commitments made by the Commission on the SIS II project (2002-2010) amounted to over 133 million Euros.¹⁷⁷

3.5.3. *Some new functions for SIS I+*

While SIS II began to be developed, SIS I kept evolving. In fact, following the security emergency related to the terrorist attacks the Spanish Government proposed important changes to increase the scope of SIS I without waiting for the roll out of SIS II. The Spanish proposal resulted in the Council Regulation (EC) No 871/2004 of 29 April 2004 and Council Decision 2005/211/JHA of 24 February 2005 *concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism*. In light of the possibility to use SIS to support the fight against terrorism, existing Schengen Convention provisions were modified and new SIS functions were introduced “with respect to the current version of the SIS, in particular as far as concerns the provision of access to certain types of data entered in the SIS for authorities the proper performance of whose tasks would be facilitated were they able to search these data, including Europol and the national members of Eurojust, the extension of the categories of missing objects about which alerts may be entered and the recording of transmissions of personal data”.¹⁷⁸ While not evident from changes in the system nomenclature,

¹⁷⁴ SEC(2007) 810.

¹⁷⁵ European Commission (2009b) Report from the Commission to the European Parliament and the Council on the development of the second generation Schengen Information System (SIS II): Progress report, July 2009-December 2009.

¹⁷⁶ House of Lords European Union Committee (2007), see footnote 67.

¹⁷⁷ European Commission (2010b) Report from the Commission to the European Parliament and the Council. Progress report on the development of the second generation Schengen information system (SIS II): July 2010-December 2010.

¹⁷⁸ Council Regulation (EC) No 871/2004.

this step “amounted to a fundamental departure from the basic principles of Article 102 of the Schengen Convention, which limits the use of Schengen data to the purposes laid down in each category of alert”.¹⁷⁹

3.5.4. *SIS One4All*

After the introduction of new functions in SIS I, and due to delay in the SIS II development and its implementation (including, in October 2006, Portugal put forward a proposal for a temporary solution to allow the SIS to be adapted to allow the participation of more than 18 States, so enabling the new EU Member States (Slovak Republic, Slovenia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland and Czech Republic) to join Schengen by October 2007. “The proposal involved the ‘cloning’ of the Portuguese national system, its integration in the new Member States and subsequently their connection to the central system already in use”.¹⁸⁰ The system was called SIS One4All. “The Commission believed that it would add nine months to the planning of SIS II. Nevertheless on 5 December 2006 the Justice and Home Affairs Council, after re-affirming that the development of the SIS II remains the absolute priority, decided to implement SIS one4all ... and invited the Commission to present yet another revised timetable for SIS II by February 2007”.¹⁸¹

The successful implementation of SISone4all, and the positive Schengen evaluations of the new MS, allowed the lifting of internal border controls with these new countries at the end of 2007 for land and sea borders and in March 2008 for air borders. The lifting of internal border controls paved the way for implementing alternative and less risky approaches for migrating from SIS1+ to SIS II”.¹⁸² At the same time, “Following requests by the Member States to allow more time for testing the system and to adopt a less risky strategy for migration from the old system to the new one, the Commission presented proposals for a regulation and a decision defining the tasks and responsibilities of the various parties involved in preparing for the migration to SIS II (including testing and any further development work needed during this phase). These proposals were adopted by the Council on 24 October 2008.”¹⁸³

As time went by, though, further delay characterized SIS II development and implementation. As a consequence, “in June 2009, during JHA Council, Romania and Bulgaria presented a joint declaration regarding the common

¹⁷⁹ Schengen Convention Joint Supervisory Authority (2003), see footnote 34.

¹⁸⁰ <http://www.epractice.eu/cases/SISone4ALL>.

¹⁸¹ House of Lords European Union Committee (2007), see footnote 67.

¹⁸² http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm.

¹⁸³ http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm.

intention to connect to SIS through SISOne4ALL solution”¹⁸⁴ while continuing the parallel development of national SIS II systems in order to be ready to migrate from SIS I+ to SIS II together with the other migrating Member States.¹⁸⁵

The Council decision on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania was adopted on the 29th of June 2010, during the reunion of the UE Council on Agriculture (AGRI). The adoption of the Decision enabled the Romanian and Bulgarian authorities to enter data into the SIS.¹⁸⁶

As a consequence, both Romania and Bulgaria are now connected to the SIS and enter, update and delete national alerts in SIS as well as undertake the necessary activities in order to execute the alerts entered in SIS by other states.¹⁸⁷

3.5.5. *SIS II and SIS I+R(evolution)*

In parallel to the changes taking place to the functioning SIS I, The work on developing SIS II kept going. At the same time, while absolute priority to the development of SIS II was reaffirmed in several occasions by JHA¹⁸⁸ the implementation of the SISOne4ALL project impacted on SIS II schedule. As a consequence, and following invitation by the Council, the Commission drew up a revised timetable in consultation with Member States’ technical experts from the Council’s informal SIS II Task Force and with the Member States’ delegations in the SIS II Committee. According to this new schedule, the operational date for SIS II for Member States using the SIS I+ was moved to December 2008. Only then the integration process for Member States not connected to the SIS I+ could commence.¹⁸⁹

As described in Section 3.5.2., by the end of 2007, provisions for the establishment, operation and use of SIS II (Regulation (EC) No 1987/2006; Council Decision 2007/533/JH) and for the network requirements (Commission Decisions 2007/170/EC and 2007/170171/EC) under 1st and 3rd pillars

¹⁸⁴ http://www.schengen.mai.gov.ro/English/index07_01.htm.

¹⁸⁵ <http://www.mvr.bg/en/Shengen/sis.htm>.

¹⁸⁶ <http://www.schengen.mai.gov.ro/English/index09.htm>.

¹⁸⁷ <http://www.mvr.bg/en/Shengen/sis.htm> furthermore, “On January 28, 2011, the meeting of the Schengen Evaluation Working Party took place in Brussels. On this occasion, the group adopted the Schengen evaluation report in the field of SIS/SIRENE for Romania, drafted after the last evaluation mission which took place in Romania during December 6-10, 2010. Thus, Romania successfully concluded the Schengen evaluation process” <http://www.schengen.mai.gov.ro/English/index09.htm>.

¹⁸⁸ European Commission (2007) Revised global SIS II schedule in light of the SIS one4ALL implementation. Brussels, 29 January 2007.

¹⁸⁹ *Ibid.*

had been adopted. At the same time, a comprehensive test of SIS II needed to be set out, conducted by the Commission together with the Member States, and validated by the preparatory bodies of the Council, confirming that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+.¹⁹⁰ The test scope and organisation were specified by Council Decision 2008/173/EC¹⁹¹ and Council Regulation (EC) No 189/2008,¹⁹² which foresaw also the obligation for the commission to draw up interim and final test status reports. Furthermore, a legal instrument to govern the migration from SIS I+ to SIS II environment was also required. This instrument, provided in October 2008 by Council Regulation (EC) No 1104/2008¹⁹³ and by Council Decision 2008/839/JHA¹⁹⁴ required that an ‘interim migration architecture’ for the Schengen Information System were to be established and tested in order to better manage the potential difficulties brought about by the migration from SIS 1+ to SIS II. The interim migration architecture was to have no impact on the operational availability of SIS 1+. A converter (a technical tool to allow consistent and reliable communication between C.SIS and Central SIS II) was to be provided and kept updated by the Commission. The migration legal instrument had an expiration date on 30 June 2010.

While this normative implementation framework was being developed, the technological development encountered significant problems, in particular in the development of SIS II central system.¹⁹⁵ This resulted in a delay of the schedule and the need to prevent the expiry of the migration legal provisions.

Furthermore, “failure of the main development contractor to pass the Operational Systems Test (OST) in December 2008”¹⁹⁶ triggered both an analysis-and-repair period and comprehensive architectural review (which pointed out that the system components were “over-engineered and capable of simplification”¹⁹⁷), both the exploration of “an alternative technical scenario for developing SIS II based on SIS 1+, known as ‘SIS 1+ renewal and evolution’ (SIS 1+ RE)”¹⁹⁸.

¹⁹⁰ Regulation (EC) No 1987/2006 and Council Decision 2007/533/JH.

¹⁹¹ Council Decision 2008/173/EC.

¹⁹² Council Regulation (EC) No 189/2008.

¹⁹³ Council Regulation (EC) No 1104/2008.

¹⁹⁴ Council Decision 2008/839/JHA.

¹⁹⁵ European Commission (2008) Report from the Commission to the European Parliament and the Council on the development of the second generation Schengen Information System (SIS II): Progress report, July 2008-December 2008.

¹⁹⁶ European Commission (2009a) Report from the Commission to the European Parliament and the Council on the development of the second generation Schengen Information System (SIS II): Progress report, January 2009-June 2009.

¹⁹⁷ European Commission (2009b), see footnote 175.

¹⁹⁸ European Commission (2009a), see footnote 196.

In order to improve the involvement of the Member States, “as the project moved into a new phase, a global SIS II programme management approach was introduced in January 2009, as recognised by the Council on 26-27 February”.¹⁹⁹ Furthermore, the Council on 26-27 February 2009 requested the Presidency and the Commission²⁰⁰ to submit a report containing an in-depth assessment and comparison of both scenarios. As both project were judged technically feasible the Council concluded on 4-5 June that the development of SIS II was to continue on the basis of SIS II project and that SIS 1+ RE was going to be retained as the contingency plan. The Council also agreed to two project milestones to test the stability, reliability and performance of the central SIS II and the proper functioning of vital core functionalities after significant development phases of SIS II project.²⁰¹ Contracts with SIS II contractors had to be renegotiated to include milestones non-compliance as resolute conditions.²⁰² Furthermore, France negotiated a contract for the replacement of obsolete components of SIS 1+ (and optionally extendable for SIS 1+RE), which could not be used beyond September 2010.²⁰³

Another element that needed to be considered was the significant increase in the number of alerts. In 2009, “From the 22 million alerts originally foreseen, the latest estimates predict[ed] 73 million alerts in the foreseeable future”²⁰⁴ and in 2010 an estimated size SIS II at go live of 52 million alerts.²⁰⁵ This required new system capacity specification, an intensive work on requirements and the redefinition of SIS II schedule. A new expiry date was therefore introduced by Council Regulation (EU) 541/2010 amending Regulation (EC) no 1104/2008 and Council Regulation (EU) 542/2010 amending Decision 2008/839/JHA. At the same time, “process of refining the requirements did not modify the core obligations stemming directly from the SIS II legal instruments”.²⁰⁶

¹⁹⁹ European Commission (2009b) see footnote 175. Furthermore, “the Council of 4-5 June invited the Commission to build upon the experience and lessons learned from this management structure and develop it further. These management changes have been consolidated in the legislative proposal for a Regulation to amend the migration instruments” (ibid.).

²⁰⁰ in close cooperation with the SIS II Task Force, and in consultation with the appropriate instances (European Commission (2009a), see footnote 196).

²⁰¹ Ibid.

²⁰² European Commission (2009b), see footnote 175.

²⁰³ European Commission (2010a) Report from the Commission to the European Parliament and the Council. Progress report on the development of the second generation Schengen Information System (SIS II): January 2010–June 2010.

²⁰⁴ European Commission (2009b), see footnote 175.

²⁰⁵ European Commission (2010a), see footnote 203.

²⁰⁶ Ibid.

This further delay resulted also in secondary repercussions such as the temporary suspension of the back-up local national interfaces (to be re-activated at a later stage, prior to go-live) to reduce costs.²⁰⁷

By the end of 2010, the Commission stated that “the significant technical and political uncertainties over the future of the SIS II project that characterised the beginning of 2010 have progressively been addressed in the course of the year. This intensive work culminated with the successful outcome of the first milestone test, the consensual definition of final requirements for the system to go live and the conclusion of the corresponding contractual framework. These positive developments all contributed to bringing the SIS II project back on track with a clear and shared vision on the remaining phases of the project, as well as a realistic schedule and an adequate budgetary plan to complete the work outstanding”.²⁰⁸

On a final note, Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 established a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice to be responsible for the operational management of Central SIS II and certain aspects of the communication infrastructure.

4. The EAW in action in Italy

This section describes how the EAW procedure is implemented in practice and the role played by SIS assemblage.

4.1. Issuing an EAW in Italy

In Italy in order to issue an EAW both for the prosecution of a crime and for the enforcement of a sentence, there should be evidence that the requested person is, resides, or is domiciled in the territory of one of the EU Member States. A *Vademecum* drafted by the Ministry of Justice to support the EAW implementation suggests the application of the *principle of proportionality* to issue an EAW. The judge or the public prosecutor should assess the gravity of the crime, the personality of the perpetrator, the amount of the punishment and the duration of the precautionary measure, also in consideration of the expiry of the terms of the phase. They should also consider the large amount of resources that the enforcement of the arrest warrant requires.

The competent authority to issue an EAW during the investigation and trial phases is the judge who issued the domestic arrest warrant (precautionary

²⁰⁷ European Commission (2010a), see footnote 203.

²⁰⁸ European Commission (2010b), see footnote 177.

measure of prison custody or house arrest). In line with the EAW FD, EAWs are not issued for investigative purposes. In general, the request/draft of the EAW is prepared by the public prosecutor of the public prosecutor offices attached to the first instance Court or to the Court of Appeal who is following the case and who has all the required information to fill the EAW. In prosecution cases, the issue of an EAW requires the existence of a domestic arrest warrant, which, according to the Italian Code of Criminal Procedure, can be imposed only for offences that are punishable with maximum imprisonment of four years or more. If the request is approved and signed by the judge, copy of the EAW (with eventual additional documents attached to it) is sent to the Ministry of Justice and, frequently, also directly to SIRENE and INTERPOL. While according to Art 9 of the EAW FD, “When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority”,²⁰⁹ also in this case the EAW is usually transmitted through the Ministry of Justice.

After receiving the EAW, the Ministry of Justice faxes the EAW to SIRENE for issuing a SIS Alert 95 and to INTERPOL for the diffusion to “EAW Countries” which are not included in SIS. In a few occasions in the past it happened that the request of issuing a SIS Alert 95 was sent by the issuing judicial authority to the SIRENE Bureau without informing the Ministry of Justice. For this reason the SIRENE Bureau now alerts the Ministry of such events.

The competent authority to issue an EAW for the enforcement of a sentence is the public prosecutor attached to the court that issued the arrest order (*Ordine di Esecuzione e Carcerazione*). According to the Vademecum, an EAW is issued when there is a sentence of at least one year of actual imprisonment. In practice, given the Italian suspension regimen, the sentence must be of at least 3 years imprisonment. The Italian Code of Criminal Procedure describes three tracks to be followed for the execution of detention sentences: the first track includes cases with a remaining sentence to be served of more than three years (six years in some specific cases). In these cases the public prosecutor issues the arrest order. The second track includes cases with a remaining sentence to be served of less than three years (six years in some specific cases), for which the public prosecutor issues the arrest order with suspension (*Ordine di Esecuzione Carceraria con Sospensione*). Finally, the third track includes all cases sentences of less than three years for which the suspension is not issued.²¹⁰

Again, if an EAW is issued, a copy of the EAW is usually sent/faxed to the Ministry of Justice and to the SIRENE Bureau (and to INTERPOL). As this

²⁰⁹ Art 9 of the EAW Framework Decision.

²¹⁰ For a broader discussion on the topic, see Di Giorgio G (2009) Le attribuzioni del Pubblico Ministero in tema di esecuzione delle pene detentive e di Mandato di Arresto Esecutivo. training seminar “Problemi aperti in materia di esecuzione della pena” Appeal Court of Bologna 30 November 2009.

is not always the case, as a rule the Ministry of Justice faxes the EAW to the SIRENE Bureau for issuing a SIS Alert 95 (and to INTERPOL for the diffusion to “EAW Countries” which are not included in SIS). At the same time, the SIRENE Bureau keeps informed the Ministry of Justice of requests received directly by the issuing judicial authority.

If the requested person is wanted for the execution of more than one sentence, the public prosecutor must fill one EAW form for each sentence and inform the SIRENE Bureau about which sentence to use in order to issue the Alert, as SIS allows the entry of just one Alert per person. In general, it is inserted the “main” sentence. When the requested person is localized/arrested, the SIRENE Bureau informs the executing Member State of the existence of more than one sentence and of a plurality of EAWs. As a consequence of the principle of speciality, when more than one EAW exists for the same person, it is necessary that the executing judicial authority decides for the surrender on each one of them. When the surrender takes place, only the sentences for which the EAW has been approved can be enforced. It is still possible, though, to ask to the person surrendered to renounce to the speciality clause or, to submit/resubmit an EAW to the executing Member State for the sentences for which surrender has not been granted.²¹¹

As a consequence of both normative restraints and *Vademecum* persuasive reasoning, Italian judges and public prosecutors, typically issue EAWs only in “serious cases” such as terrorism, organised crime, murder, rape, large drug smuggling etc. The existence of other EAWs issued by Italian courts is not checked by the Italian authority issuing an EAW. Checks are made both by the Ministry of Justice and by the SIRENE unit. The SIRENE unit and the Ministry of Justice alert each other that the EAW has already been issued for the same person.

The task to assist the competent judicial authorities and the responsibilities for the administrative transmission and reception of EAWs, as well as for all other official correspondence related, is delegated by the Minister of Justice (designed as the central authority by the Italian Law 69/05 Art 4. transposing Art. 7. of the Framework Decision, see section 1.2.2 of the present report) to the Directorate for International cooperation (Ufficio II) within the Directorate General for Criminal Justice.²¹² The *Ufficio II* keeps records of all incoming and outgoing EAWs sent from the courts. When an EAW is received from an Italian court (generally the first communication takes place by post

²¹¹ Ibid.

²¹² The Directorate for International cooperation is located in Rome within the Ministry of Justice building. Directorate is organized in 4 units: EAW, rogatory assistance, extradition and transfer of prisoners and bilateral negotiations.

or by fax) a case file is created. This file will collect all the documents related to the case sent or received by the *Ufficio II* from then on.

If the location of the person is not known and there is not a suspicion that the person is outside the Italian border, often a SIS Alert 98²¹³ (or SIS Alert 99²¹⁴) is filed to localize the person. If the person is localized, an EAW and an Alert 95 are then issued. While a SIS Alert 98 (99) is filed at local level, Alerts 95 are issued only by the SIRENE unit. When receiving an EAW issued by an Italian judicial authority, the SIRENE Bureau in Rome (Italy) fills the A+M forms and enter the data in SIS translating the needed information from Italian to English. The translation is typically made by the operator entering the data. All SIRENE personnel typically speak English at a fair-good level. During the interviews, it was noted though that the task of translating is both delicate and time-consuming, and this may generate problems with the growing number of cases that the division is facing. Direct interaction between the public prosecutor/judge following the case and SIRENE may take place in order to better respond to the requirements of the case (i.e. particularly urgent, missing relevant information, ambiguities to be solved to allow a correct translation and the issuing of the Alert etc.). While “an EAW can be issued for several offences at the same time, as long as they are covered by the same domestic arrest warrant or conviction”,²¹⁵ the SIS alert 95 must refer only to the main offence. This may generate problems in the data enter. All incoming and outgoing messages and documents are recorded in a secure electronic repository.

If the decision at the basis of the EAW is reviewed or retracted, the EAW and the SIS Alert should be retired. It happens though that SIRENE is not notified. As a consequence of the missed notification, the Alert originally inserted in the SIS appears as being valid. This may give rise to substantial problems. For example, as also noted during the Italian EAW Council of EU peer review, “a person who has been apprehended in Italy and who is subsequently put on trial, without this being communicated to SIRENE, may after his or her release again be detained in a different locality or in a different Member State. Police and/or judicial time is thus wasted, and it could also give rise to possible allegations of breaches of the law by the executing authority with regard to incorrect data being inserted in the SIS”,²¹⁶

²¹³ Persons wanted as witnesses, or for the purposes of prosecution or the enforcement of sentences.

²¹⁴ Persons or vehicles to be placed under surveillance or subjected to specific checks.

²¹⁵ Council of the European Union (2009) Evaluation report on the fourth round of mutual evaluations “the practical application of the European arrest warrant and corresponding surrender procedures between member states” Report on Italy, 5832/1/09 REV1 p 12.

²¹⁶ *Ibid.* p 20.

Foreign SIRENE Bureaux may ask to flag the Art. 95 alert in relation to their State. As previously mentioned, a flagged alert is considered as being issued for the purpose of communicating the place of residence of the person concerned. An issue that has arisen in the EAW evaluation reports “is the scrutiny and flagging in the SIS of alerts for arrest for surrender purposes without the matter being put before the competent executing judicial authority for consideration. This is a major issue for the operation of the EAW, since the flagging of an alert may de facto amount to non-execution of the underlying EAW” (Council of the European Union 8302/4/09 REV 4 p. 17).

After a person has been localized/apprehended in another EU country, the SIRENE Bureau is typically alerted through a Form G²¹⁷ sent by the national SIRENE Unit of the Country in which the person has been localized/apprehended. The foreign authority can require additional information. If available, the Office directly provides it through the use of L²¹⁸ and M forms. Furthermore, the SIRENE Bureau inform the Ministry of Justice and the issuing authority about the need to provide the translation of the EAW within the required time limit, as well as to provide for eventual additional information asked from the foreign authority. The Ministry of Justice or the issuing judicial authority may also be contacted directly by the foreign authority once the requested person has been apprehended in one of the EU countries. The *Ufficio II* is in charge of the translation of the EAW. English, French, German and Spanish translators are available internally. For other languages the *Ufficio II* must resort to the services of external translators. As it was noted during the interviews at the ministry personnel, this may generate problems, especially in case of countries with very tight deadlines for the transmission of the official translation. The foreign authority can request additional information, both in order to evaluate the need for detention measures and to decide on the surrender.

If the surrender is granted, Interpol organizes the transfer of the person, who is arrested by the Frontier Police when passing the border or at the national airport. The Alert 95 is revoked out. In case the surrender is not granted, the foreign authority requires the Italian SIRENE unit to Flag the Alert for that country. The Alert though is still valid for all other SIS countries. Furthermore, the issuing authority may issue a new EAW concerning the same person which results in a new Alert for the same person which is valid also in that country.

Provisional detention time limits, ranging in general between three months and one year (calculated including the detention period matured abroad) may result in the person being released just after the surrender or even in the re-

²¹⁷ Matching an alert (HIT).

²¹⁸ Form L corresponds to “Supplementary information on a person’s identity”.

tiement of the surrender request, while the procedure is being decided in the executing country. In one of the interviews emerged how three persons requested for participation in terrorist acts were physically surrendered just the day before the provisional detention time limit of the phase of the proceeding.

4.2. Executing an EAW

Typically the execution of an EAW begins with the localization/apprehension of the requested person by a local police unit following a check based on an Alert 95 (or on the basis of an Interpol alert-diffusion or red notice) or on a routine check from which the existence of an alert is discovered (i.e. passport control at the airport). If an Alert 95 result when a control is made, the person is immediately taken into custody. The local police immediately contacts the SIRENE Bureau which verifies the consistency of the Alert, sends a G form (HIT) to the SIRENE Bureau of the issuing country and, if needed, requests additional information. This is particularly important in order to notice cases in which identity thefts have occurred or in which details are so vague that no exact identification is possible (i.e. an Alert for Mr. John Brown, no birth date, somatic or other data available). Form M is used for this exchange of information between national SIRENE Bureaux.

The Italian SIRENE unit provides the local police office a “support kit” for the procedure the local police office has to follow according to the Italian implementation law (L 69/05) and the Court of cassation adjourned case law. This kit has been specifically designed to be easy to use and contain both indications on the activities to carry out and electronic forms to fill out the documents the local police office needs to produce.

The local police office then proceeds with the arrest of the person. This is not necessarily an easy task as the person being arrested should be informed in a language which he or she understands about the EAW and its content, about the possibility of consenting to surrender, about the right to legal counsel and to be assisted by an interpreter. A local office may not have, for example, the availability of a translator with the right competences. The police then informs all the authorities interested providing copy of the report of the procedural steps followed (including the steps taken to identify the requested person) and of the A+M forms to the Court of Appeal of the District, the Public Prosecutor Office General attached to it, the Ministry of Justice and the SIRENE unit.

The Ministry of Justice then notifies the requesting Member State of the arrest, requesting the transmission of the arrest warrant and eventual additional documentation (in general the issuing country has already been unofficially notified by SIS) translated in Italian as according to Article 6.7. Law 69/05 Italy accepts EAWs only in Italian. Although in cases of urgency the Ufficio II has provided to the translation through its internal translators. A for-

mal certification is not required. The Ufficio II, upon reception of the EAW, makes a check of the EAW and in case of evident problems such as missing parts or the EAW not being translated into Italian, contacts the issuing authority asking it to make the appropriate corrections/integrations. It should be noted that the lack of translation of the EAW into Italian is a common reason for the rejection of an EAW execution on formal grounds.²¹⁹ When the Ufficio II receives the EAW from the issuing authority, it then submits it to the Court of Appeal with territorial jurisdiction, which is the court in charge of the decision about the execution of the EAW.

Within 24 hours the person held in custody must be made available by the police to the judges of the Court of Appeal in whose district the arrest has been made. Within forty-eight hours after receiving the report of arrest, the Court of Appeal must validate the arrest. If it is evident that the wrong person was arrested or the person was arrested on grounds other than those pursuant to the law, the release of the person is ordered (if the SIS alert is not modified, the person may be arrested again). Also, if the competent issuing authority does not provide an Italian translation of the EAW (or the SIS alert) to the Italian Ministry of Justice or to the competent Judicial Authority within ten days of the validation of the arrest by the Court of Appeal, the order imposing the coercive measures is null and void. In case of problems concerning the content or the authenticity of the documents transmitted by the issuing judicial authority, the Court of Appeal can contact directly, or through the Ufficio II of the Ministry of Justice, the issuing authority. If the EAW in Italian is delivered and there is still danger that the person may abscond, new coercive measures can be ordered. The order can be challenged before the Supreme Court of Cassation. The appeal may be lodged by the legal counsel of the requested person or by the public prosecutor general of the Court of Appeal in the interest of the law.

After the first examination by a judge of the Court of Appeal to validate the arrest, a panel of three judges of the Court of Appeal holds a hearing for the discussion of the surrender. This hearing is always held even if the requested person has expressed her or his consent to surrender. However in this case the hearing must take place within ten days from the date in which the consent to surrender has been given (Art. 14.4. of the Italian implementing law).

Additional information is often requested by the Italian executing judicial authority to the issuing authority to comply with Art. 6.3. and 6.4. of the Italian implementing law. One important piece of information is the date in which the crime has been committed. As the Italian implementation law provides that the EAW surrender procedure does not apply to offences committed be-

²¹⁹ Council of the European Union (2009), p. 25, see footnote 215.

fore 7 August 2002, the lack of indication of the date the offence was committed is a common formal ground for refusal. As already mentioned, according to Art. 6.3. surrender is permitted only if a copy of the detention order of personal freedom or custodial sentence that has given rise to the EAW is attached.

According to Art. 6.4. of the Italian EAW implementation law, the following clarification are also requested: a report on the offences with evidence of the sources of proof, the time and place in which the offences happened and their legal classification; the text of the legal provisions applicable, with an indication of the type and duration of the penalty, physical description or other information that could help ascertain the identity and nationality of the requested person. If relevant information is missing from the EAW, the executing authority may request it directly or through the Ufficio II.

However, given the case law of the Court of Cassation, while all this information is always requested, failure to receive the report on the offences and the text of the legal provisions applicable or documentation concerning the identification of the requested person does not preclude anymore the surrender.

The request of the court of Appeal is submitted to the Ufficio II, specifying the date of the hearing *in camera* for which it should be available (Art. 6.5). The Ufficio II translates the request in the language requested by the issuing Country and submits it to the issuing authority. Ufficio II has a practice to submit such request also to INTERPOL/SIRENE, asking it to inform the corresponding service in the issuing Member State in order to ensure the transmission and reduce the possibility of errors through redundancy.²²⁰ If the issuing authority does not provide such information within 30 days since receiving the request, the court decides anyway on the case.

The Court of Appeal holds a hearing in the presence of the general prosecutor, the legal counsel of the requested person and the requested person if wants to be present. Immediately following the hearing, the Court of Appeal discusses “in camera” the decision regarding the execution of the EAW. At the conclusion of this discussion, the decision is read out immediately. The reading is considered as notification to the parties, whether present or not. The parties are entitled to receive a copy of the decision (Art. 17.6.).²²¹

²²⁰ Ibid. p 29.

²²¹ Ibid. p 31.

The decision should be issued within sixty days from the execution of the precautionary measures related to the EAW request. The decision is transmitted immediately to the Ufficio II, who informs the competent authorities of the issuing Member State also through SIRENE. In the case of a positive surrender decision, INTERPOL is informed by the Ufficio II, in order to organize the physical surrender. From the interviews emerged that in the cases in which it was not possible for the foreign executing authority to arrange surrender within the 10-day deadline, the person is typically released and then re-apprehended for the physical execution of the surrender.

If the Court of Appeal refuses the surrender request, it immediately revokes the eventual precautionary measure related to the EAW procedure and order the release of the requested person

The decision of the Court of Appeal on the surrender request may be challenged before the Court of Cassation. The appeal may be lodged by the legal counsel of the requested person or by the public prosecutor general of the Court of Appeal. An appeal is possible also against a surrender decision in a case where the requested person concerned has given her or his consent to the surrender. The appeal must be lodged within 10 days of notification of the decision of the Court of Appeal and suspends the execution of the surrender decision. Lawyers have criticized the short span of time available, as in their opinion it does not provide enough time to prepare the documents.

EAW cases are typically allocated to the sixth penal section of the Court of Cassation. The Court of Cassation holds a hearing within fifteen days from receiving the documents of the case. The public prosecutor office and the legal counsel are notified at least five days in advance. Also in this case, lawyers have criticized the short span of time available, as in their opinion it is not enough to prepare the case. Within the general public prosecutor office attached to the Court of Cassation there is not a functional specialization as EAW is concerned and cases are allocated considering the hearing calendar of the public prosecutors. At the same time, some public prosecutors possess a specific expertise in dealing with such cases.

The Court of Cassation does not decide only on points of law, as it usually does in other cassation procedures, but also on substance of the case. Also, contrary to the typical Court of Cassation procedure, the requested person can be present and is allowed to speak to the court. This, though, takes place quite seldom. At the conclusion of the hearing the Court of Cassation [decides in chamber and immediately afterwards] reads out its decision. The written decision of the Court of Cassation at the conclusion of the hearing should be accompanied by a specific statement containing the grounds underlying it. If it is not possible to immediately deliver this statement, the Court of Cassation should deliver the statement within five days from reaching the decision.

A copy of the decision is immediately transmitted to the Ministry of Justice (Ufficio II). The procedures that follow in case of surrender decision or acquittal are analogue to those described for a decision of the Court of Appeal. The Court of cassation can also quash a decision with remittal, in which case the documents are transmitted by the Court of cassation to the Court of Appeal where the remittal judge should decide the case within twenty days of receiving them.

There is a contact point for EAW matters at the Court of Cassation. The aim of the contact point is, on the one hand, to function as a centre of expertise for the benefit of the members of the Court of Cassation (and, as appropriate, for members of Courts of Appeal that may need information or assistance in EAW matters), and on the other hand to facilitate contacts with issuing authorities in the other Member States.²²²

5. Preliminary conclusions

The report has attempted to provide a flavour of the complexity ingrained in the main EAW information infrastructure: the Schengen Information System. It is a complexity that is embedded in the heterogeneous and loosely integrated nature of the assemblage, which, once “in action”, manages to perform its tasks. At the same time, the reconstruction of the SIS and SIS II stories allows to see how, under the surface, the assemblage components (normative, technological and organizational) change with time. It allows to see how the trajectories these components follows are not always convergent. Also, it shows how external events and the broader political context (i.e. terrorism attacks, new EU Members accession) indeed play a relevant, if ex-ante unpredictable, role in determining the direction of a change. Indeed, while the system as a whole is still there after almost twenty years from its implementation, its components have radically changed.

The case study shows how, while all these changes have taken place, the capability of the Schengen Information System to perform its functions has been kept and maintained. At the same time, it shows also how the same has not been true for the second generation of the Schengen Information System. In this case, the same kinds of changes have resulted in a never-ending normative and technological development phase.

The SIS story provides therefore the opportunity to reflect on the implicit assumptions that are still shared by much of the practitioners’ and scientific communities on how information systems are developed, should evolve

²²² Ibid. p 32.

and made interoperable to support services provision. Indeed, in the last decade, much progress has been done, understanding that technology is just one of the components to be considered. For example, in the Commission ‘European Interoperability Strategy (EIS) for European public services’, it is recognized that “Interoperability issues are not only technological, but also cover a wide range of aspects, such as: lack of a cross-border and cross-sector legal basis for interoperability, insufficient awareness and political will, or lack of agreement on the governance structures required”.²²³ At the same time, the same vision shows how information systems and interoperability between systems are still perceived as positivistic objectives to reach. Indeed, the European Interoperability Framework (EIF) definition of interoperability, “the ability of disparate and diverse organisations to interact towards mutually beneficial and agreed common goals, involving the sharing of information and knowledge between the organisations, through the business processes they support, by means of the exchange of data between their respective ICT systems”,²²⁴ in its generality and inclusiveness, miss the messiness of a reality populated by objectives multiplicity and conflict, unintended effects, and time bounded decisions. SIS story shows the relevance of all these elements when the temporal dimension is added to the equation. More importantly, it shows how a system with all this messiness managed to support the EAW while the attempt to develop a more tidy second generation system resulted in a never ending sequences of accidents, delays and postponements.

6. Some lessons for the creation and evolution of an EU scale interoperability infrastructure

While the previous section pointed out some of the limits of the present EU vision in relation to European Interoperability, it nevertheless stands true that “Interoperability between public administrations is crucial for achieving European integration and concerns core aims of the European Union”.²²⁵ In this perspective, the Schengen Information System story provides a number of lessons to support the creation and evolution of an EU scale interoperability infrastructure, in order to better understand which are the elements and the dynamics (normative, organizational, technological, semantic and governance) which have allowed the system to perform.

²²³ European Commission (2010c) European Interoperability Strategy (EIS) for European public services: Annex 1 to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions ‘Towards interoperability for European public services’.

²²⁴ Ibid.

²²⁵ Ibid.

6.1. *About Norms*

When dealing with large-scale interoperability infrastructures, agreements need to be ratified and norms and contracts created. The story of SIS is full of examples of Council Decisions and Regulations defining technical, organizational and functional features of the system, allowing contracts to be ratified and by which authorities, and imposing time limits to their validity. In this way, the norms that are introduced shape not only the features, but also the development path of the system. At the same time, norms (and contracts) reveal themselves to be time bounded and sometime time-limited. As a consequence of escalating complexity, unforeseen derives and delays, norms need to be changed and new contracts stipulated. This process does not take place in a linear and well ordinated manner. It produces effects which are not considered when observing an information system performing its functions in one point in time, but which are a fundamental component of the life of the system and a key element to understand it. The juridical maze that is needed to assemble a large-scale information system requires constant attention and cultivation. Indeed, SIS story points out how legal interpretations can progressively stabilize trough recursive interactions between the various actors and component that constitute the 'performative assemblage'.²²⁶ At the same time, the Schengen Manual example, which keeps being updated and adapted over time, shows how this stabilization is not in the direction of a static as-set but of a dynamic one.

The story also shows how the assemblage is capable of performing its functions tolerating (at least for a time) some discrepancies between the normative layer and its technological and organizational components. As an example, while the Schengen Convention Joint Supervisory Authority (JSA) in 1996 discovered that the databases of the N-SISs were not identical as provided for by the Schengen Convention, the system remained functional. In some cases such discrepancies are resolved ex post recognising for example roles and functions that have imposed in the practice, as for the SIRENE Bureaux, formally introduced in the Schengen convention by Council Regulation (EC) No 871/2004 of 29 April 2004 and Council Decision 2005/211/JHA of 24 February 2005, ten years after they started to perform their essential tasks.²²⁷

6.2. *About Organization*

While some organizational structures are conceived ex-ante, i.e. N-SIS units, other impose themselves as a functional requirement and are only

²²⁶ Mohr R, Contini F (2011) Reassembling the legal: 'The wonders of modern science' in court-related proceedings. *Griffith Law Review* 20 (4): 994-1019.

²²⁷ House of Lords European Union Committee (2007), see footnote 67.

afterward formally recognized as in the SIRENE Bureaux case. Indeed, SIRENE Bureaux, adding one layer of organization, reduced the complexity in several other layers of the system. It provided a single gateway/interfaces at national level capable of reducing and translating meanings and actions between different organizations such as the various Police forces. The role of the SIRENE Bureaux has been paramount not only in the everyday functioning of SIS, supporting cross-training, standardization and shearing of practices, but also in its extension to new Member States, with the training and assessment of the new units before they were connected. The SIRENE Bureaux provided the competences and resources needed to interface the existing SIS with the somewhat different requirements of the EAW FD. Indeed, SIRENE Bureaux have also absorbed part of the complexity of the EAW procedure, supporting communications between issuing and executing authorities or, as in the Italian example, providing a regularly updated “support kit” for the EAW arrest procedure to the local police offices.

SIS story shows also how in the long run, organizations involved may change, their role may change, and new organizations can be created and begin to play a role. Eurojust and Europol are two examples from the ‘user’ perspective, but the changes in the governance component as EU governance structure changed over time is even more relevant.

6.3. *About Technology*

Perfect fit is not always required in order for the technology to be performative. Predating the EAW, SIS is not perfectly aligned with it (i.e. it does not provide for the 32 categories of crimes for which the double criminality principle does not apply). At the same time, SIS perform its function ‘well enough’ for the EAW FD to be successfully implemented.

As already mentioned in the section on norms, problems of compatibility between technology and norms may emerge. The SIS showed to be able to tolerate some inconsistencies and still performing its functions.

Size both from a databases growth both from a geographical extension provided to be a non irrelevant technical issue. SIS updates such as SIS I+ and SIS One4All were triggered by such needs. Between the results of this need to extend and keep SIS operational, there has been on the one hand a reduction in the resources that could be allocated SIS II, and on the other hand a growing misalignment between the SIS II technological and organizational components, which caused additional delay in the development and implementation of the system.

6.4. *About Semantic*

The way in which semantic issues have found solutions in SIS case provides some useful hints for the development of other interoperability infrastructures. First, there is the key role of SIRENE Bureaux in the translation of meanings and actions. Furthermore, the capability of the system of allowing some flexibility on ‘where’ the translation takes place increases the ability of the system to perform. The presence in the SIS Bureaux of personnel speaking several languages allow the system to perform also in many cases in which SIS alerts not in English. Furthermore, their specialized competences and their understanding of other states EAW FD implementation laws and practices have also reduced the complexity of communication and finding a common understanding between issuing and executing authorities, helping solving semantic impasses which are generated not only by the use of different languages, but from seeing and understanding the world from different, nationally bound, legal perspectives.

A last aspect, also related to semantic is that the definition of what SIS is, and therefore which procedures and practices can support has shifted with time. While initially SIS was created only for alerting authorities of other Schengen countries on certain categories of people and goods in order for them to take ‘concrete measures’ and ‘compensate’ for the removal of internal borders, with time, its nature and scope has shifted in order to support new instruments such as the EAW, but also include investigative functions.

6.5. *About Governance*

Not only governance structures need to be created and equilibriums need to be achieved. As time goes by they need to be able to change. It is the case of the events related to the decision to adopt SIS One4All, but also to the one related to SIS I+RE alternative to SIS II.

Another element worth considering is that at least one “great pressure source” seems to be linked to each relevant policy action/change. Such pressures have gone on the one hand in the direction of making SIS I evolve to remain operational and “do more”. On the other hand they seem to have resulted in a greater delay in SIS II development and implementation. As SIS II experience shows, tighter the coupling attempted, stronger become derives, time delays and greater the level of coordination required. Given all these elements it looks like the governance capability and drive was not enough for the complexity of SIS II project.

7. Acronyms

AFSJ	Area of freedom, security and justice
C-SIS	Technical support function of the Schengen Information System-central site containing SIS reference database
DG	Directorates-General
e-CODEX	e-Justice Communication via Online Data Exchange, the first European Large Scale Pilot in the domain of e-Justice
EAW	European Arrest Warrant
EDPS	European Data Protection Supervisor
EIF	European Interoperability Framework for European public services
EPO	European procedure for Payment Order
EIS	European Interoperability Strategy for European public services
EU	European Union
EURODAC	EURODAC is an information system created to support the comparison of fingerprints of asylum applicants and illegal immigrants
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Police Office
FD	Framework Decision
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
JSA	Schengen Convention Joint Supervisory Authority
MS	Member State
N-SIS	National section of the Schengen Information System
OST	Operational Systems Test
PJSA	Schengen Convention provisional Joint Supervisory Authority
PWP	Permanent Working Party
s-TESTA	Secured Trans-European Services for Telematics between Administrations
SIA	Schengen Implementation Agreement
SIRENE	Supplementary Information Request at the National Entry
SIS	Schengen Information System

SIS I+	Updated version of the Schengen Information System
SIS I+RE	Schengen Information System I+ Renewal and Evolution
SIS II	Second Generation Schengen Information System
SIS One4All	Modified version of SIS I+ offered by Portugal to new MS to allow the enlargement of the Schengen Area over the SIS I+ limits
SIS Steering Committee	Schengen Information System Steering Committee
SIS-TECH WG	SIS-TECH Working Group
SISNET	SIS virtual private network

About the authors

Davide Carnevali: Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG-CNR).
davide.carnevali@irsig.cnr.it

Jorge González-Conejero: Institute of Law and Technology, Autonomous University of Barcellona (IDT-UAB).
jorge.gonzalez.conejero@uab.es

Francesco Contini: Research Institute on Judicial Systems of the National Research Council of Italy.
francesco.contini@irsig.cnr.it

Paula Fernando: Centre for Social Studies of the University of Coimbra and Permanent Observatory on Portuguese Justice.
pfernando@ces.uc.pt

Diana Fernandes: Centre for Social Studies of the University of Coimbra and Permanent Observatory on Portuguese Justice.
dianaf@ces.uc.pt

Conceição Gomes: Centre for Social Studies of the University of Coimbra, Executive Coordinator of the Permanent Observatory on Portuguese Justice and Coordinator of the Unit for Legal and Judiciary Training.
cgomes@ces.uc.pt

Giovan Francesco Lanzara: Department of Political and Social Sciences, University of Bologna.
giovan.lanzara@unibo.it

Giampiero Lupo: Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG-CNR), and Department of Political and Social Sciences, University of Bologna.
giampiero.lupo@irsig.cnr.it

Marco Mellone: Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG-CNR) and Interdepartmental Research Center on European Law, University of Bologna.
marco.mellone@irsig.cnr.it

Gar Yein Ng: Legal Studies Department of Central European University, Budapest.
gyng@ceu.hu

Marta Poblet: Institute of Law and Technology, Autonomous University of Barcelona (IDT-UAB).
marta.poblet@uab.cat

Andrea Resca: LUISS “Guido Carli” University, Rome and Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG-CNR).
andrea.resca@irsig.cnr.it

Antoni Roig: Autonomous University of Barcelona Law School.
antoni.roig@uab.cat

Gregor Stojin: Supreme Court of Slovenia.
gregor.stojin@sodisce.si

Josep Suquet: Institute of Law and Technology, Autonomous University of Barcelona (IDT-UAB).
josep.suquet@uab.cat

Marco Velicogna: Research Institute on Judicial Systems of the National Research Council of Italy.
marco.velicogna@irsig.cnr.it