



Concluding conference

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JUST-JTRA-EJTR-AG-2018

This project is funded by the European Union's Justice Programme (2014-2020)

PREVIOUS ASSESSMENTS

- **Previous collected data on the second-generation Regulations :**
 - **Simplification of debt collection : by V. Rijavec, T. Ivanc and T. Kerestes in 2014:** REPORT on the application of Regulation (EC) 1896/2006 of the European Parliament and of the Council creating a European Order for Payment Procedure :
 - **With regard to the ESCP Regulation, an evaluation was conducted on behalf of the European Commission, Directorate-General for Justice, by Deloitte in 2013.**

Project Train 2 EN4ce is innovative in several aspects:

- Feedback questionnaires conducted with participants of the workshops allowed us to evaluate the current state of acceptance and knowledge of the Regulations by practitioners.**
- the project teams have established an official project platform(database) <https://www.pf.um.si/acj/projekti/pr10-train2en4ce/> where the videos from workshops, training materials and handbook with practical cases on practical application of the Twin Regulations (EOP and ESCP) are available for free.**
- making the database accessible to the public and conducting workshops have significantly raised the visibility of the second-generation Regulations for practitioners.**

Common problems

- **Lack of awareness**
- **Wide range of options for creditors**
- **Service of documents**
- **Efficiency**
- **Protection of consumers**
- **Costs**

Lack of awariness

- **case law on the second generation Regulations compared to BUIa is small**
- **lawyers tend to prefer legal tools they are already familiar with to experimenting with new ones**
- **the inadequate guidance offered by the MS to potential users**
- **Danger that the EU instruments are being applied from the perspective of national laws and legal traditions**

Wide range of options for creditors

- Different tools for debt recovery available to creditors may also have created a certain amount of confusion for average practitioners
- Not one of the second generation Regulation provides for a wholly euroautonomous procedure for cross-border enforcement
- Gaps are filled with domestic laws



Service of documents

- **Complex interplay between EOP and ESCP Regulations and the Service Regulation**
- **Appropriate legal remedy in cases of defective service:**
 - In the *eco cosmetics (cases C-119/13 and C-120/13)* case, the CJEU had decided that Arts. 16–20 EOP Regulation are not applicable, not even by analogy – „the (opposition) procedures laid down in Articles 16 to 20 are not applicable where it appears that a EOP has not been served in a manner consistent with the minimum standards laid down in Articles 13 to 15 of that regulation.

Efficiency of the proceedings

- **the use of IT**: forms enable the use of automatic data processing; promotion of the use of videoconferencing under the ESCP
- **specialised courts** dealing with cross-border enforcement matters:
 - The CJEU already had the opportunity to deal with this problem in the context of the Maintenance Regulation: Cases C-400/13 and C-408/13, Sophia Marie Nicole Sanders v. David Verhaegen and Barbara Huber v. Manfred Huber.
 - The CJEU stressed that, generally speaking, „centralisation of jurisdiction ... promotes the development of specific expertise, ... while ensuring the proper administration of justice and serving the interests of the parties to the dispute“.

- **Standard forms:**
 - **more space for explaining the merits of the case, for calculating interests or contractual fines, and for a better explanation of to whom the cost of proceedings must be paid.**
 - **With regard to small claims (Art. 23a ESCP Regulation) the forms do not contain any incentives for the parties to settle the case.**

Consumer protection

- The EOP Regulation confers exclusive jurisdiction on the courts of the Member State where the consumer-debtor is domiciled (Art. 6(2) EOP Regulation):
 - With regard to the protection of consumers and Art. 7(2)(d) EOP Regulation (this provision only requires the applicant to provide ‘a description of evidence supporting the claim’, and not the evidence itself), the CJEU (Joined cases C-453/18 and C-494/18 – Bondora) concluded that:
 - a tribunal “seised in the context of a European order for payment procedure” would be entitled “to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms and, consequently, that they preclude national legislation which declares the additional documents provided for that purpose to be inadmissible”
- The ESCP Regulation does not contain any specific rule on jurisdiction for consumer-related claims, but merely refers to Arts. 17 et seq. BUIA

Costs

- **The question as to whether enforcing claims by means of the second-generation Regulations is actually more cost-efficient than domestic procedures will have a decisive impact on the success of the uniform European proceedings.**
- Art. 16 ESCP Regulation covers only situations in which one of the parties is wholly unsuccessful in its claims.

- **Thank you for your attention.**

