COUNTRIES

FRANCE, HUNGARY, ITALY, LATVIA, LITHUANIA, NORWAY, AND THE NETHERLANDS

CORE TOPICS

I. DIFFERENT LEVELS OF CIVIL PROCEDURE HARMONISATION

Xandra E. Kramer points out that the Netherlands has historically played a significant role in the harmonisation of civil procedure, actively participating in the negotiation and implementation of proposed legislation by the European Commission. The ***ex officio*** **application of EU consumer law (as will be seen in section II)**, adherence to CJEU case law, and the significance of cross-border relationships are notable aspects of this involvement. It has consistently implemented these applications, with the Brussels I-*bis* Regulation being a key instrument in Dutch civil procedure. **Dutch courts, including the Supreme Court and lower courts, closely follow and apply extensive case law from the CJEU in this area.**

The influence of European rules on Dutch civil procedure is evident in various sectors, such as intellectual property, particularly in connection with provisional measures. Following the ruling in the *Hermes* case of 1998, which was based on the TRIPs agreement, the Netherlands had to introduce new requirements for initiating main proceedings after obtaining a provisional measure in IP cases.

Additionally, new procedural rules have been introduced as a result of the three European uniform procedures: the **Payment Order**, **Small Claims** and **Account Preservation Order**. Initially, the Netherlands, like most Member States, opposed the original proposal of the European Payment Order and the Small Claims for domestic cases, **arguing against their broad scope based on principles of proportionality and subsidiarity.** The European Small Claims Procedure (ESCP) is not frequently used as the national procedure for low-value claims at the sub-district court is deemed sufficient. Regarding the European Account Preservation Order, the Netherlands showed some reluctance, considering its domestic rules for attachment orders to be less stringent and effective.

Another critical area of discussion is collective actions, or as termed in EU language, collective redress. In 2020, **the Netherlands enhanced its system for collective action by enabling damage claims through the WAMCA.** Since then, approximately 80 claims have been brought under the WAMCA, and the system continues to develop and refine.

The SLAPPs Directive, set to be formally adopted following a political agreement in November, has also been a topic of debate. The country was not strongly in favour of the Commission's proposal, advocating for a more toned-down version. The directive is seen as unnecessary due to existing domestic rules, and it conflicts with several aspects of Dutch civil procedure, such as the law of evidence. In legal practice, practitioners generally stay well-informed, and courts faithfully apply European civil procedure.

I.1. INFLUENCE ON NON-EU COUNTRIES

Magne Strandberg discusses the impact of the EEA Agreement on procedural law, noting its limited clauses on procedural law except for rules concerning proceedings before the EFTA Court. When the EEA Agreement was being prepared, the established EU procedural law was binding for the EFTA states under the Lugano Convention of 1988. However, EFTA states, particularly Norway, have shown reluctance to include some legal acts due to their procedural content.

In Noway, the prevailing view **since the 1990s is that procedural law is outside the scope of the EEA Agreement and has limited impact on Norwegian civil procedure law. This view dominated when the Norwegian Code of Civil Procedure was being prepared in the late 1990s and the early 2000s.** Halvard H. Fredriksen's work, "Tvisteloven og EOS-avtalen" ("CCP and the EEA Agreement"), TfR 2008, demonstrates the **unavoidable relevance of EU/EEA law on Norwegian civil procedure law.** Although most EU legal acts on civil procedure are not formally binding under the EEA Agreement, they still significantly impact Norwegian civil procedure law.

At least these levels of EU civil procedure may impact Norwegian law: general EU/EEA principles, procedural clauses contained in EU legal acts limited to substantive matters, and voluntary incorporation of rules similar to the EU legal acts. EEA Agreement article 4, which prohibits discrimination based on nationality, also applies to procedural law. This article and its EU equivalent have influenced rules on security for costs.

Both the Norwegian Supreme Court and the EFTA Court have held that the principles of effectiveness and equivalence apply *mutatis mutandis* in the EEA context. In June 2023, the Norwegian Supreme Court rejected a request for a third-party funded opt-out class action.

In June 2023, the Norwegian Supreme Court rejected a request for a third-party funded opt-out class action. The case was a private law follow-up to illegal cooperation between two providers of home security packages, fronted by *Alarmkundeforeningedn* and funded by Therium. The Supreme Court found that the requested opt-out class action would violate several CCP provisions. According to *Alarmkundforeningen*, rejection of the lawsuit would violate the principle of effectiveness because there were not any other realistic options for realising the customer's claim for compensation.

The Supreme Court, however, underlined: **neither the collective redress directive nor the principle of effectiveness required opt-out class action.**

II. *EX OFFICIO* APPLICATION OF CONSUMER LAW AND ITS IMPLICATIONS

In parallel, **Remco van Rhee** analysis highlights the integration of the EU's regulatory framework in consumer protection within Member States. A notable instance is the presumption of lack of conformity in the Directive on consumer sales and guarantees. **This EU influence is particularly evident in the Netherlands, where courts are increasingly active in *ex officio* application of EU consumer laws.** Specifically, Dutch courts are expected to proactively engage in certain areas of consumer law, as dictated by ECJ case law.

Regarding competition law, the interplay between Eu regulations and national civil procedures is unmistakable. Dutch civil procedure law must incorporate aspects relevant to competition law, an area deeply influenced by EU regulations.

Furthermore, the EU's influence can prompt a national legislator to adjust its procedural system in ways not explicitly required by EU law, a phenomenon termed as 'spontaneous harmonisation'. In the Netherlands, for instance, the implementation of the Directive on IP rights led to the enactment of a special rule of IP cases. This rule subsequently influenced the Dutch Supreme Court to accept broader powers for the seizure of evidence in civil cases. **This form of indirect influence, though originating from EU legislation, can potentially lead to a broader harmonisation in procedural regimes across Member States, even in areas without a direct EU mandate.**

Vigita Vėbraitė discussion turns to the evolution of consumer law and disputes in Lithuania. Although Article 46 of Lithuania's Constitution, enacted in 1992, safeguards consumer interests, it was the **influence of EU law that significantly bolstered consumer rights protection.** Lithuanian courts have adapted, recognising the need for judicial proactivity not only in family and labor disputes but also in consumer cases.

Consumer protection is undeniably seen as a public interest issue, necessitating active court involvement. For example, under the Code of Civil Procedure (CPC), courts have the right to examine cases within the bounds of an appeal, except where public interest dictates otherwise. This flexibility facilitates the *ex officio* collection of evidence in consumer disputes. The Lithuanian courts are also increasingly vigilant about unfair terms in consumer contracts, with one **Supreme Court ruling (E3k-3-106-421/2019) affirming the consumer's right to use various recordings for evidence, balancing this against data protection rights.**

EU regulations and the CJEU case law significantly shape consumer protection in Lithuania. The Supreme Court of Lithuania actively seeks preliminary rulings from the CJEU on consumer protection, with a notable number of referrals in 2022 related to this area. **While EU rules encourage alternative dispute resolution (ADR) to prevent consumer disputes from escalating to national courts, court proceedings have still been impacted in notable ways.**

One area of influence is the **application of the payment order procedure.** Article 432 of the CPC indicates that payment order applications are not considered if they arise from consumer credit agreements that don't meet legal requirements. T**he Supreme Court has echoed CJEU case law (cases C-448/17 and C-49/14), emphasising the need to protect consumers from unfair contract terms even in payment order processes.**

Another area of interest is the CJEU's judgments on legal services and consumer interest protection in Lithuania. The CJEU ruled that the main subject matter of a contract should not be deemed unfair if ti fails to meet transparency requirements, unless the national law of the Member State specifically classifies such a lack of transparency as unfair. The Lithuanian Supreme Court has remanded cases for further examination based on its principle (e3k-3-168-421/2023).

Lastly, the implementation of Directive (EU) 2020/1828 on representative actions for consumer protection has been subject to criticism. The directive's provisions were incorporated not into the CPC, but into the Law on Consumer Protection and the Law on the Implementation of International Legal Acts on Civil procedure. This legislative choice, along with specific rules like third-party funding and the court's right to dismiss unfounded claims at the preparatory stage, has sparked debate among legal scholars and judges.

Aleksandrs Fillers highlights the **interplay between CJEU practices and Latvian civil procedure, particularly in consumer law.** Notably, there was an initial conflict between adversarial procedures and EU consumer protection preferences. For example, **Latvian courts initially struggled with the ex officio assessment of contractual term fairness.** This issue was addressed in 2009 with the introduction of a statutory duty in Art. 6(11) of the Consumer Rights Protection Law, prompting a shift in judicial practice.

However, in Latvia, there are no explicit instances where courts have undertaken *ex officio* investigations into unfair terms. Latvian legal literature suggests that courts should also identify unfair commercial practices ex officio, under the Unfair Commercial Practice Directive. **This is particularly relevant in cases involving prescribed claims. For instance, in 2017, the District Administrative Court upheld a decision by the**

Consumer Rights Protection Centre, which deemed the practice of pursuing old, prescribed claims as unfair.

In 2018, the Senate (Supreme Court), in a case involving unfair terms, stated that courts could apply rules favouring consumers only in exceptional circumstances explicitly provided for in legal norms. Additionally, in 2020, the President of the Supreme Court discouraged courts from invoking prescription *ex officio*. **In 2020 the President of the Supreme Court publicly asked other court to stop invoking prescription *ex officio*.**

This stance has drawn criticism from scholars and appeals for CJEU clarification on whether pursuing prescribed debts violates the Unfair Commercial Practice Directive, and consequently, whether prescription should be applied *ex officio*. Latvian civil procedure law includes various specialised proceedings. For example, in 2010, the Constitutional Court ruled that judges must verify *ex officio* whether terms in immovable property sales are unfair. Furthermore, unfair terms must also be assessed in ordinary procedures if raised by the debtor as a defence against mortgage or debt validity.

Finally, there's a potential legislative conflict integrating EU law into Latvian civil procedure, especially concerning Directive (EU) 2020/1828 on representative actions for consumer protection. Article 7(7) of the Directive mandates that courts or administrative authorities should be able to dismiss manifestly unfounded cases at the earliest stage, aligning with national law. This poses challenges for the integration of EU directives within the national procedural framework.

Lilian Larribère has highlighted the influence of EU mandatory rules and the implications on the French legal system. **These rules first appeared in consumer law, which is where the initial changes in French law were made to comply with CJEU case law.** However, French case law has also independently identified mandatory rules and redefined its procedural rules in other areas, particularly in private international law.

The impact of consumer law on the logic of French procedural law is significant. The CJEU directly influences French civil procedure, particularly regarding the judge's duty to independently raise legal arguments not presented by the parties. The EU's logic has also indirectly affected French civil procedure.

In consumer law, the influence on French civil procedure is twofold: **firstly, French courts are now required to autonomously raise legal arguments based on mandatory consumer law rules; secondly, the concept of *res judicata* is interpreted distinctly in consumer law due to the existence of these mandatory rules and the duty to autonomously raise arguments concerning unfair terms.**

Regarding the judge's duty to independently raise legal arguments based on consumer law, each Member State, including France, has incorporated these rules into its national consumer law. In French law, a judge's duty to autonomously introduce a new legal argument is traditionally limited. According to the *Carteret* decision by the Cour de cassation, a judge has the power but not the obligation to do so. However, following the *Pannon* decision, which states that the judge of a Member State must apply the transposed Unfair Contract Terms Directive, French law had to be modified. Before the *Pannon* decision, a judge had the option to independently raise all provisions of the consumer code, but the duty to raise unfair terms was not specified. The *Cour de cassation* eventually aligned with this in 2018, deciding that a French judge has a duty to autonomously raise the Unfair Terms Directive.

Another unique feature of french law under European influence is the handling of **prescription issues**. Under French law, judges **typically cannot independently raise the issue of prescription, but consumer law provides an exception, allowing all rules of the Consumer Code, including specific statutes of limitation, to be raised autonomously.**

III. INFLUENCE ON RES JUDICATA AND JURISDICTIONAL PROBLEMS

Manfredi Latini Vaccarella draws parallels between the **unification of Italy, the consolidation of its judiciary powers and Europe's unification need for reform.** The silent architects of these European projects – legislative and judiciary powers – have been instrumental. Since its formation, the EU has enacted about 100,000 legislative acts, profoundly transforming the legal systems of Member States.

In 1979, renowned Italian scholar **Natalino Irti published "L'età della decodificazione" (The Age of Decodification), foreseeing the concept of decodefication/harmonisation, which the EU aims to achieve through uniform application of its legislation.** This raises the question: can we apply decodefication/harmonisation also to procedural law? The CJEU has consistently emphasised that procedural law, intrinsic to each country's culturural framework, should remain untouched by the EU, thus introducing the concept of procedural autonomy. However, the Court has navigated around this by invoking principles of effectiveness and equivalence.

Three cases – *Fininvest*, *Randstad* and *Banco Desio e della Brianza SpA* – illustrate jurisdictional conflicts, interpretation of national law by the CJEU, and judges' responsibilities in applying EU law and jurisprudence.

In the *Fininvest* case, the CJEU addressed complex administrative procedures. An Italian executive judge issued a preliminary referral challenging a ***res judicata* that was infringed upon by a new administrative procedure. Contrary to established jurisprudence, such as the *Borelli* doctrine, which divided jurisdiction based on the phase of the administrative procedure, in *Fininvest* the CJEU reserved the right to interpret any potential violation of national law when initiating an administrative procedure if the final decision was made by an EUY institution.** This approach denied the Italian execution judge the authority to make a decision, thereby intervening in Italy's procedural autonomy.

The *Randstad* case involved a conflict that was primarily domestic, between the administrative and ordinary courts, and indirectly, the Constitutional Court. **It revolved around the systematic disregards of European jurisprudence and legislation by the administrative judge. In Italy, the eighth clause of Article 111 of the Constitution allows for the appeal of judgements from «special» last-resort courts, such as the Council of State and the *Corte dei Conti*, solely on jurisdictional grounds.** The pivotal question was whether, in a judicial system encompassing both national and supranational (EU) jurisdictions, violations of jurisdictional matters initially decided by or belonging to the CJEU could be grounds for appeal. While the preliminary referral was considered outside the CJEU's reach, as it pertained exclusively to the interpretation of national constitutional clauses, the Court of Cassation's decision to involve the Luxembourg judges in this matter is significant, particularly regarding the unanswered question about the obligation of last-resort judges to make preliminary referrals in cases involving jurisdictional matters.

Finally, in ***Banco Desio e di Brianza SpA*, the focus shifted to the ordinary judge's perspective regarding payment orders.** In this case, a proactive execution judge from Milan exceeded his authority by making a preliminary referral, questioning whether an execution judge could re-examine a payment order that had not been contested in the appropriate phase if it contained relative nullities or abusive clauses against the consumer. The **CJEU's intervention was pivotal, undermining the stability and authority of *res judicata* for payment orders. Consequently, the Court of Cassation had to reconcile the principles set forth by the CJEU with the national procedural code and its system.**

These cases signify a shift towards procedural autonomy and the dynamics of civil procedure in Italy. **They reflect the evolving relationship between national judicial systems and the CJUE jurisprudence, signalling a move towards a more integrated European legal framework.**

In conclusion it's evident that the landscape of procedural autonomy and civil procedure in Europe is undergoing a profound transformation. **The CJEU, through its jurisprudence, has played a crucial role in shaping this evolution, delicately balancing the principles of effectiveness and equivalence with respect for national procedural norms.** However, as the Union continues to integrate and harmonise its legal framework, the time is ripe for a more concerted effort from the EU legislator. The Treaties, as they stand, call for legislative action, and it's imperative that we heed this call.

Looking ahead, we face a critical juncture. The way we address the harmonisation of civil procedure will have lasting implications for the Union's legal landscape. It's not just about creating a unified set of rules but about **fostering a system that respects diversity while ensuring justice and fairness across Member States.** The challenge, then, is not only legal but cultural. Furthermore, the advent of **new technologies**, particularly **AI**, adds another layer of complexity to this discourse. It necessitates a forward-thinking approach, one that **embraces innovation while safeguarding the principles that form the bedrock of our legal systems.**

Chiara Petrillo, meanwhile, focuses on the debate in Italy among civil procedure experts about introducing a remedy against final judgements violation of European law and jurisprudence, often due to ultimate instance judges not complying with the preliminary referral obligation under Article 267 of TFUE. This debate stems from numerous violations by the highest administrative court, the Council of State, which has often been reluctant to apply the CJEU's jurisprudence. This reluctance poses a significant risk of infringement procedures under Article 258 TFEU or liability actions against Italy for failing to apply or violating European law and jurisprudence.

The Court of cassation, empowered by the Constitution (art. 111, para. 8), can only annul Council of State judgements for jurisdictional violations. Despite past effort to address these violations, the Constitutional Court (judgement No. 6 of 2018) ruled that the Court of Cassation lacks authority to challenge the Council of State's decisions. **This leaves jurisdictional issues between administrative judges and the CJEU. The Constitutional Court suggested a revocation remedy against these violations, quickly adopted by the Council of State.**

The Council of State's strategy involves questioning the compatibility of Italian law with Article 267 TFEU, seeking a **reconsideration of the Cilfit judgement**, and querying the Court of Justice about the compatibility of internal procedural systems with Article 267 TFEU regarding the revocation of judgement that violate European law. This approach aims to allow the Council of State to bypass the Court of Cassation as the sole arbiter of European law violations. However, the CJEU maintains that national law remedies and compliance with effectiveness and equivalence principles are for each Member State to determine.

The Court of Cassation and the Council of State have aligned themselves with the decision of the CJEU decision, disclaiming jurisdiction over internal preparatory acts in favour of the CJEU. With the distribution of jurisdiction clarified, t**he Joined Section of the Court of Cassation, through Ordinance No. 10922/2019, recognised the Council of State's authority to issue preventive measures against European law violations, an approach the CJEU views favourably.**

These developments point to the evolving nature of European jurisprudence and its impact on national legal system. **The integration of EU law into domestic legal frameworks remains a complex and dynamic process, requiring constant adaptation and interpretation by national courts.**

Lilian Larribère has highlighted a system akin to the Italian one, facing similar challenges. To apply *res judicata*, three conditions must be fulfilled, as outlined in Article 1355 of the Civil Code: identity of parties, identity of subject-matter of the dispute (the *petitum*) and identity of cause. In the ***Cesareo*** **decision of July 7, 2006, the *Cour de cassation* established the principle the "concentration of legal arguments"**. This means that changing the legal basis of a claim does not alter its cause for the purpose of *res judicata.* Therefore, a **subsequent action involving the same subject matter, parties, and factual background is precluded by the first judgement. *Res judicata* thus applies, and the cause does not include the legal grounds upon which the claim is based.**

Consumer disputes, while generally adhering to the principles of civil procedure, are also shaped by the unique logic of consumer law. In this realm, the concept of *res judicata* is interpreted more strictly compared to its classical understanding. An illustrative case was handed down in February, which may resonate with the *Société Générale* case decided by the Court of Justice on May 4, 2023, involving Romanian law. This case emphasised the directive on unfair terms in consumer contracts, asserting that such directives must be considered, even if it challenges national law provisions.

Viktória Harsági has highlighted, among other things in Hungary, **the novelty of allowing notaries to send preliminary referrals to the CJEU, thereby extending jurisdictional power to them as well for specific cases.**

III.1. Effects on international private law and international arbitration law

Lilian Larribère also discusses the indirect influence of **EU mandatory rules in private international law, noting that the CJEU's influence here is primarily indirect due to the absence of direct case law from European Courts.** However, French courts, influenced by the CJEU jurisprudence and EU Law, have **altered fundamental principles in private international law and international arbitration law**, anticipating potential conflicts with European law.

A key development is the extension of a judge's obligation to independently raise a European rule from consumer law to the public policy rules of the European Union. This shift is exemplified in the *Cour de cassation's* decisions, like the *Monsanto* case of July 7, 2017, where the court recognised its duty to apply the product liability regime derived from a European directive. In France, the solution about the powers of the

judge *vis-à-vis* conflict of law rules was established in the *Mutuelles du Mans* decision of May 26, 1999, by the First Civil Chamber of the *Cour de cassation*. In this decision, the French court said that the judge has the duty to apply the conflict of law rule *ex officio* when the rights were unavailable, a non-pecuniary right (for example, in matters of filiation), but to recognise a simple faculty when the right were available. You can already see how different this case law was from the *Cartret* solution.

This case law is now partially outdated: in a May 26, 2021, decision by the *Cour de cassation*, the First Civil Chamber has recognised the judge's duty to apply conflict of laws that are EU public policy rules, and which may be quite numerous.

The reason is that even if the *ex officio* powers of national judges belong to the sphere of Member States' procedural autonomy, uncertainty remains as to the scope of this autonomy in relation to European conflicts of law rules. This solution was confirmed in a recent case, which is the *Airmeex* case of September 2023 (27 September 2023, n. 22-15.146). So today, the EU's conflict of laws rules benefits from a derogatory regime in terms of the judges' powers compared with the conflict of law rules of French law. **Their European origin may oblige the judge to raise them on his own motion, in line with the principles of effectiveness and primacy.**

Similarly, in international arbitration, the *Cour de cassation* has considered EU mandatory rules in adjusting procedural rules, as seen in the *PwC* case and the *London SteamShip* case from the CJEU.

In arbitration law, the principle of *competence-competence*, as per article 1448 CCP, has evolved. If a consumer wishes to bring an action against a professional, if the contract contains an arbitration clause, he must refer the matter to the arbitral tribunal, even if he considers the clause to be unfair. This was the solution adopted by the *Cour de cassation* in two cases, *Rado* and *Jaguar*. The *Cour de cassation* in the PwC case of 2020 reinterpreted this principle in light of EU law, particularly regarding unfair terms in consumer contracts. This case underlines the indirect yet significant impact of EU law on national procedural rules, even in areas traditionally governed by member States, such as arbitration.

PwC: According to the Court of Justice, in the absence of European Union rules on the matter, the procedural rules for safeguarding the rights which individuals derive from European law are a matter for the domestic legal order of each Member State, by virtue of the principle of the procedural autonomy of the Member States, provided, however, that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (CJEU, October 26, 2006, C-168/05, paragraph 24, ECJ May 16, 2000, *Preston and others*, C-78/98, paragraph 31, and September 19, 2006, *Germany* and *Arcor*, C-392/04 and C-422/04, paragraph 57).

The **procedural rule of priority laid down by this text cannot have the effect of making it impossible, or excessively difficult, to exercise the rights conferred on consumers by Community law, which national courts are obliged to safeguard.**

Similarly, **Aleksandrs Fillers** has talked about the influence of the CJEU on private international law.

IV. CONCLUDING REMARKS

This second summary of the reports presented at the Maastricht Conference confirms – once again – that there are **common issues as well as similarities in the application of EU law and jurisprudence**. The ***ex officio* application of consumer law appears to be the predominant topic** for most countries. Why is there a strong correlation between the application of **consumer law and procedural issues**? The national implications are evident and vary. **Italy and France grapple with the stability of *res judicata* and internal jurisdictional conflicts, whereas in the Netherlands and Latvia, conflicts arise with internal laws**. The Consumer's Directive seems to overlook a part on procedural autonomy. Could a new directive on procedural rules for this category be advisable? Would such a directive become an excuse to apply these new **"EU procedural rules" to other protected categories, such as workers**? This could lead to a slow but steady convergence at the EU level of a new set of procedural European laws. Also, intriguing are the differing approaches of countries such as the Netherlands and Norway, which seem more aligned compared to France and Italy, possibly due to more ingrained procedural traditions. **Another sector that must be considered is international private law, as well as arbitration law, which were not the subjects of observation in the Vienna Conference.**

These general reflections provide a broad background to understand the bigger picture and the potential **trend among such heterogeneous legal systems**. The harmonisation of civil procedure at a European level is a fact. Could this ignite a movement towards a judicial and legislative federal system in Europe? The Nice Charter was transposed into the Lisbon Treaties, and an attempt to create a European Constitution seemed too ambitious at the time. However, the i**dea of a common procedural system doesn't seem excessive, even though the current harmonisation through the CJEU is creating more national problems in ensuring judicial protection than it resolves.**

THIRD CONFERENCE (III/III)
LISBON 7TH MARCH 2024

COUNTRIES

BULGARIA, CROATIA, GERMANY, ITALY, MALTA, POLAND, PORTUGAL, SLOVENIA, SPAIN AND SWEDEN

CORE TOPICS

I. THE EVOLUTION OF RES JUDICATA

Christoph G. Paulus and **Vasilis Kapetanos** spoke in detail about the profound influences of EU jurisprudence and legislation on Germany. The Brussels Convention of 1968 played a pivotal role in integrating national procedural systems within the EU. Recent discussions have centred on new procedural instruments of secondary law, like the Representative Actions Directive, and on procedural harmonisation through Union principles of effectiveness and equivalence, which impact various aspects of German civil procedure law.

This ongoing relationship inevitably leads to conflicts. A focus will be given to the reaction of the German scholarship to Union legislation and case law. This focus is justified as the German legislator is hesitant to act and address issues unless these issues pertain to German matters or the adoption of secondary Union law. **Primary areas of interest include the influence of EU anti-discrimination law on German civil procedure and the impact of CJEU case law on the principle of *res judicata*, consumer protection litigation, and insolvency proceedings.**

In the early 90s, a conflict arose between German procedural law and European Community law, specifically concerning European anti-discrimination law. This tension was exemplified in the cases of *Hubbard/Hamburger* and *Mund & Fester* in 1993.

In *Hubbard/Hamburger*, the CJEU ruled that Germany's requirement for foreign nationals to provide security for costs and legal fees when initiating proceedings (former Section 110 of the ZPO) was discriminatory based on nationality, contravening European primary law. Similarly, *Mund & Fester*, the CJEU found that a German procedural provision allowing for seizing injunctions in situations requiring enforcement abroad, indirectly discriminated based on nationality, citing the Brussels Convention as a closed framework for cross-border litigation. These rulings prompted amendments to German procedural rules but were met with widespread criticism in the academic realm, particularly regarding the *Mund & Fester* judgement.

Regarding the Brussels I *bis* regulation the CJEU's case law has impacted the institutions of subject matter and *res judicata*. In German procedural law, the subject matter consists of two core elements: essential facts and the specific claim sought. As a procedural institution, substantive *res judicata* under Section 322 I ZPO, governing the binding content of judgements, is linked to the subject matter doctrine, as both institutions share a common objective: to prevent conflicting court decisions. The CJEU's *Kernpunkttheorie* interprets "cause of action" broadly under Article 29 of the Brussels I *bis* regulation, extending the concept beyond German understanding. It considers two claims identical if they share the same factual, legal basis, and purpose, even if not entirely identical, focusing on the core issues. German doctrine defines the subject matter more narrowly, focusing on the plaintiff's claim for a specific relief sought.

Debates in Germany included proposals to align the current understanding with the *Kernpunkttheorie*, but legislative or judicial action has not been taken. Concerning *res judicata*, the CJEU's concept of "EU *res judicata*" extends the scope beyond the operative part, contrary to the German approach. **The famous *Gothaer* decision by the CJEU faced criticism in Germany for potential discrepancies, paradoxical outcomes, and questions about its legitimacy.** No legislative or academic proposals have been made to change the scope of national *res judicata*. **The clash between EU law and the German institution of *res judicata* goes beyond mere interpretations of *res judicata* within the closed system of Brussels I *bis* Regulation. Instead, it revolves around fundamental EU principles of effectiveness and equivalence.** The procedural autonomy of the Member States is constrained by the principles of effectiveness and equivalence, serving as checks on national provisions conflicting with Union law objectives. These principles serve as methodological instruments – according to the German understanding – to resolve conflicts between national procedural law and Union law.

In the 2014 *Klausner Holz* case, a critical conflict emerged between the scope of Germany's *res judicata* rule (Section 322 I ZPO) and the EU law's demand for the full effectiveness of EU State aid regulations (Art.

107 TFEU). The CJEU ruled that *res judicata* must yield when State aid granted in violation of EU law cannot be recovered through other means, directly impacting a civil judgement's *res judicata* nature. The CJEU mandated the German court to examine whether *res judicata* obstructed aid recovery and, if possible, to interpret Section 322 I ZPO in a manner consistent with Union law effectiveness. This required the German court to challenge long-standing legal doctrine and established jurisprudence, suggesting that party objections to contract validity and nullity, not raised during the initial hearing but present, should not be deemed *res judicata*. While the judgement at first was considered an isolated incident due to the EU's exclusive competence in the area of competition law, it prompted discussions about averting future conflicts between national procedural norms and EU law. Scholars proposed enhanced dialogue between German courts and the CJEU through referrals as a feasible solution. Another question raised was the appropriate remedy for a future breach of the principle of effectiveness conflicting with national *res judicata*. While some advocated for a new ground for retrial, in analogy to 580 Nr. 8 ZPO, particularly for Union law violation cases, others vehemently opposed this approach, equating it to authoritarian regimes' manipulation of retrials. So far, no legislative action has been taken in response to these debates.

However, whether the *Klausner Holz* case was an isolated incident did not remain unanswered for long. The area of interest here is consumer protection and Directive 93/13/EEC, and the *ex officio* examination of unfairness clauses in consumer contracts. **The tension – albeit still theoretical – between EU law and German civil procedure was ignited in the 2012 *Banesto* case but rooted in earlier judgements like *Océano Grupo* and *Van Schijndel und Peterbroeck*.** Recent CJEU rulings, including *Ibercaja Banco*, intensified the debate. These judgements shed light on how *ex officio* review of unfair contractual terms impacts national enforcement procedures, challenging concepts like rules on fact preclusion, *res judicata*, and national procedural maxims. The focal point of the debate is the simplified *Mahnverfahren* for debt collection. To provide a glimpse of the current debate in Germany, in the recent *SPV Project 1503* case, the CJEU reiterated the need for an *ex officio* examination of relevant contract terms in every order for payment procedure against consumers. On one hand, the German *Mahnverfahren* is a simplified automated procedure where only the formal requirements are examined by the *Rechtspfleger* (specially trained court staff). The merits of the claim are examined to a very limited extent. On the othecr hand, the debtor in Germany has a "two stage protection". He can first lodge an opposition against the payment order within two weeks from the service of the order. If the respondent has not lodged an opposition (*Widerspruch*) or failed to do so in due time, the court must, upon a corresponding petition being filed by the claimant, issue a writ of execution, the defendant is entitled to enter a protest (*Einspruch*). **Whether this system of protection fulfils the requirements of Union law is unclear. A referral to the CJEU would provide clarity on this point. Scholars have already suggest aligning German procedural law with these developments, potentially requiring substantial ZPO amendments. Critics argue this may violate national procedural autonomy, raising even questions of *ultra vires* review. More moderate voices propose using existing procedural instruments, like Section 139 ZPO, for effective consumer rights protection, awaiting further case law developments.**

Ivaylo and **Stanislav Kostov** delve into the significant impact of three cases on Bulgarian national procedural autonomy: *Kantarev*, *Bulgarska Narodna Banka*, and *Vivacom*. The Bulgarian courts have made a relatively significant number of preliminary references in recent years. An important part of these references was made by lower courts with the main aim of challenging the practices of superior courts that contradict Union law. **In some instances, the practice of the CJEU has led to changes in procedural laws. Notably, in 2019, a new provision was introduced in the Code of Civil Procedure, mandating the court to examine, of its own motion, the unfairness of terms in consumer contracts, thus providing parties with the opportunity to express their opinions on these issues.** This new provision signifies the adoption of a general principle applicable across all civil proceedings concerning consumer rights.

Moreover, the *res judicata* of a judgment that has entered into force cannot be affected by the discovery of a breach of Union law, as such a violation is not a ground for the review of the final judgment. **In Bulgarian law, a ground for reopening a case through a request for the review of a final judgment is exclusively a judgment of the ECHR which has established a violation of the European Convention on Human Rights, and a new trial of the case is necessary to remedy the consequences of that violation.**

Following the amendment of the State Liability Act in 2006 (coinciding with the entry into force of the Code of Administrative Procedure and the introduction of first-level administrative courts), jurisdiction over State liability cases also changed. Cases for damages resulting from the administration's acts or omissions are settled by administrative courts in accordance with the Code of Administrative Procedure. The remainder of the cases are heard by civil courts under the Code of Civil Procedure.

Actions for damages under the State Liability Act are brought against the state body that caused the damage in its capacity as a procedural substitute of the State (Article 7, paragraph 1 of the State Liability Act). In situations where a state body causes damages not covered by the scope of the State Liability Act, according to consistent practice by the Supreme Court of Cassation, the claim is brought against the body that caused the damage, in its capacity as a procedural substitute for the State or against the State represented by the Minister of Finance.

After Bulgaria's accession to the European Union in 2007, there was uncertainty about which court was competent to deal with so-called Francovich cases and under which procedural rules – those of the State Liability Act, which offered the advantage of a simple state fee, or under general rules requiring the injured person to pay in advance a proportional state fee amounting to 4% of the claim's cost. Due to contradictory practices developed in the Supreme Court of Cassation, mainly concerning claims for damages against the Supreme Administrative Court for breaches of Union tax law, the General Assembly of the Civil and Commercial Sections of the Supreme Court of Cassation initiated interpretative case No. 2/2015. This case raised questions regarding the competent court and the procedural rules under which State Liability actions should be considered. In instances of contradictory judgments by Supreme Court panels, Bulgarian legislation allows for such an interpretative procedure to resolve the contradiction and unify case law. Subsequently, judges from the Supreme Administrative Court were also involved in the decision-making process for a joint resolution, as the Supreme Administrative Court also considers State liability cases.

The interpretative case was suspended after a preliminary ruling was requested in the 2018 *Kantarev* case by a first-level administrative court. The request for a preliminary ruling involved the interpretation of several provisions of Directive 94/10/EC on deposit-guarantee schemes, including questions about the applicable procedural rules in the main proceedings and the state fee (simple or proportional) required. The CJEU held that it is the responsibility of each Member State's internal legal order to designate competent courts and establish detailed procedural rules for legal proceedings intended to safeguard the rights individuals derive from EU law, provided they respect the principles of equivalence and effectiveness. Specifically, conditions for the reparation of loss and damages outlined by national law must not be less favourable than those related to similar domestic claims (principle of equivalence) and must not be framed in a way that makes obtaining reparation excessively difficult or practically impossible (principle of effectiveness). Regarding the principle of equivalence, the Court received no information that would lead it to question whether the rules established by the State Liability Act or by the Obligations and Contracts Act comply with those principles. Concerning the principle of effectiveness, it is also necessary to consider the fee required for court access and whether that fee could constitute an insurmountable barrier. The CJEU determined that a fixed fee of 5 EUR likely does not pose such a barrier to court access. However, it did not rule out the possibility that a potential proportional fee, capped at 4% of the dispute's value, could be an insurmountable obstacle to pursuing an action for damages, especially if no exemption from paying such a fee is available.

As a result of this decision, in 2019, the new provision of Article 2c was added to the State Liability Act, incorporating claims for damages caused by breaches of Union law into the Act's scope. Following this legislative change, in 2021, the Supreme Court of Cassation and the Supreme Administrative Court declared the request for a ruling on the interpretative case inadmissible and closed the case. The newly adopted provision of Article 2c of the State Liability Act governs the jurisdiction of cases involving compensation for damages caused by violations of Union law. Applying the procedural rules of the Code of Administrative Procedure, administrative courts have the authority to consider claims for damages caused by breaches of Union law by the administration, the administrative court of the first level, and the Supreme Administrative Court. In all other instances, such claims fall under the jurisdiction of civil courts, which apply the Code of Civil Procedure.

What is the result of these developments? With the introduction of Article 2c into the State Liability Act, for the first time in Bulgarian procedural tradition, a claim for compensation for damages caused by a judicial body is submitted for consideration by administrative courts and the Supreme Administrative Court. In all other cases explicitly regulated by the State Liability Act (including violations of the right to consider a case within a reasonable time under Article 2b of the State Liability Act and Article 2, paragraph 1, item 2 of the State Liability Act in connection with Article 5, paragraph 4 of the ECHR), cases against the administrative courts and the Supreme Administrative Courts are heard by civil courts.

In a context similar to that of 2018, the Court of Justice delivered its judgment in the case of *Bulgarska narodna banka* (Bulgarian Central Bank). Some questions in this case pertained to the qualification (legal basis) of a claim for damages. The core inquiry was whether the principles of equivalence and effectiveness necessitate a court, seized of an action for damages formally based on a national law provision relating to State

liability for damage resulting from an administrative activity but supported by allegations of Union law infringement, to autonomously regard that action as stemming from a failure to fulfil obligations under Article 4(3) TEU. The Court of Justice determined that the domestic court is not obligated to do so.

Lastly, the subject matter extends to the pending case before the Court of Justice, namely *Vivacom Bulgaria*. Following the amendment to the State Liability Act, claims were brought before administrative courts to address the liability of the Supreme Administrative Court for breaches of Union value-added tax law. The last resort in such cases is the Supreme Administrative Court itself. This legislative framework raises concerns regarding the right to effective judicial protection, the principle of *nemo iudex in sua causa* and, essentially, the principle of equivalence, given that the Supreme Administrative Court exclusively handles cases involving judicial breaches of EU law, while all other cases involving damages caused by a judicial body fall under the purview of civil courts.

In the *Vivacom Bulgaria* case, a panel from the Supreme Administrative Court sought a preliminary ruling with the following question: «*Do the second subparagraph of Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union preclude national legislation such as Article 2c(1)(1) of the State Liability Act, under which an action for compensation for damages caused by an infringement of EU law by the Supreme Administrative Court, Bulgaria, in which the Supreme Administrative Court is the defendant, must be examined by that court at last instance?*».

Predicting the Court of Justice's response, especially considering the inconsistent case law of the Strasbourg Court on similar issues, particularly regarding Bulgarian cases, is challenging. A positive response would necessitate an amendment to the State Liability Act. Conversely, a negative response could undermine the effectiveness of EU law, **as the Supreme Administrative Court, unlike the Supreme Court of Cassation, may be hesitant to rule against itself.** Nonetheless, by the year's end, the Court of Justice's decision is expected.

I.1. The impact on national insolvency procedures

Christoph G. Paulus sheds light on the German tradition of viewing bankruptcy law as a specialised branch of execution law, **which has notably evolved over the last two decades towards a paradigm of Europeanisation of procedural law.** Interestingly, this shift is not propelled by an inherent coherence of legal principles such as effectiveness or a unified doctrine of subject matter. Instead, it's **driven by pragmatic economic considerations, with the capital market exerting pressure on the EU Commission to harmonise the insolvency laws of Member States.** This push for harmonisation has led to significant legislative developments, including the recast **European Insolvency Regulation (2015) and the introduction of a Union-wide pre-insolvency proceeding through Directive EU 2019/1023, aiming to establish a preventive restructuring framework.** A further directive is underway, boldly aiming for additional harmonisation of insolvency laws.

The process of Europeanisation in insolvency law manifests in waves, affecting Member States' laws through both CJEU jurisprudence and EU legislative acts like Regulation 2015/848 and subsequent directives. For example, Article 26 of the European Insolvency Regulation (EIR) codified a procedural innovation, transforming a practice originally utilised by English courts into a statutory procedure now embedded in each Member State's national law, though it has not yet been applied. Another noteworthy amendment empowered insolvency practitioners in any main proceeding to initiate secondary proceedings in other Member States, a capability not previously available under laws such as Germany's InsO.

Further, the EIR has introduced the concept of the communicative judge, encouraging cross-border judicial communication, a practice once foreign to the German judiciary but now incorporated into Germany's international insolvency law (InsO, Sec. 348). This represents a significant shift towards cooperative and communicative approaches in handling insolvency proceedings.

The CJEU plays a crucial role in shaping the Europeanisation of procedural law, **as seen in the landmark *Seagon* decision, which challenges fundamental procedural laws, including those governing German civil procedure.** Additionally, the Court's jurisprudence on the avoidance powers of insolvency practitioners (*Actio Pauliana*) demonstrates the complexity of aligning national laws with EU standards. For instance, in cases where jurisdiction conflicts arise, the CJEU has favoured the plaintiff's location as the jurisdiction for avoidance actions, extending this preference to defendants outside the EU in decisions like *Hertel*.

In the *Bank Handlowy* case, the CJEU restricted a Polish court from assessing a debtor's insolvency status in a secondary proceeding, emphasising the precedence of the main proceeding's jurisdiction without requiring

an insolvency examination. **This decision underscores the CJEU's role in defining procedural standards across the EU.**

The *Radlinger* judgment highlighted the influence of EU law on national insolvency proceedings, applying the principle of effectiveness to challenge national laws incompatible with EU directives, as seen in the examination of unfair clauses within insolvency proceedings. This case raises questions about the compatibility of national insolvency laws with EU standards and the potential need for CJEU guidance on interpreting debtor and consumer rights within insolvency contexts.

The evolving relationship between EU law and Member States' civil procedure laws is characterised by both progress and challenges. **The harmonisation process, facilitated by EU legislation and the principle of effectiveness, aims to bridge diverse procedural legal orders and cultures. This effort towards Europeanisation fosters a dynamic dialogue between national courts and the CJEU, further underscored by the ECrtHR's stance on the importance of preliminary rulings for safeguarding procedural rights under Article 6(1) ECHR.**

However, this process also reveals tensions arising from the CJEU's autonomous interpretation of procedural concepts and its emphasis on the principle of effectiveness, **leading to a fragmented legal landscape and challenges in distinguishing between EU and domestic law.** In Germany, this dynamic has spurred debates on "materialisation" in civil procedure law, **indicating a shift towards integrating substantive law values and balancing traditional procedural goals with broader EU policy objectives.**

This overview reflects the complex **interplay between European directives, CJEU jurisprudence, and national legal traditions, highlighting the ongoing process of Europeanisation in insolvency and civil procedure law.**

II. EU LEGISLATIVE PROPOSALS AND POTENTIAL INCONSISTENCIES

Isabel Alexandre, brings attention to the implications of the European Account Preservation Order (EAPO) procedure within the Portuguese legal framework, specifically focusing on the process of obtaining account information under this procedure and the complexities surrounding the invalid service of defendants. Established by Regulation EU No 655/2014, the EAPO aims to facilitate the swift and efficient preservation of funds in bank accounts to safeguard against the risk of creditors being unable to enforce their claims due to the transfer or withdrawal of funds.

One critical aspect of the EAPO procedure, as outlined in Article 13 of the Regulation, is the process for obtaining account information. This becomes particularly relevant when a preservation order is requested in one member state, say Spain, and there is a reason to believe the debtor has accounts in another Member State, such as Portugal. The request for account information is then directed to the Portuguese information authority, the Order of Solicitors and Enforcement Agents (OSAE), as designated by Portugal under Article 50 of the EAPO Regulation. **This designation obligates all banks within Portugal to disclose whether the debtor has an account with them upon request by the OSAE, highlighting the procedural integration of EU and national law mechanisms aimed at facilitating cross-border debt recovery.**

Furthermore, the discussion points towards the necessity of incorporating Article 14 of the EAPO Regulation into Portuguese legislation, specifically assigning the Banco de Portugal the responsibility of transmitting data regarding bank accounts to the OSAE upon request. This reflects the ongoing efforts to harmonise the national legal regime with European standards, particularly concerning the accessibility of information on bank accounts for preservation orders.

Another significant issue addressed is the alignment, or lack thereof, between Portuguese domestic law and EU law regarding the consequences of invalid service of defendants, especially under Regulation EC No 1392/2007 (Service Regulation). The CJEU's interpretation, as seen in the *Henderson* case, suggests that national legislations, like the Portuguese Code of Civil Procedure, may conflict with EU law by allowing the correction of procedural irregularities through means other than those prescribed by EU regulations.

On the other hand, **Luigi De Propris** addresses the nuanced risks that a recent European Commission legislative initiative on private international law, focusing on the rules governing the assignment of claims, poses to national procedural laws. This initiative aims to clarify the "third-party effects" of claim assignments, which the Rome I Regulation (Article 14) does not currently cover. **These effects revolve around who holds ownership rights over a claim after it has been assigned, including what actions an assignee must take to secure legal title to the claim (such as registering the assignment or notifying the debtor), and how to resolve conflicts between multiple claimants to the same claim.**

This issue involves complex considerations about the ownership and proprietary effects resulting from claim assignments, affecting the assignor, the assignee, and third parties. The challenge lies in determining which jurisdiction's laws should apply to these proprietary effects, with several doctrinal solutions proposed over time. One suggestion extends the law governing the assignment contract to cover these effects, while another proposes using the law governing the assigned claim itself, arguing it would be most familiar to the debtor and therefore the fairest approach. Alternatively, some have advocated for the law of the assignor's habitual residence to serve as the determining factor, with variations and mixed approaches also being discussed.

On March 12, 2018, the European Commission proposed a regulation that would primarily apply the law of the assignor's habitual residence to the third-party effects of assignments, with certain exceptions allowing for the law of the assigned claim to apply, particularly in securitisation contexts. This approach is touted for its predictability, ease of third-party verification, alignment with the EU's insolvency regulation framework, and accommodation of the practical needs of factoring and securitisation sectors.

However, this proposal introduces potential legal uncertainties and conflicts. Different laws could apply to the same economic transaction, depending on the aspect being considered. For example, discrepancies could arise if the law of the assigned claim discharges a debtor's obligation to one assignee, while the law of the assignor's habitual residence favours another. Additionally, aligning the applicable law for proprietary effects with that governing the assignor's insolvency could overlook other important legal processes involving claims, such as enforcement actions or foreclosures, leading to unforeseen coordination challenges and impacting the movement of capital. It could also introduce disparities in how assignments and foreclosures are treated across different jurisdictions.

A particular concern is the situation where the success of a foreclosure action relies on the assignor still owning the claim, thereby invoking the law of the assignor's residence even in cross-border contexts. This could undermine the principle of procedural autonomy, suggesting that outcomes of significant legal procedures could be subject to foreign laws.

Given these complexities and the potential for introducing inconsistencies into procedural law, there is a strong argument for a thorough reassessment of the European Commission's proposal. This reevaluation is essential to ensure that the proposed regulation adequately addresses the intricate realities of procedural law while preserving the procedural autonomy of EU Member States.

III. EVOLUTION *THROUGH* HARMONISATION – CJEU AND EMERGING TECHNOLOGIES

Paula Costa e Silva delves into the nuanced discussion of the evolving influence of European Union law on national legislations, pinpointing the transformation in litigation practices, especially in the arena of consumer representative actions. **Observing the current legal landscape in Portugal, she highlights a surge in litigation, underscored by cases initiated both before and after the transposition of pivotal EU directives, including the 2020 Directive on representative actions for consumer protection and the 2014 Directive on damages under national law for infringements of competition law provisions.** This scenario presents a complex interplay of laws, where actions brought post-transposition navigate a significantly altered legal framework, leading to a convoluted array of statutes governing class or representative actions.

The critique sharpens when examining the transposition of the 2020 Directive into Portuguese law, revealing a stark contrast in the thoroughness of adoption compared to other Member States like Germany and Spain. Paula Costa e Silva forecasts a significant **impact from cross-border litigation and CJEU preliminary rulings on national legal frameworks and judicial outcomes**. She uniquely identifies Portugal's dual approach to collective protection, intertwining traditional *actio popularis* – where consumer protection is constitutionally recognised – with modern collective claim mechanisms, suggesting an intricate distinction in the legitimacy and purpose between these types of legal actions.

Manfredi Latini Vaccarella delves into the complexities Italy faces in integrating **the jurisprudence of the CJEU, highlighting a disparity in how civil and administrative cases respond to EU law principles.** By examining three pivotal cases – *Fininvest*, *Randstad*, and *Banco di Desio e Brianza* – Vaccarella underscores **the tension between the harmonisation intent of the CJEU and Italy's procedural autonomy.** These cases bring to the forefront i**ssues such as the doctrine of *res judicata*, jurisdictional conflicts, and sector-specific protections, laying bare the nuanced challenges of aligning national legal procedures with EU directives.** The narrative paints a picture of a judicial system at a crossroads, grappling with the dual demands of maintaining procedural independence while navigating the supra-national directives aimed at creating a cohesive European legal framework.

Vaccarella posits that the evolution of civil procedure in Italy, and by extension in Europe, necessitates a **rethinking of legal systems in the face of EU law integration.** He suggests a move away from the idea of a uniform European Code towards an "indirect codification" process, where harmonisation is achieved through targeted regulations and directives addressing specific aspects of civil procedure. This approach, seen in the adaptation of insolvency law and Italy's post-COVID legislative updates under the National Recovery and Resilience Plan, aims to f**oster uniformity while respecting the unique procedural legacies of Member States.**

A critical component of this evolution is the proposed structural reform of the CJEU to enhance its understanding of national procedural laws and address the inconsistencies in its application of the principles of effectiveness and equivalence. Such reforms are imperative to prevent the legal uncertainty that arises from divergent interpretations of EU law at the national level.

Looking to the future, Vaccarella anticipates the transformative impact of artificial intelligence (AI) on legal procedures. With the European Commission's ambitious vision to shape Europe's digital future, the integration of AI into civil proceedings promises improvements in impartiality, efficiency, and accessibility to justice. However, this technological leap also poses questions about the future of procedural autonomy and the doctrinal integrity of national legal systems.

The synthesis of AI and EU law harmonisation represents a paradigm shift in civil procedure, challenging traditional doctrines and inviting a reimagining of legal processes. Vaccarella's discourse invites reflection on how AI and EU directives might recalibrate the balance between procedural autonomy and the overarching aims of the European legal order.

Echoing the foundational work of Giuseppe Chiovenda, the discussion acknowledges the enduring influence of procedural doctrines while recognizing the imperative for adaptation. The CJEU's role in this transformation is pivotal, necessitating a nuanced understanding of national legal traditions and the challenges of implementing uniform procedural standards.

In sum, Vaccarella's analysis encapsulates the multifaceted dynamics at play in the integration of EU law and the adoption of new technologies within the Italian judicial system. It underscores the delicate balance between preserving procedural heritage and embracing the innovations necessary for a harmonized European legal landscape. The path forward, marked by both challenges and opportunities, demands thoughtful consideration of how best to achieve a cohesive yet flexible procedural framework that respects the diverse legal traditions of EU Member States.

III.1. Influence of the CJEU on national Supreme Courts

Eva Storskrubb presents an examination of the impact of EU law on Swedish civil procedure, highlighting a nuanced perspective that contrasts with the generally positive integration seen in other areas. **She describes Sweden's approach to EU procedural legislation as one marked by a strong attachment to its own legal system and a limited impact of EU law as a force for procedural change or improvement.** While Swedish courts generally accept the principles of primacy and direct effect, the principles of equivalence, effectiveness, and the right to effective judicial protection have seen limited impact, indicating structural challenges, especially in handling consumer claims and the mechanism of preliminary references.

Storskrubb's analysis includes three specific situations: the conflict between procedural autonomy and EU law as seen in case C-30/19 *Braathens Regional Aviation*; the challenges in *ex officio* application of EU law beyond civil procedures; and the Swedish courts' approach to the duty of seeking preliminary references. **The *Braathens* case, in particular, sheds light on national law preventing courts from examining claims of discrimination when the defendant agrees to pay compensation without acknowledging discrimination, conflicting with Article 47 of the Charter of Fundamental Rights of the European Union.** The Swedish Supreme Court faced fundamental issues post-CJEU ruling, pondering whether national procedural rules should be set aside or amended to comply with EU directives, signalling a need for legislative action that has not yet been taken.

Joao Marques Martins discusses a Portuguese case reflecting on the application of the Brussels I Regulation principles by the Supreme Court within the national Code of Civil Procedure. A plaintiff sued FIFA for using his image and professional skills without permission, leading to a jurisdictional dispute since the defendant was not domiciled in Europe. **The Portuguese courts' jurisdiction was based on the location of witnesses and the occurrence of wrongful acts within Portugal, illustrating the complexities of applying EU principles within national procedural contexts.**

Patrick J Galea offers insight into Malta's experience, a mixed jurisdiction with a civil law system influenced by extensive common law traditions, undergoing transformation through European integration. The enforcement of EU Member State's judgments in Malta, especially against gaming companies, highlighted the supremacy of EU law, as acknowledged in the Malta Code of Civil Procedure. However, the Constitution of Malta presents a supreme legal authority, creating a tension between national sovereignty and EU obligations. **The *Felsberger* case demonstrates this conflict, where the court prioritised the Constitution over EU law in the context of recognising and enforcing an EU member state judgment, hinting at potential infringement proceedings by the European Commission against Malta.**

Furthermore, Galea notes the gradual assimilation of the principle of proportionality in Maltese civil procedure, influenced by European Civil Procedure, enhancing the judiciary and legal practice culture. He also touches on the incorporation of English legal principles such as case management and pre-trial procedures, underscoring the diverse procedural influences that EU Member States, like Malta, navigate within the broader canvas of European civil procedure harmonisation.

These discussions all reflect the intricate dynamics of integrating EU procedural laws within national legal systems, revealing a landscape of adaptation, resistance, and ongoing transformation influenced by constitutional priorities, procedural autonomy, and the evolving jurisprudence of the CJEU. The narrative underscores the complexity of harmonising civil procedures across diverse legal traditions while maintaining the essence of national legal identities within the EU framework.

IV. EXCESSIVE CONSUMER PROTECTION?

Tadeusz Zembrzuski elucidates on the transformation of consumer protection within civil proceedings through the lens of EU law. Historically centring on substantive civil law for consumer protection, Poland has recognised the necessity of incorporating procedural mechanisms into this sphere. This shift towards what Zembrzuski terms "proceduralisation" of consumer protection within the procedural autonomy of EU Member States poses a critical question: how to extend optimum protection to consumers at the litigation stage? This query foregrounds Poland as an evolving landscape for procedural consumer protection.

The discussion pivots to assessing the effectiveness of EU regulations constituting the consumer protection framework. Key inquiries include whether Polish courts truly serve as guardians for consumers and if the objectives of Directive 93/13/EEC – centred around effectiveness, proportionality, and deterrence – are being met. Zembrzuski points out that Poland exemplifies a State where procedural autonomy hasn't been fully leveraged, given the dual facets of consumer protection: normative and adjudicative. Both the Polish legislator's perspective and the judicial approach in practice are critical to understanding the state of consumer protection.

In March 2023, Poland introduced separate proceedings for consumer disputes, a move that didn't stem from a comprehensive assessment of consumer needs or account for procedural consumer protection aspects highlighted by CJEU jurisprudence. The legislative actions have sparked significant reservations about the current model of consumer legal protection's efficacy.

A crucial point of contention is the overarching paradigm of consumer protection which, despite being preserved on the surface, is applied to a broad array of disputes. This ranges from significant judicial disputes to minor cases involving simple goods or services, thereby breaching the pattern of implementing EU directives attentively to the dispute's specificity. **The Polish legislator's "one-size-fits-all" approach has led to an automatic judicial response that overlooks the imbalance between consumers and business entities in disputes.**

Further analysis reveals a gap in the actual philosophy behind current solutions, which encompasses three special solutions for judicial disputes involving consumers. These solutions address procedural material concentration, court's domestic jurisdiction, and proceeding costs. However, only the first aspect is deemed significant, with the others not substantially impacting consumer protection efficacy. The effectiveness of consumer protection remains unmet, as Polish procedural solutions, not fully aligning with EU perspectives or CJEU case law, fail to address the contractual imbalance between businesses and consumers adequately. This imbalance has led to procedural disparities and, paradoxically, ineffective consumer protection.

Looking forward, Zembrzuski anticipates developments like the expansion of information mechanisms and regulations concerning proceeding courts, suggesting non-contentious matters proceedings could better serve consumer protection. He advocates for courts taking *ex officio* actions to expedite proceedings and confirm findings to clarify factual grounds and procedural evidence concentration. Adjustments in the procedural burden distribution and proof burden, favouring consumers, are also envisaged.

Andzej Olaś explores the nuanced terrain of applying civil procedural rules to consumer cases within the Polish legal system, underlining a practice of indiscriminate application akin to that used in general civil cases. This approach, characterised by principles of party disposition and adversarial processes, is compounded by a procedural formalism and strict rules requiring the concentration of all factual allegations and evidence before trial. The system includes specialised procedures for default judgments and expedited *ex parte* proceedings, allowing for the issuance of payment orders without the defendant's prior notice. This procedural model, when applied without significant adaptations to consumer cases, led to judicial practices that were not particularly conducive to consumer protection, failing to provide an effective and equivalent safeguarding of EU consumer laws.

However, a shift towards a more consumer-oriented application of procedural rules began to emerge, driven by an increasing awareness of EU consumer law's impact among the legal community, including judges and counsel, and the general public. **This change is evidenced by several key developments: a) active engagement with the CJEU; b) alignment with CJEU jurisprudence; and c) remediation through extraordinary means of appeal.**

One notable aspect of this transformation is the adaptation of procedural rules to include obligations for courts to assess unfair terms in consumer contracts *ex officio*. Additionally, courts are now required to inform parties about their findings, allowing for an adversarial discussion that ensures consumers can make informed decisions regarding their claims.

A landmark decision by the Polish Supreme Court on May 7, 2021 (III CZP 6/21), acknowledged and fully incorporated CJEU jurisprudence into Polish law. **The decision emphasised that courts must proactively examine whether a contractual clause is unfair from the outset of a case, without waiting for consumer action. Furthermore, if a court identifies an unfair clause, it must inform the parties and facilitate an adversarial discussion on the matter, guided by the principle of fair proceedings.**

This proactive judicial stance, informed by CJEU jurisprudence, represents a significant departure from past practices. It indicates a broader judicial recognition of the need to adapt the interpretation and application of procedural norms to better protect consumer rights within the EU legal framework.

Andzej Olaś's insights highlight the evolving judicial landscape in Poland, where procedural sovereignty is being reinterpreted in the context of EU consumer law. This evolution underscores a gradual but definitive shift towards a more consumer-friendly judicial practice, aligning procedural formalities with the overarching objectives of consumer protection and effective judicial remedy as mandated by EU directives.

Aleš Galič delves into the effectiveness of payment orders within the context of consumer protection, particularly focusing on what he terms "non-genuine disputes," **where there are no contentious questions of fact or law.** He emphasises that the European Payment Order (EPO) Regulation, designed for cross-border cases, is optional and does not preclude the use of other procedures such as national payment orders or regular litigation. This regulation specifically targets uncontested pecuniary claims without imposing a ceiling on the dispute value. The application must specify the amount and confirm that the claim has matured at submission time.

Galič scrutinises the varying extent of merit assessment across national laws, ranging from a mere documentary review to no review at all—effectively "rubber stamping." This diversity raises questions about the regulation's effectiveness, leading Galič to suggest that the provisions' inconsistency might result from compromise, deliberate ambiguity, or drafting oversight. He predicts a significant role for the CJEU in clarifying the standard of claim review for issuing an EPO, ensuring alignment with EU law principles.

A critical aspect of Galič's discussion is the requirement for *ex officio* application of consumer law, influenced by the principle of effectiveness. This has necessitated far-reaching adaptations in proceedings involving consumers, extending protections even to passive consumers or those who haven't contested jurisdiction. He reviews CJEU cases that outline procedural requirements for the *ex officio* examination of unfair terms in consumer contracts under Directive 93/13/EEC.

Galič further explores the national payment order procedure characterised by an *ex officio* review of standard clauses in consumer contracts. Drawing from the CJEU's stance in *Banco Espanol*, he highlights the court's obligation to assess potentially unfair terms *in limine litis*, without awaiting consumer objections. He outlines three methods for exerting control in payment order procedures: judicial review of contract terms prior to issuing a payment order, ensuring defendants have an effective right to oppose, and mandating courts responsible for enforcement to review contract terms' fairness.

The *Bondora* case of 2019 is pivotal in Galič's analysis, examining the CJEU's interpretation regarding the court's authority to request additional information for an *ex officio* review of contract terms' fairness. This decision challenges the feasibility of a simplified, automated EPO process, advocating for a shift toward a more evidence-based model akin to French law in consumer cases.

Galič critiques the Slovenian payment order system for its fully automated nature and lack of preliminary review, which, coupled with a stringent eight-day opposition period, potentially breaches the EU law principle of effectiveness. **He advocates for a payment order system that filters "genuine" from "non-genuine" disputes, allowing judges to focus on cases requiring judicial scrutiny and improving consumer access to justice.**

In summary, Galič presents a comprehensive analysis of the challenges and opportunities within the EPO Regulation and national payment order procedures, emphasising the need for clearer standards and more consumer-oriented adaptations to align with EU consumer protection directives and CJEU jurisprudence.

Fernando Gascòn Ichuasti has examined the impact of EU law on Spanish procedural law, noting that this influence is not a recent development. **The Spanish procedural system has been grappling with the case law of the CJEU for over a decade, largely due to the proactive stance of Spanish judges in seeking preliminary rulings from the Court.** The impact of EU law on Spanish procedural law can be assessed in two primary ways:

1. Regulatory Impact Beyond the Implementation of Directives and Making Regulations Operative: On numerous occasions, the Spanish lawmaker has looked to EU procedural rules as benchmarks for domestic reforms. Examples include:

(a) The implementation of the European Small Claims Procedure (ESCP) regulation, which led to an increase in the threshold for the mandatory use of a lawyer from 900 euros to 2000 euros.

(b) The implementation of the European Order for Payment (EUOP) regulation prompted a reform in the domestic order for payment regulation as well, such as allowing the court to offer the claimant the opportunity to reduce the claim's quantum instead of dismissing the application if the amount is deemed excessive.

(c) The implementation of the Trade Secrets Directive was utilised to protect the confidentiality of trade secrets not only in proceedings aimed at obtaining redress for trade secrets infringement but also in any proceedings where a trade secret may need to be disclosed.

Inchausti advocates for utilising European law as an opportunity to improve domestic law.

2. Missed Opportunities: There are instances where the implementation of directives or the activation of regulations was not leveraged to enhance domestic procedural legislation. For example, the disclosure proceedings required for cartel damages claims under Directive 2014/104/EU were not extended to all types of civil litigation, as initially proposed.

The Impact of CJEU case law on Spanish Procedural Law: The academic community is well aware that many significant cases were initiated by preliminary rulings requested by Spanish judges. Specifically, the principle of effectiveness, particularly applied to Directive 93/13/EEC on unfair contract terms, allowed the CJEU to identify legal provisions and judicial practices in Spain that were incompatible with EU law. **This insight led to significant amendments to the Spanish Code of Civil Procedure to bolster judicial oversight, even ex officio, on unfair contract terms.** These changes have influenced various aspects of enforcement proceedings, including the initial phase and debtor opposition phases in ordinary and mortgage loan enforcement proceedings, as well as provisional and protective measures and order for payment proceedings concerning potentially unfair contract terms.

IV.1. Enforcement Practices and Notaries

Alan Uzelac examines Croatia's legislative response to the CJEU's ruling regarding the country's debt-collection procedure, **particularly focusing on enforcement proceedings based on 'authentic documents.'** In Croatia, notarial writs, which are execution orders issued by notaries public against debtors for unpaid monetary claims (like utilities or communication bills), play a pivotal role in enforcement procedures. **These writs are issued in *ex parte* proceedings grounded on 'authentic documents,' such as invoices or business records, and are served on the debtor, who has a 15-day period to object.** In the absence of an objection, the writ becomes enforceable, typically executed by the financial agency (FINA) through automatic seizure of funds from the debtor's bank accounts.

The discussion pivots to the CJEU's involvement with the Croatian enforcement system, specifically through the analysis of two cases from 2017: *Pula Parking* and *Zulfikapašić*. The *Pula Parking* case arose when a German tourist, having parked in a public lot in Pula and received a parking ticket from the city's parking company, faced enforcement action through a notary public. The tourist's legal challenge questioned the competence of a notary to issue an enforcement writ in a cross-border scenario under EU law, prompting the Pula court to seek clarification from the CJEU on whether notaries can be deemed a 'court' under the Brussels I *bis* Regulation.

In contrast, the *Zulfikapašić* case involved a Croatian lawyer seeking payment for his services from a client residing in Germany. After the notarial writ issued by the notary went uncontested, the lawyer's request for an EEO from the notary sparked a jurisdictional dispute, leading to another referral to the CJEU. The Court clarified that for enforcement sought in another Member State, judgments must originate from court proceedings adhering to guarantees of independence, impartiality, and the principle of *audi alteram partem*. **Consequently, the Croatian procedure for issuing writs based on 'authentic documents,' characterised by the debtor's unawareness of the creditor's writ request and post-adoption service, does not align with**

the EU's definition of a 'court' for the purposes of cross-border enforcement under the mentioned regulations.

Uzelac contemplates the implications of the CJEU's decisions, presenting options for Croatia: maintaining the current domestic procedure, aligning with EU standards through negotiation (similar to Hungary and Sweden's approach for EU-wide enforceability of writs), or undertaking substantial reforms to revert the issuance of writs back to courts. **He notes the CJEU's cautious stance towards 'external outsourcing' of dispute settlements due to the need to preserve EU law autonomy. However, the Court has not objected to 'internal outsourcing' within Member States, provided it falls under state authority and control. Such delegation impacts cooperation among Member States and their interaction with the CJEU on preliminary rulings, suggesting that while Member States can empower notaries for certain enforcement acts, this does not guarantee automatic recognition by other Member States in cases requiring cross-border cooperation.**

Lastly, Uzelac points to emerging challenges in consumer protection and payment orders, as highlighted by cases such as *Profi Credit Polska S.A. w Bielsku Bialej* and *Kuhar v Addiko Bank d.d.*, underscoring that summary *ex parte* proceedings may conflict with EU consumer protection standards. **This overview elucidates the complex interplay between national enforcement practices, EU law, and the need for legislative adaptations to align with EU consumer protection and procedural standards.**

V. CONCLUDING REMARKS

In this final Lisbon Conference, we've received definitive confirmation of the substantial national implications in every Member State, with common themes categorised into four areas: **(i) consumer protection, (ii) *res judicata*, (iii) dialogue between national jurisdictions and the CJEU, and (iv) levels of harmonisation.** It's clear that future civil procedure reforms must align with European expectations. However, challenges persist, particularly regarding whether the CJEU can continue to exert its influence amidst resistance from more "conservative" civil procedure traditions. Additionally, there's debate over whether new regulations or directives are necessary to standardise the definition of *res judicata* and establish universal procedural enforcement across the EU.

The path forward is fraught with questions, and the CJEU's ability to grasp the full implications of its judgments is limited if the initial pushback comes from the Member States that sought preliminary rulings, affecting jurisdiction. **CJEU judgments are like "icebergs", with national implications that emerge at the local level.** The principles of effectiveness and equivalence remain crucial tools. As substantive law becomes harmonised, it becomes evident that civil procedure harmonisation is the next step. **Whether this is being achieved in the EU is a matter that requires individual assessment to identify common challenges and successes.** Achieving this will allow us to work toward a uniform system aimed at providing EU citizens with effective judicial protection and timely justice. **The role of emerging technologies, including AI systems like ChatGPT, is increasingly vital in this harmonisation process.**