



Common minimum standards of civil procedure

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Value Assessment

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Common minimum standards of civil procedure

European added value assessment
accompanying the European Parliament's
legislative own-initiative report

(Rapporteur: Emil Radev)

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Executive summary

The number of people and companies involved in cross-border transactions in the EU is constantly increasing. In the event of problems related to civil law, for example concerning non-payment for goods or services in a cross-border context, a company or individual might need to bring a case to court in another Member State, which can be very challenging. Differences in procedural rules among the EU Member States create difficulties and costs for the parties involved and can be a source of mistrust between judiciaries when it comes to recognition or enforcement of foreign judgments. In this context, as part of the EU move towards an area of freedom, security and justice, the European Parliament adopted an own-initiative resolution on common minimum standards of civil procedure.¹

This European Added Value Assessment (EAVA) was initially produced to support the Parliament's 2017 resolution. This analysis revises and updates the quantitative assessment of the EAVA. Based on more recent data, this EAVA estimates whether and to what extent adoption of minimum EU standards of civil procedure could generate European added value. The European added value is quantified as a percentage reduction of the total cost of civil procedure. The total cost of civil procedure is estimated based on the data on the number of civil and commercial proceedings in the EU-28 and the cost of litigation in the Member States. Based on this analysis, EAVA estimates that introducing common minimum EU standards of civil procedure could reduce annual costs for citizens and businesses in the European Union by as much as €4.7 to 7.9 billion per annum.² The European added value could potentially be generated through reduction of fragmentation, simplification and filling gaps in the current EU procedural rules.³ Furthermore, common minimum EU standards would contribute towards building mutual trust between judicial authorities of different Member States. Increasing trust has the potential to enhance legal certainty and stability for citizens and businesses, and further reduce costs from uncertainty and delay.

The EU has legal competences to take action in the field of civil procedural law.⁴ Three policy options have been considered in the EAVA. All three policy options are based on EU legal competences in the area and do not infringe the principles of subsidiarity and proportionality. However, the extent and logic of regulatory intervention, and consequently of expected European added value, of the three policy options differs. The first policy option analysed would require minimum regulatory intervention. It has the potential to reduce costs related to civil litigation in the EU by €4.7 billion per year. The European added value would be generated through compilation and consolidation of the

¹ Own-initiative report on common minimum standards of civil procedure [2015/2084\(INL\)](#). In accordance with the EU's better law-making agenda, the European Parliament legislative own-initiative report is accompanied by a European added value assessment (EAVA). The draft EAVA was presented at the Legal Affairs Committee workshop on 'Common minimum standards of civil procedure' held on 15 June 2016.

² The divergence in cost reduction estimates depends on the policy options and the extent of harmonisation of procedural rules, which is currently under debate at policy level.

³ Current EU procedural rules are incoherent and incomplete because they do not apply to all civil law disputes and they are limited to specific types of procedure. The main costs related to the fragmented EU rules on civil procedure are costs to the operation and conduct of business; administrative and legal costs; social costs; reduced mobility of citizens; and business and incoherence costs.

⁴ For a comparative review of the EU available legal competences in the area of civil procedural law see e.g. [Working document on establishing common minimum standards for civil procedure in the European Union – the legal basis](#), Committee on Legal Affairs, European Parliament 2015; Rafal Mańko, [Europeanisation of civil procedure](#), EPRS, European Parliament, pp. 9-16, June 2015.

current EU law instruments related to civil procedure.⁵ The more ambitious policy option, which would require adoption of a binding EU law instrument, could potentially reduce the costs by up to €7.9 billion per year. The adoption of an EU law instrument containing minimum standards of civil procedure applicable to all stages of the procedure would have the potential to reduce fragmentation of the procedural rules, enhance transparency and contribute to the building of trust among EU judiciaries. The 'middle way' policy option could potentially reduce the costs by up to €6.3 billion per year. This policy option, which would take longer to implement, would potentially also reduce fragmentation and therefore costs. However, the approach to addressing fragmentation would be different. This policy option would focus first on a comprehensive review of the current system and then fill the gaps in the specific aspects or stages of civil procedure. Therefore, instead of the comprehensive EU law instrument applicable to all stages of civil procedure, this policy option would proceed with a partial, procedure-specific, approach to reducing the current fragmentation.

⁵ Common Minimum Standards of Civil Procedure, [Annex 1](#), EPRS, 2016.

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1. Introduction

Civil procedure is directly relevant for millions of European Union (EU) citizens and businesses. Simple, transparent and clear rules of procedure can help people and companies to better understand and enforce their rights in a legal dispute. The rules of civil procedure, including for example the rules on how to bring a court case, what documents need to be submitted, whether a lawyer needs to be consulted, are the competence of each of the Member States. However, the European Union also has an important role to play.

The **EU Member States**, under the Treaty on the Functioning of the European Union (TFEU), have **entrusted the EU to facilitate access to justice⁶ and develop judicial cooperation in civil matters.⁷** Moreover the EU is tasked by the Member States to adopt measures to achieve the objective of establishing a functioning internal market.⁸ To implement those tasks and achieve the objectives provided in the TFEU, the EU has taken a number of actions.⁹ In the area of civil procedure, the EU has already adopted rules, for example, to help citizens and businesses to settle low value disputes,¹⁰ coordinate rules on access to legal aid¹¹ and facilitate debt recovery.¹²

Experts in European private law, however, argue that there is **further potential at EU level to optimise rules of procedure.¹³** The optimisation of procedural rules across the EU can facilitate cost-effective dispute resolution and the rule of law, and enhance trust among judiciaries in the EU. These two functions of civil procedure are central to recoup the full benefits of the fundamental freedoms of the EU's internal market and facilitate cross-border mobility of persons, services, goods and businesses.

This European added value assessment (EAVA) **estimates possible benefits** for the EU economy that can be generated by **adopting minimum European standards of civil procedure.** The purpose of the EAVA is to provide evidence-based support for the European Parliament's initiative on the common minimum standards of civil procedure.¹⁴ The adoption of common minimum EU standards of civil procedure have been identified as one of the possible tools available to enhance access to justice and judicial cooperation in civil matters and facilitate cross-border mobility of persons and businesses. The key focus of the study is on the **quantitative assessment** of the potential European added value that can be generated by the introduction of common minimum EU standards of civil procedure.¹⁵

The quantitative assessment in this EAVA has been further developed and revised since the adoption of Parliament's resolution in 2017, with a view to informing further discussion on its call for a legislative proposal.

⁶ Article 67 TFEU

⁷ Article 81 TFEU

⁸ Article 114 TFEU

⁹ See Section 2 'EU Law and Policy Context' below for an overview of EU legal acts in the area of civil procedure.

¹⁰ [Small Claims Procedure Regulation](#), 2007.

¹¹ [Legal Aid Directive](#), 2016.

¹² The [European Account Preservation Order](#) Regulation, 2014.

¹³ See e.g. Xandra E. Kramer, [Strengthening Civil Justice Cooperation: The Quest for Model Rules and Common Minimum Standards of Civil Procedure in Europe](#), 2018; [Harmonized Rules and Minimum Standards in the European Law of Civil Procedure](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2016.

¹⁴ European Parliament [resolution](#) of 4 July 2017 with recommendations to the Commission on common minimum standards of civil procedure in the European Union (2015/2084(INL)).

¹⁵ This EAVA does not analyse the European added value of other options to optimise civil procedure. Additionally, this EAVA does not provide a detailed legal analysis of the substantive and material scope of the possible minimum standards of civil procedure.

1.1. Background

Measures on civil procedure are **necessary for the proper functioning of the internal market**¹⁶ and an **integral element of access to justice**. Civil procedure, comes into play in disputes between two private parties, for example, in family, consumer or contractual matters. EU measures on civil procedure aim to reduce economic costs for private parties in submitting a claim or enforcing a right, to provide better access to justice, to making claims and to building trust among judiciaries in the EU Member States. To date, the EU has adopted thirteen legal instruments in the area of civil procedure.¹⁷

Expert evaluation and feedback on the effects of the adopted EU instruments indicates **substantial reduction of costs for the parties**. For example, the EU regulation establishing procedure for settlement of claims of low value has contributed to a 40 % reduction in the costs of litigating a cross-border claim and reduced the time of litigation by 66 to 87 %.¹⁸ This means that settling a dispute by applying EU procedural rules is now on average five times faster¹⁹ and almost half the cost than before the adoption of EU rules.²⁰

However, evaluations also highlight that **current EU measures on civil procedure do not perform to the best of their potential**. The uptake and use of EU procedures is limited and the EU legislation adopted is highly fragmented. The EU procedural rules cover only selected areas of civil law relations and selected procedures.²¹ In the area of judicial cooperation in civil matters, the EU *acquis* has ten horizontal legislative acts and three sectoral pieces of legislation specifically applicable to consumer,²² competition²³ and intellectual property law²⁴ fields.

The **positive results** of the EU measures in the selected areas, developments on the international level and limitation of the current EU legal framework on civil procedure, **drive further demand** for EU action in the field of civil procedure.²⁵ The discussion on what additional action at EU level are necessary, remains open.

¹⁶ For example, [Regulation \(EC\) No 861/2007](#) of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure explicitly provides that 'The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market'; Similarly, see the preamble to [Regulation \(EC\) No 1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

¹⁷ See Section 2 below for the analysis.

¹⁸ European Commission staff working document, Impact assessment accompanying the document proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, [SWD\(2013\) 459 final](#), p.12.

¹⁹ The litigation time decreased from up to 24 months to 3 to 8 months.

²⁰ European Commission staff working document, [SWD\(2013\) 459 final](#), p.12.

²¹ While EU horizontal measures are an important step towards the development of EU law rules in the area, the current measures do not cover all stages and all the aspects of the civil procedure. In this sense, there are important lacunas in the current EU framework, either in terms of procedural rights or stages of procedure covered. These lacunas in EU legislation are currently covered differently in the various procedural rules in the Member States.

²² [Directive 98/27/EC](#) of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, OJ L 166, 11.6.1998 (Consumer Injunctions Directive).

²³ [Directive 2014/104/EU](#), Competition Damages Directive.

²⁴ [Directive 2004/48/EC](#), IP Rights Enforcement Directive.

²⁵ See Section 3 for more detailed analysis.

One group of proposals to develop EU civil procedure suggests focusing on the efficiency of dispute management and judicial cooperation through **development of technical tools**²⁶ and shifting from traditional litigation to **alternative dispute resolution methods**.²⁷ The key argument is that the availability of technical tools, for example submission of documents by electronic means or videoconference to provide evidence, would contribute to the enhanced efficiency of the whole procedure. The optimisation of procedural rules themselves, i.e. the rules under which documents need to be submitted, or which evidence can or should be presented, does not need to be addressed, or addressed only minimally.

Critics of this approach question whether and to what extent maximisation of cost-effectiveness and trust in civil procedures, particularly in cross-border situations, can be achieved through primarily technical solutions and alternative methods of dispute resolution. Critics argue that innovative technological solutions and promotion of alternative dispute resolution methods also need to be supplemented by the coordination or harmonisation of the key elements of the civil procedure. To put it differently, the EU cannot achieve optimal efficiency gain and reduce economic losses, due to the transaction and administrative burden costs related to cross-border civil procedures, by only facilitating technological e-solutions and alternative dispute resolution (ADR).

Accordingly, a **second group of proposals** argues that, in addition to technical tools and ADR, a more **substantive coordination on the core principles of civil procedure** is needed. The work undertaken by the European Law Institute (ELI) and International Institute for Unification of Private law (UNIDROIT) provides strong evidence that while technical solutions are necessary, they are not sufficient and further action is required to also address substantive issues related to civil procedure.²⁸ The key argument here is that further efficiency gains, especially in the area of enforcement of judicial decisions, cannot be achieved without measures that facilitate trust between EU judiciaries. Trust, can only be achieved by clearly defining common standards of civil procedure at EU level.

Defining common minimum EU standards of civil procedure would also push national systems to reflect on the best available practices and possibly modernise their national systems. The common minimum EU standards of civil procedure would also help parties to better estimate the cost of proceedings and thus reduce uncertainty and delay costs.

Dr Nelly Madanska, a former Deputy Director of the Bulgarian Institute of Justice and an experienced advisor at the Bulgarian Ministry of Justice, summarised the state of discussion and developments in the field as follows: 'At this stage of accumulated intellectual potential, social perception and policies, reflected in documents and acts of EU bodies, at least two main options for development [in the area of civil procedure] may be envisaged. The first one is to let the above-mentioned process develop naturally. The other option is related to the acceleration of the Europeanisation of the civil

²⁶ See for example, European Commission, [2019-2023 Action Plan European e-Justice](#), ST/5140/2019/INIT, OJ C 96, 13 March 2019, p. 9–32.

²⁷ [Directive 2008/52/EC](#) of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24 May 2008, p. 3- 8; [Directive 2013/11/EU](#) of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18 June 2013, p. 63–79; [Regulation 524/2013/EC](#) of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18 June 2013, p. 1-12.

²⁸ An overview on the ongoing UNIDROIT/ELI project on principles of civil procedure is available on the web page of the [International Institute for Unification of Private Law](#). See also, [Harmonized Rules and Minimum Standards in the European Law of Civil Procedure](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2016.

proceedings, through establishing common minimum standards, which may serve as a basis for approximation of the national civil proceedings legislations'.²⁹

1.2. Methodology and scope of assessment

The EAVA focuses on the assessment of the necessity and possible benefits of developing common minimum EU standards of civil procedure. Accordingly, this study answers the following question: how much European added value can be generated by adopting common minimum EU standards of civil procedure?

To answer this question, EAVA firstly analyses the existing situation (Section 2) and identifies gaps and problems in the existing regulatory framework (Section 3). The aim is to map the existing legal landscape and identify possible sources of inefficiency in the current system. Section 2 provides a concise overview of the current EU legislation in the field of civil procedure. This qualitative analysis of the EU legislation focuses specifically on the identification of the legal basis, aims and scope of the adopted legislation and the procedural elements that are currently covered.³⁰ Section 3 assesses the existing gaps.

Secondly, the EAVA then analyses how current inefficiencies can be addressed (Section 4) and how much European added value can be generated as a result (Section 5). Section 4 develops three policy options³¹ as to how the EU could introduce minimum standards of civil procedure. The options outline the possible substantive scope and type of EU legislative action. Section 5 quantifies the European added value of introducing common minimum EU standards of civil procedure. The European added value is estimated in terms of the percentage of reduction of total cost of a civil litigation.³² It is assumed that the three policy options identified would have different potential for this cost reduction, ranging from 5 to 15 % of total costs for cross-border cases and 0.5 % of national cases.

The substantive scope of the EAVA analysis covers minimum EU standards of civil procedure applicable to the procedure before the courts, including principles and rules on costs and funding of litigation in civil law cases. While important areas of law, family law issues, insolvency, employment and competition, as well as issues related to the organisation of the courts and ADR, are not covered by this EAVA. Neither does this EAVA provide a detailed comparative legal analysis of the possible substantive and material scope of the common minimum standards of civil procedure. However, the available body of legal analysis is taken as a starting point to generate insights into the quantification of the European added value. To estimate the European added value, this study builds extensively on a review of academic and policy literature, available empirical data,

²⁹ Nelly Madanska, '[Harmonised' rules of civil procedure?](#), presentation to the Committee on Legal Affairs Workshop on Common Minimum Standards of Civil Procedure in the EU: The Way Forward, European Parliament, 15 June 2016, Brussels.

³⁰ Practitioners have underlined that the EU and Member States need to reflect carefully on available law before taking any possible additional measures. Among other voices, the Council of Bars and Law Societies of Europe has underlined that further measures at EU level should complement, amend or improve current principle or regulatory acts, but not add new regulation. See e.g. Béatrice Deshayes, '[Des normes minimales communes de procédure civile?](#)', presentation to the workshop organised by the Legal Affairs Committee, European Parliament, 2016.

³¹ The EAVA focuses and limits itself primarily to the analysis of the two broad policy actions, and all four policy options, to optimise the EU civil procedure. The two policy actions are: firstly, the status quo and secondly, the adoption of common minimum standards of civil procedure at the EU level. Alternative policy options to optimise civil procedure are not analysed in this EAVA.

³² The total cost is estimated on the basis of the number of civil and commercial cases in the EU and the average cost of civil litigation in each Member State. See Section 5 for a detailed description of the methodology and analytical model of European added value assessment.

and an expert study commissioned by the European Parliamentary Research Service to support this EAVA.³³

³³ This EAVA makes use of the expert study commissioned by the European Parliamentary Research Service and carried out by Magdalena Tulibacka, Margarita Sanz and Roland Blomeyer, 'Common minimum standards of civil procedure', (the 'Tulibacka et al. study'). The Tulibacka et al. study was commissioned in 2015 and completed in 2016. The study, provides a detailed analysis of the type and substantive scope of possible EU action in the area of civil procedure, and elaborates three possible detailed policy proposals. Tulibacka et al. conducted an online survey and expert interviews with established academic experts, judges associations, national administrations, international lawyer and consumer associations. The Tulibacka et al. study was subject to internal (EPRS) and external (Professor Christopher Hodges, University of Oxford) peer review.

2. EU Law and policy context

This section focuses on the current EU rules and procedures. The aim is to describe the existing EU legislative and policy landscape, including the scope of the EU rules' coverage and its legal nature.

2.1. Applicable EU law

Procedural matters have traditionally belonged to Member States' national law. However, in the context of the development of EU law in general, and private law more specifically, there has been a shift in competences and legitimacy towards the EU.³⁴ **Article 47** of the Charter of Fundamental Rights of the European Union, provides a fundamental right to effective remedy and fair trial. **Article 67(4)** of the Treaty on the Functioning of the European Union (TFEU) states that 'The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'. Chapter 3 of Title V 'Area of Freedom, Security and Justice' of the TFEU focuses on judicial cooperation in civil matters. **Article 81 TFEU** provides a specific legal basis for the adoption of measures in the area of judicial cooperation in civil matters. Finally, **Article 114 TFEU** provides a general legal basis for all measures aiming to enhance functioning of the internal market.

Existing EU secondary legislation related to civil procedure include a mix of measures adopted on the basis of Article 67 TFEU, Article 81 TFEU and Article 114 TFEU. Secondary legislation can be divided into three broad groups of legal instruments.³⁵ Firstly, legal acts establishing autonomous 'optional instruments' provide a choice of autonomous, optional procedural rules, in an alternative to the procedures existing under the laws of the Member States.³⁶ Secondly, sector-specific directives, adopted on the basis of Article 114 TFEU aim to achieve objectives related to the functioning of the internal market.³⁷ Thirdly, EU horizontal instruments adopted on the basis of Article 81 TFEU³⁸ cover specific civil procedure topics.

2.1.1. Optional instruments – procedural rules as a parallel and optional alternative to national rules

The central feature of these optional instruments is that they provide an alternative tool, additional to the possibilities existing under the laws of the Member States, which remain unaffected. The key rationale of these instruments is to simplify and speed up litigation, for low value cross-border cases for example, as well as to simplify the recognition and enforcement of a judgment decided in another Member State. The added value of these instruments is that the common standard is applicable and comprehensible across all EU Member States. Arguably, this should generate and contribute to efficiencies and build mutual trust among judiciaries in the Member States. The

³⁴ See e.g. N. Reich, *General Principles of EU Civil Law*, Intersentia, 2014.

³⁵ For a concise and up-to-date overview see e.g. Rafal Mańko, *Europeanisation of civil procedure*, EPRS, European Parliament, June 2015; see also [Compendium of European Union Legislation on Judicial Cooperation in Civil and Commercial Matters](#), European Commission, 2018; *Implementation of optional instruments within European Civil Law*, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2012.

³⁶ i.e. [Regulation 861/2007](#) establishing a European Small Claims Procedure, or [Regulation 1896/2006](#) creating a European Order for Payment Procedure.

³⁷ See e.g. ongoing legislative proposal for a directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, [COM\(2018\) 0184 final](#) – 2018/089 (COD). On the legal basis, the proposal states: 'The legal basis for the proposal, as is the case for the current Injunctions Directive, is Article 114 of the TFEU to which Article 169 of the TFEU refers. The proposal aims, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that qualified entities can seek representative actions aimed at the protection of the collective interests of consumers in case of infringements of Union law'.

³⁸ [Legal Aid Directive](#) and the [Mediation Directive](#).

optional instruments, operate in parallel to the procedures available under national law. Parties remain free to either opt for the national procedure or to make recourse to the optional procedure provided by European law.

The first category of optional instruments, the European small claims procedure (ESCP),³⁹ the European order for payment procedure (EOP), and the European account preservation order (EAPO),⁴⁰ provide an entirely optional procedure that can be used as a substitute for national procedural rules. These three instruments have two broad aims: firstly, to simplify, expedite and reduce the costs of the procedure in cross-border situations and secondly, to simplify and expedite recognition and enforcement.

Table 1 – Optional and autonomous EU procedures additional to Member State procedures

	Legal basis	Aim and scope	Procedural steps/issues covered
European small claims procedure (ESCP)	Article 67 TEC	European procedure for small claims intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. ⁴¹ Civil and commercial matters, with value under €5 000. ⁴²	All stages of the procedure including: Commencement of the procedure, conduct of the procedure, languages, conclusion of the procedure, oral hearing, taking of evidence, representation of parties, assistance for the parties, remit of the court or tribunal, service of documents, time limits, enforceability of the judgment, costs, appeal, minimum standards for review of the judgment, applicable procedural law, recognition and enforcement.

³⁹ [Regulation 861/2007](#) establishing a European Small Claims Procedure or Regulation 1896/2006 creating a European Order for Payment Procedure.

⁴⁰ [Regulation \(EU\) No 655/2014](#) of the European Parliament and of the Council of 15 May 2014, establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

⁴¹ To simplify and speed up litigation concerning small claims in cross-border cases, whilst reducing costs, by offering an optional tool in addition to the possibilities existing under the laws of the Member States, which remain unaffected.

⁴² The Regulation does not extend, in particular, to revenue, customs or administrative matters or to State liability for acts and omissions in the exercise of State authority (*acta jure imperii*) (Article 2.1); Article 2.2. 'This Regulation shall not apply to matters concerning: (a) the status or legal capacity of natural persons; (b) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage; (c) maintenance obligations arising from a family relationship, parentage, marriage or affinity; (d) wills and succession, including maintenance obligations arising by reason of death; (e) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (f) social security; (g) arbitration; (h) employment law; (i) tenancies of immovable property, with the exception of actions on monetary claims; or (j) violations of privacy and of rights relating to personality, including defamation.'

	Legal basis	Aim and scope	Procedural steps/issues covered
European Order for Payment Procedure (EOP)	Article 67 TEC	<p>The European order for payment (EOP) procedure intended to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims.</p> <p>Civil and commercial matters in cross-border cases concerning uncontested pecuniary claims.⁴³</p>	<p>The EOP procedure is based on the use of standard forms in any communication between the court and the parties, in order to facilitate its administration and enable the use of automatic data processing.</p> <p>The EOP Regulation covers the application process for the EOP, issuing an EOP, serving an EOP to a defendant, opposing an EOP.</p>
European Account Preservation Order (EAPO)	Article 81 TFEU	EU procedure enabling a creditor to obtain a European Account Preservation Order ('Preservation Order' or 'Order'). This allows a court in one EU Member State to freeze funds in the bank account of a debtor in another EU Member State, with the aim of facilitating debt recovery between EU countries in civil and commercial matters.	Detailed regulation of procedural steps, including evidence, time-limits

The second category of EU optional instruments, the European Enforcement Order⁴⁴ and the European Certificate of Succession⁴⁵ have a more narrow scope. The focus is mainly on simplifying and reducing the costs of recognition and enforcement by providing standard forms.

⁴³ The aim is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement. Regulation shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*). This regulation shall not apply to: (a) rights in property arising out of a matrimonial relationship, wills and succession; (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (c) social security; (d) claims arising from non-contractual obligations, unless: (i) they have been the subject of an agreement between the parties or there has been an admission of debt, or (ii) they relate to liquidated debts arising from joint ownership of property.

⁴⁴ [Regulation \(EC\) No 805/2004](#) of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

⁴⁵ [Regulation \(EU\) No 650/2012](#) of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession and [Commission Implementing Regulation \(EU\) No 1329/2014](#) of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

Table 2 – EU coordinating procedures bridging diverging Member State civil procedure rules

		Aim and scope	Procedural steps/issues covered
European Enforcement Order (EEO)	Article 67 TEC	The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without a requirement to commence any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.	Provides for a system for certification as a European Enforcement Order For a judgment on an uncontested claim to be certified as a EEO, the court proceedings in the EU country of origin must meet certain procedural requirements.
European Certificate of Succession (ECS)	Article 81 TFEU	The main aim of this regulation is to enhance the right of persons in a succession context with cross-border implications. The Regulation brings all civil-law elements related to the succession together, and as one element, provides for the provision of an optional European Certificate of Succession. The European Certificate of Succession (ECS) is an optional document issued by the authority dealing with the succession. It is recognised in all EU countries automatically.	Provides for creation of a European Certificate of Succession

The third category includes the Online Dispute Resolution Regulation (ODR).⁴⁶ This category is similar to the category two instruments, as it provides an optional procedure to simplify and reduce the costs. The ODR provides an online platform through which consumers and traders can submit a complaint in consumer disputes emerging from online transactions. The ODR also provides an information, matching and case management system. Importantly, however, it does not provide procedural rules for settling disputes, but a technical system to simplify the procedure instead. The procedural rules of the ADR body, to which complaint submitted through ODR is referred, apply.

⁴⁶ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

Table 3 – EU procedures optional to national out-of-court dispute resolution mechanisms

	Legal basis	Aim and scope	Procedural steps/issues covered
Online Dispute Resolution Regulation (ODR)	Article 114 TFEU	<p>ODR offers a simple, efficient, fast and low-cost out-of-court solution for consumers and traders to disputes arising from online transactions.</p> <p>Concerns all disputes for products or services bought online anywhere in the European Union.</p>	<p>Online platform that provides a standard complaint form available in all official EU languages and free of charge.</p> <p>Matching with the ADR body.</p> <p>Case management tool.</p> <p>The ODR does not include a procedural rule, the rules and procedures of the selected disputes resolution body apply.</p>

2.1.2. Sector-specific instruments – procedural rules applicable to the specific substantive area of law

In the areas of EU consumer protection law,⁴⁷ intellectual property,⁴⁸ and competition law,⁴⁹ the EU has adopted legislation that regulates certain procedural aspects in a specific policy field.

⁴⁷ Consumer Injunctions [Directive 2009/22/EC](#) of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (codified version), text with EEA relevance. See Commission proposal currently under consideration [proposal for a directive](#) on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, [COM\(2018\) 184 final](#); [Directive 2013/11/EU](#) of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

⁴⁸ [Directive 2004/48/EC](#) of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

⁴⁹ [Directive 2014/104/EU](#) of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Table 4 – EU sector-specific procedural instruments

		Aim and scope	Procedural steps/issues covered
Consumer Injunctions Directive (CID)	Article 114 TFEU	A mechanism allowing qualified entities (i.e. consumer organisations) to seek an injunction to stop infringement of collective consumer interests on consumer rights, consumer credit, package travel, unfair commercial practices, unfair terms in consumer contracts, sale of consumer goods and associated guarantees.	Sets minimum standards for injunctions by consumer organisations. Does not in itself stipulate procedural rules but instead provides for a right of action.
Consumer Alternative Dispute Resolution (ADR) Directive	Article 114 TFEU	Disputes between consumers and traders concerning contractual obligations arising from sales or services contracts , both online and offline , in all economic sectors , other than health and higher education. This should include disputes arising from the sale or provision of digital content for remuneration . Applies to complaints submitted by consumers against traders .	Provides for rules on access to and quality requirements applicable to ADR entities and procedures
Intellectual Property Rights (IPR) Enforcement Directive	Article 114 TFEU	Any infringement of intellectual property rights provided for by EU law and/or by the national law of the EU country concerned, subject to exceptions provided in Article 2.	Provides for a minimum but standard set of measures, procedures and remedies allowing effective civil enforcement of intellectual property rights throughout the EU internal market.
Antitrust Damages Directive (ADD)	Article 114 TFEU and 101 TFEU	Action for damages for violation of competition law rules to ensure equivalent level of protection and enforcement throughout the internal market.	Provides procedural rules to guarantee full compensation for a harm caused by an infringement of the EU antitrust rules. Includes right to full compensation; principles of effectiveness and equivalence; rules, principles and penalties on the disclosure of evidence; effect of national decision, limitation periods, joint and several liability; passing-on of overcharges; quantification of harm; consensual dispute resolution.

2.1.3. Horizontal instruments – procedural rules applicable to the specific element of civil procedure

The last category of the EU measures are horizontal measures that focus on the specific element of civil procedure, but cover broad policy areas.⁵⁰

⁵⁰ Council [Directive 2002/8/EC](#) of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes; [Directive 2008/52/EC](#) of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters; Commission [Recommendation of 11 June 2013](#) on common principles for injunctive and compensatory collective redress

Table 5 – EU horizontal procedural instruments

	Legal basis	Aim and scope	Procedural steps/issues covered
Legal Aid Directive (LAD)	Articles 61 and 67 TEC (now 67 TFEU)	Establishes minimum common rules relating to legal aid for EU cross-border disputes (excluding Denmark) in civil and commercial matters.	Establishes a right to legal aid; minimum standards related to the conditions to receive and extent of legal aid and provides procedural rules on processing application for legal aid including access to information, language, duty to provide reasons for rejection. Commission Decision 2004/844/EC of 9 November 2004 provides a standard form for legal aid application.
Mediation Directive (MD)	Articles 61 and 67 TEC	Establishes rules to facilitate the use of mediation in cross-border disputes in civil and commercial matters on a voluntary basis. It does not cover revenue, customs or administrative matters; the liability of an EU Member State authority for acts and omissions in the exercise of State authority; and disputes where one or more parties is domiciled or resident in Denmark.	Facilitates Member State establishment of rules on the quality of mediation; recourse to mediation; enforceability of agreements resulting from mediation; confidentiality of mediation; effect of mediation on limitation and prescription periods; provision of information for the general public; provision of information on competent courts and authorities.
Collective Redress Recommendation (CRR)	Article 292 TFEU	This non-binding instrument provides principles to facilitate access to justice, stop illegal practices and enable injured parties to obtain compensation in mass harm situations caused by violations of rights granted under Union law, while ensuring appropriate procedural safeguards to avoid abusive litigation.	Sets principles for collective redress including: principles on standing, admissibility, information on a collective redress action, reimbursement of legal costs of the winning party, funding and cross-border cases applicable to injunctive and compensatory redress; principles on expedient procedures for claims for and efficient enforcement of injunctive orders; principles related to the compensatory collective redress including on constitution of the claimant party by 'opt-in' principle, collective alternative dispute resolution and settlements, legal representation and lawyers' fees, prohibition of punitive damages, funding of compensatory collective redress and collective follow-on actions.

In conclusion, the secondary EU legislation on civil procedure issues is a very complex and mixed landscape. The legal basis and the substantive scope of the instruments adopted in the area of civil procedure is different. While some instruments provide an autonomous, optional EU procedure (e.g. small claims procedure), others regulate a specific element of a procedure (e.g. legal aid), or a specific area of law (e.g. consumer disputes). Some instruments are limited to cross-border

mechanisms in the Member States concerning violations of rights granted under Union Law, see also Commission proposal currently under consideration, proposal for a directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, COM(2018) 184 final.

situations while others also apply to domestic cases. Moreover, some instruments are adopted in the form of a regulation and are therefore directly applicable, while others are directives requiring national implementation. Bringing this complex matrix of instruments together, Xandra Kramer concludes: 'the specifics of the EU supranational order, the limited competence of the EU legislator, and the reluctance of the Member States have resulted in ad hoc piecemeal legislation'.⁵¹

⁵¹ Xandra E. Kramer, *Strengthening Civil Justice Cooperation: the Quest for Model Rules and Common Minimum Standards of Civil Procedure in Europe*, in Marco Antonio Rodrigues and Hermes Zaneti Jr (ed.) *Repercussões do CPC - Processo Internacional*, Editora Juspodivm, 2019.

3. Limitations and gaps

The status quo of EU rules on civil procedure is heavily criticised by the experts. Kramer states that a 'mishmash of EU civil procedure legislation can be characterised as a legislative form of unintentional deconstructivism, and – along with application problems in the Member States – has so far only to a limited extent contributed to increasing access to justice and to strengthening the enforcement of EU law'.⁵²

The current situation in practice results in **two main problems**: low use of the European procedures due to incoherence and complexity and low level of trust among judicial authorities.⁵³

The review and the evaluations of the existing secondary legislation (see Table 6 below), repeatedly highlight the similar type of issues that can be broadly summarised as follows: the EU instruments, if adopted and applied correctly, have a great economic potential in the Member States, however, as it currently stands the use of EU procedures is limited. For example, the impact assessment on establishing a European small claims procedure and a European order for payment procedure states that 'Despite the benefits it could bring in terms of reducing the costs and time of litigating cross-border claims, the procedure is still little known and remains under-used several years after the entry into application of the Regulation'.⁵⁴

⁵² Xandra E. Kramer, *Strengthening Civil Justice Cooperation: the Quest for Model Rules and Common Minimum Standards of Civil Procedure in Europe*, in Marco Antonio Rodrigues and Hermes Zaneti Jr (ed.), *Repercussões do CPC - Processo Internacional*, Editora Juspodivm 2019.

⁵³ Other factors, for example: lack of knowledge, lack of experience among judges and lawyers, lack of willingness of lawyers to use a fast and cheap procedure, have been mentioned in the evaluation reports.

⁵⁴ Commission staff working document, impact assessment accompanying the document 'proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European small claims procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure', SWD(2013) 459 final, p.7.

Table 6 – Evaluations and reviews of the EU secondary legislation on civil procedure

		Evaluation/review
1	European small claims procedure (ESCP)	2013 Evaluation identified a number of shortcomings leading to the 2015 proposal for amendment. Amended Regulation subject to evaluation in 2022 (Article 28). 2013 Impact assessment supporting amendments.
2	European order for payment procedure (EOP)	2013 Evaluation 2013 Impact assessment 2016 European Parliament implementation report and European implementation assessment
3	European account preservation order (EAPO)	
4	European enforcement order (EEO)	Evaluation planned for 2021.
5	European Certificate of Succession (ECS)	Feasibility study on the registration and interconnection of national European Certificate of Succession registers planned for 2020.
6	Online Dispute Resolution Regulation (ODR)	
7	Consumer Injunctions Directive	2017 Fitness check of consumer law; (see also underlying study p. 235 ff). 2017 Inception impact assessment Roadmap .
8	Consumer Alternative Dispute Resolution (ADR) Directive	
9	Intellectual Property Rights (IPR) Enforcement Directive	SWD(2017) 431 COM(2017) 708
10	Antitrust Damages Directive	Evaluation planned for 2024.
11	Legal Aid Directive	Compliance assessment study concerning Directive (EU) 2016/1919 on legal aid planned for 2021. 2016 European Parliament, impact assessment of European Parliament substantial amendments .
12	Mediation Directive	2014 External European Commission evaluation study . 2016 European Parliament implementation report and European implementation assessment .
13	Collective Redress Recommendation	2018 report on the implementation of COM(2018)040. Collective redress in the Member States of the European Union , Directorate-General for Internal Policies of the Union, 2018.

The fragmentation and incoherence may **create costs and practical obstacles for citizens and companies** in the exercise of their right to an effective remedy as provided in Article 47 of the Charter and results in the low use of the EU procedures available. Two types of fragmentation affect the efficiency of the EU civil procedure. First are the differences among EU measures and second the differences among Member States' procedural rules. The differences between rules of civil

procedure in each Member State are not necessarily the problem in themselves. However, these differences can also present significant obstacles to the exercise of free movement rights or right to an effective remedy protected under EU law. This is the case when differences, for example, contribute to mistrust between judiciaries and lead to unnecessary delays or additional costs in cross-border litigation or enforcement of judicial decisions. Therefore a nuanced balance is necessary to ensure, on the one hand, protection of national differences and the richness of national civil procedural rules, and on the other, protection of the right to an effective remedy and free movement rights protected under EU law.

Section 2 above outlined the scope and coverage of current EU measures on civil procedure. By way of summary, the table below provides a visual representation of the differences in the scope of coverage of minimum standards of procedure currently covered by EU secondary legislation.⁵⁵

⁵⁵ The four main groups of principles against which current EU legislation is reviewed are based on the principles suggested by the ELI/UNIDROIT project. These principles are: (1) access to courts and to justice; (2) fair proceedings; (3) efficient proceedings; (4) a just and effective outcome. The four main groups were operationalised by Tulibacka et al. through a set of twenty-one more specific principles. See [Annex 1](#) for detailed analysis and an explanation of the choice of methodology.

Table 7 – Procedural standards covered by the current EU legislation on civil procedure

	ESCP	EOP	EAPO	EEO	ECS	ODR	CID	ADR	IPR	ADD	LAD	MD	CRR
Access to legal advice	x										x		
Confidential consultation										x			
Choice of lawyer	x												
Litigation or ADR											x		x
Funding											x		x
Proportionate costs	x	x	x							x			x
Unmeritorious claims	x	x									x		x
Judicial independence													
Judicial impartiality													
Openness	x								x				x
Equality of parties													
Fair play inter parties	x	x	x	x					x				
Notification of parties	x	x	x	x					x				
Equal access to information	x		x										x
Judicial control	x	x											
Undue delay	x		x										
Duty to provide reasons													
Accurate decisions													
Protective relief			x						x				
Effective enforcement													
Finality													

The EU primary law and Court of Justice of the European Union (CJEU) jurisprudence provide further principles and guidance applicable to EU law in general, including civil law. This complex regulatory

framework of primary and secondary law provides anything but a coherent and easily understandable regulatory framework. This complexity presents difficulties, even for civil law practitioners, let alone ordinary citizens.

Based on the extensive review of the common procedural standards currently in force in the EU and the CJEU case law, scientific literature, EU and international policy developments, Tulibacka et al. conclude:

'[...] a citizen or a resident of an EU Member State wishing to commence litigation in another EU Member State [...] When involved in litigation [...] still cannot rely on the same or similar procedural guarantees. Various aspects of access to justice, jurisdiction, standing, judicial independence and impartiality, costs and funding of litigation, legal representation, the stages of proceedings, the roles of the parties and the court, evidential rules, requirements concerning language and translation of documents, specific procedural steps, timelines and time limits, sanctions, interim relief, decisions, appeals, recognition and enforcement retain significant differences.'⁵⁶

Fragmentation and incoherence between applicable rules is an **obstacle to building mutual trust among judiciaries**. Effective cooperation between Member State judiciaries based on trust is an essential element of well-functioning freedom, security and justice and the EU internal market. The current incoherent body of law is criticised in the academic literature as 'deconstructive' and damaging mutual trust.⁵⁷ Tulibacka et al. underline that 'The courts applying EU procedural standards are national courts, and their different approaches as well as the results they produce do not always encourage mutual trust'.⁵⁸ This also puts pressure on the CJEU, which is often called to give a uniform interpretation of procedural concepts and principles scattered among various legislative acts, based on the contextual interpretation.⁵⁹

Trust is not a goal in itself but a value and an integral operational mechanism that allows judicial systems to function effectively and efficiently in the EU context. As Wischmeyer puts it, 'until a comprehensive European civil or criminal code is passed and a strong European judicial authority is created, trust is indispensable in order to explain and justify the risks a national court takes in every decision'.⁶⁰ Wischmeyer draws two key conclusions on the issue of trust.⁶¹ Based on extensive review of the academic literature and empirical studies, Wischmeyer concludes that trust 'is not only a precondition for integration, but also the result of legal regulation'.⁶² Therefore, the legislative measures to facilitate a climate of trust are necessary. The lack of trust 'has been identified as one decisive reason for the crisis of judicial cooperation'⁶³

In conclusion, the EU measures on civil procedure are fragmented and do not provide a coherent framework. The fragmentation creates practical obstacles and generates costs for the parties and disadvantage development of trust in judicial cooperation. Based on the above analysis, **additional measures at EU level should focus on reducing fragmentation among existing norms and facilitate trust between judiciaries**.

⁵⁶ Tulibacka, et al., Common minimum standards of civil procedure. et al., [Annex I](#)

⁵⁷ Xandra E. Kramer, Strengthening Civil Justice Cooperation: the Quest for Model Rules and Common Minimum Standards of Civil Procedure in Europe, in Marco Antonio Rodrigues and Hermes Zaneti Jr (ed.), *Repercussões do CPC - Processo Internacional*, Editora Juspodivm, 2019.

⁵⁸ Tulibacka et al., Study, Findings and Recommendations.

⁵⁹ See e.g. Case C-456/11, *Gothaer Allgemeine Versicherung AG and Others v Samskip GmbH*, Judgment of the Court (Third Chamber), 15 November 2012.

⁶⁰ Thomas Wischmeyer, Generating Trust Through Law? – Judicial Cooperation in the European Union and the 'Principle of Mutual Trust' (7 July 2015), 17 German L. J. (2016), 363.

⁶¹ *ibid.*, p.362

⁶² *ibid.*, p. 362

⁶³ *ibid.*, p. 362

4. EU policy response

4.1. Need to take EU action – cross-border mobility, international developments and fragmentation of existing measures

In addition to the fragmentation and incoherence in the current regulatory framework, two other push factors underline the **necessity and timeliness of EU action on civil procedure**: the number of court proceedings, and developments on the international level.

The number of civil and commercial **court proceedings with cross border implications** is significant and **expected to grow**.⁶⁴ In 2018, the number of civil and commercial court proceedings in the EU was estimated to be in the range of 3.4 million. In the commercial law area alone, the number of cross-border cases between EU businesses is in the range of 1.2 million annually.

Driven by the large number of court proceeding with cross-border implications, a number of **international initiatives aim at the streamlining and modernisation of the rules of private international law**. The most comprehensive initiative, specifically focusing on the European civil procedure, is the joint UNIDROIT and European Law Institute (ELI) project. The ELI/UNIDROIT project started in 2013, and aims to present a set of comprehensive rules on civil procedure in September 2019. The project seeks to elaborate a set of rules and principles that would reconcile differences between various national rules of civil procedure. The focus of these rules and principles is on the peculiarities of transnational, as compared to purely domestic, disputes. The objective therefore is to develop state of the art modern rules of civil procedure that apply to transnational disputes.

The extensive work by ELI/UNIDROIT takes the practical necessities of the transnational parties into consideration and is based, among other sources, on the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights (ECHR), EU law, and common traditions of the European countries. The ELI/UNIDROIT rules and principles, when published, will provide a most comprehensive and up-to-the date proposal for governance of civil procedure in transnational disputes. This authoritative restatement on the European civil procedure, however, will be of a 'soft law' nature, providing guidance, rather than a binding legal instrument. To bring this 'soft law' into a legally binding set of rules and principles, an EU law instrument would be needed.

The current market demand for settlement of civil disputes, reflected in the number of court proceedings, provides new economic opportunities. Additionally, common EU action would have a strong potential to contribute to the EU objective to build trust between EU judicial systems. Moreover, the current international initiatives provide a fruitful evidence-supported basis for regulatory action. Bringing this together, taking action at EU level would address market demands, contribute to EU objectives and result in modern up-to-date regulation.

4.2. Possible further EU action – common minimum standards of civil procedure

One of the proposals discussed in the academic and policy literature on how to enhance EU civil procedure is an **adoption of minimum EU standards of civil procedure**.⁶⁵ Hess and Kramer,

⁶⁴ See e.g. European Commission impact assessment on service of documents See e.g. Commission staff working document impact assessment accompanying the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), [SWD/2018/287 final](#).

⁶⁵ See e.g. M. Weller and C. Althammer (eds.), *Mindeststandards im europäischen Zivilprozessrecht*, Mohr Siebeck, 2015.

leading experts in EU civil procedure law, summarising the main trends, argue that 'civil procedure in the EU has entered a new era in which the development of common standards and best practices in the Member States and at the EU level are of the essence'.⁶⁶ This policy option is preferred over others to optimise EU civil procedure because it has the greatest potential to address the existing shortcomings, facilitate trust and trigger modernisation of national procedural rules.⁶⁷ Neither the status quo nor purely technical policy solutions would be able to meet those objectives.⁶⁸ The direct impact of the introduction of minimum EU standards of civil procedure would be (1) reduction of fragmentation, and (2) enhancement of trust between Member State judiciaries. The minimum standards of civil procedure also expected to indirectly trigger (3) modernisation and optimisation of national civil proceedings. The cumulative effect of these three impacts would be a reduction of costs of civil and commercial proceedings in the EU and an enhancement of the fairness of judicial proceedings.

4.2.1. Efficiency and fairness in trans-border judicial proceedings for citizens and business

Citizens and businesses would benefit from simplification, reduction of uncertainty, clarification of and easier access to rights when litigating in unfamiliar cross-border situations. This includes effective realisation of four EU fundamental freedoms provided in the EU Treaties and secondary law and fundamental rights safeguarded by Article 47 of the Charter of Fundamental Rights of the European Union. The effective, clear and transparent system of European civil procedural law that respects obligations following from the Charter would enhance citizen and business confidence in EU internal market freedoms and the European area of justice. As Robert Bray points out, 'without a decent legal system, a well-functioning judiciary and civil service and good rules of civil procedure, you will never have the benefits of a well-functioning free-market economy'.⁶⁹

4.2.2. Mutual trust

Mutual trust is difficult to achieve without a common basis that is shared and understood among Member State judiciaries. A detailed analysis by Wischmeyer identifies three strategies that can contribute to building of trust of judicial cooperation.⁷⁰ The first strategy is to improve trust through administrative measures to develop a common 'European judicial culture'. This includes, for example, organising trainings, seminars and exchanges. The second strategy is to 'change the law in order to create a climate of trust'. This strategy, includes, among other possible measures, creation of minimum rules. Wischmeyer, with reference to the academic literature, states that 'Mutual recognition is facilitated notably by partial harmonisation, because it is easier for courts or agencies to trust when they know that the trustee follows those minimum rules'.⁷¹ The third strategy is the development, refinement and facilitation of trust through CJEU jurisprudence.⁷²

⁶⁶ B. Hess and Xandra E. Kramer, From Common Rules to Best Practices in European Civil Procedure: An Introduction, in Hess and Kramer, eds., *From Common Rules to Best Practices in European Civil Procedure*, Nomos, 2017, p.9.

⁶⁷ For the discussion of various policy options, their benefits and limitations, see e.g. European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, [Harmonized Rules and Minimum Standards in the European Law of Civil Procedure](#), 2016. Further detailed assessment is necessary to provide a comparative overview of alternative policy options to optimise the current EU civil procedure system.

⁶⁸ This is not to suggest that e-solutions are not necessary. The enhancement in efficiency of proceedings through modern technologies is both necessary and desirable.

⁶⁹ Robert Bray, Common Rules and Best Practices From the Perspective of the European Parliament, in Hess and Kramer, eds., *From Common Rules to Best Practices in European Civil Procedure*, Nomos, 2017, p.38.

⁷⁰ Thomas Wischmeyer, Generating Trust Through Law? – Judicial Cooperation in the European Union and the 'Principle of Mutual Trust' (7 July 2015), 17 German L. J. (2016).

⁷¹ *ibid.*, p. 365.

⁷² *ibid.*, p.365.

4.2.3. Modernisation of national procedural rules

Member States' experiences suggest that adoption of EU procedures triggers a revision of national rules and procedures. On this basis, discussing the possible effect of adopting minimum EU standards of civil procedure Madanska argues that 'On the one hand such set of principles would serve as a basis of further modernisation of the national procedural legislation, based on common values and which guarantees protection of the rights of the parties in the proceedings, regardless of the national court they have submitted their application to. On the other hand, the common minimum standards would be beneficial to the law enforcement, since they would enable the implementation of the national court proceedings in line with the harmonised perception of fair trial in reasonable time. The adoption of such measures would be a base for better mutual understanding of the national judges and enhancement of their perception for the European judges' mission'.⁷³

4.3. Policy options to introduce common minimum EU standards of civil procedure

The precise scope and definitions of the possible common minimum EU standards of civil procedure is an ongoing debate in the academic literature. Based on regulatory intervention logic and expert surveys, Tulibacka et al. identify three possible policy options to establish common minimum EU standards of civil procedure.⁷⁴

⁷³ Nelly Madanska, 'Harmonised' rules of civil procedure?, presentation at the Committee on Legal Affairs Workshop on Common Minimum Standards of Civil Procedure in the EU: The Way Forward, European Parliament, 15 June 2016, Brussels.

⁷⁴ This section is based on the detailed analysis provided in Tulibacka et al. Common minimum standards of civil procedure, [Annex I](#).

Table 8 – Three policy options for adoption of minimum EU standards of civil procedure

	Scope	Additional EU legislation	Binding legal act	Regulatory intervention	Relation to the status quo
Policy option 1: Compilation and consolidation	Compilation and consolidation of the existing minimum standards in one (guidance) instrument	No	No	Minimum	This option would provide only minimum added value in relation to the current status quo
Policy option 2: Comprehensive review, a 'Roadmap' and subsequent further legislation	This is a three step approach. First, comprehensive review of the existing EU and national standards. Second, adoption of the 'Roadmap' and third, additional legislation for specific stages of principles of civil procedure	Possible	Possible	Medium	<p>This option first aims to review and where possible remove incoherence in the existing rules. The further binding legal act(s) could be adopted, if necessary, to address any incoherence. The overall structure of the current regulation, i.e. covering specific principles, or stages of civil procedure, will remain.</p> <p>This option has a potential to remove a number of existing incoherencies, however, the limits of the current regulatory framework would remain.</p>
Policy option 3: Horizontal instrument	Horizontal, legally binding EU legislation that includes EU minimum standards of civil procedure.	Yes	Yes	High	This option would provide the highest degree of coherence, however, would require a substantial revision of the current regulatory structure.

4.4. European Parliament proposal – a horizontal directive establishing minimum standards of civil procedure

4.4.1. Legal basis and scope

The EU shares a wide range of competences with Member States in the civil procedure area.⁷⁵ The various options for the adoption of common minimum EU standards of civil procedure are discussed in detail in the 2015 European Parliament Committee on Legal Affairs working document 'on establishing common minimum standards for civil procedure in the European Union – the legal basis'.⁷⁶ The 2017 European Parliament resolution calls for the European Commission to propose a binding EU law instrument containing minimum standards of civil procedure applicable to all stages of civil proceedings, based on Article 81 TFEU. The draft directive, annexed to the 2017 Parliament

⁷⁵ Article 67 (4) TFEU; Article 81 TFEU; Article 114 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union.

⁷⁶ European Parliament Committee on Legal Affairs, [working document](#) on establishing common minimum standards for civil procedure in the European Union – the legal basis, December 2015.

resolution, provides a comprehensive set of rules and principles related to common minimum standards of civil procedure, divided into four broad sections: rules and principles related to fair and effective outcomes; efficiency of proceedings; access to court; and justice and fairness of proceedings.

4.4.2. Subsidiarity and proportionality

The objective of Parliament's 2017 proposal for a directive on the common minimum standards of civil procedure was 'to approximate civil procedure systems so as to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter and in Article 6 of the ECHR, by laying down minimum standards concerning the commencement, conduct and conclusion of civil proceedings before Member States' courts or tribunals'.⁷⁷ This objective, according to the European Parliament explanatory note, cannot be sufficiently accomplished by the Member States themselves.⁷⁸

The European Parliament also considers that the adoption of common minimum EU standards will not substitute national procedural systems and thus would not go beyond what is proportionate and necessary to achieve objectives provided under the Treaties.⁷⁹ As stated in the explanatory note accompanying the Legal Affairs committee report, 'The proposed directive is not aimed at substituting national civil procedure systems in their entirety. While respecting national specificities and the fundamental right to an effective remedy and to a fair trial, which ensures effective and efficient access to justice, it is aimed at establishing common minimum standards regarding the function and conduct of Member States' civil proceedings in relation to all matters falling within the scope of Union law. It is also aimed at providing a basis for the gradual deepening of the approximation of civil procedure systems of Member States'.⁸⁰ According to the Parliament's proposal, only minimum rules should be established, leaving it to the Member States to provide a higher level of protection.⁸¹

4.5. Position of the European Commission – further need to be assessed: no action so far

The European Commission responded to the 2017 EP resolution the same year.⁸² The Commission stated that it would first analyse the results of the ongoing Commission studies on service of documents and taking of evidence, and the results of the ELI/UNIDROIT project on civil procedure. Based on the results of that assessment, the Commission would decide on whether further action in this area is needed.⁸³ In its response, the Commission underlined that 'any further reinforcement or intensification of European minimum standards for civil procedure has to be done with respect to the diversity of laws and legal traditions of the Member States and to the benefit of the citizens and companies. [...] Should further action be needed in this area, the Commission intends to take into account Parliament's proposal in its future work'.⁸⁴

Not specifically related to the Parliament proposal on common minimum standards of civil procedure, but more generally in the area of judicial cooperation, the European Commission carried

⁷⁷ see Committee on Legal Affairs, [Explanatory statement](#) to the Report with recommendations to the Commission on common minimum standards of civil procedure in the EU (2015/2084(INL)), European Parliament.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² [Follow-up to the European Parliament resolution of 4 July 2017, with recommendations to the Commission on common minimum standards of civil procedure in the European Union](#), SP(2017)539.

⁸³ *ibid.* SP(2017)539.

⁸⁴ [Follow-up to the European Parliament resolution of 4 July 2017, with recommendations to the Commission on common minimum standards of civil procedure in the European Union](#), SP(2017)539.

out two impact assessments on service of documents⁸⁵ and on taking of evidence⁸⁶ in 2018, and proposed two legislative acts respectively.⁸⁷ Improving the effectiveness of national justice systems is also a part of the annual cycle of EU policy coordination through the European semester. These measures indirectly benefit procedural efficiency in civil and commercial litigation, although they do not however address the fragmentation and incoherence costs.

To date, the Commission has not followed Parliament's call to adopt common minimum standards of civil procedure.

⁸⁵ Commission staff working document impact assessment accompanying the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, [SWD/2018/287 final](#).

⁸⁶ Commission staff working document impact assessment accompanying the proposal for a a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, [SWD/2018/285 final](#).

⁸⁷ Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) [COM \(2018\) 379](#) and proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters [COM \(2018\) 378](#).

5. European added value assessment

This section estimates the benefits of adopting common minimum standards of civil procedure in quantitative terms.

5.1. Analytical framework

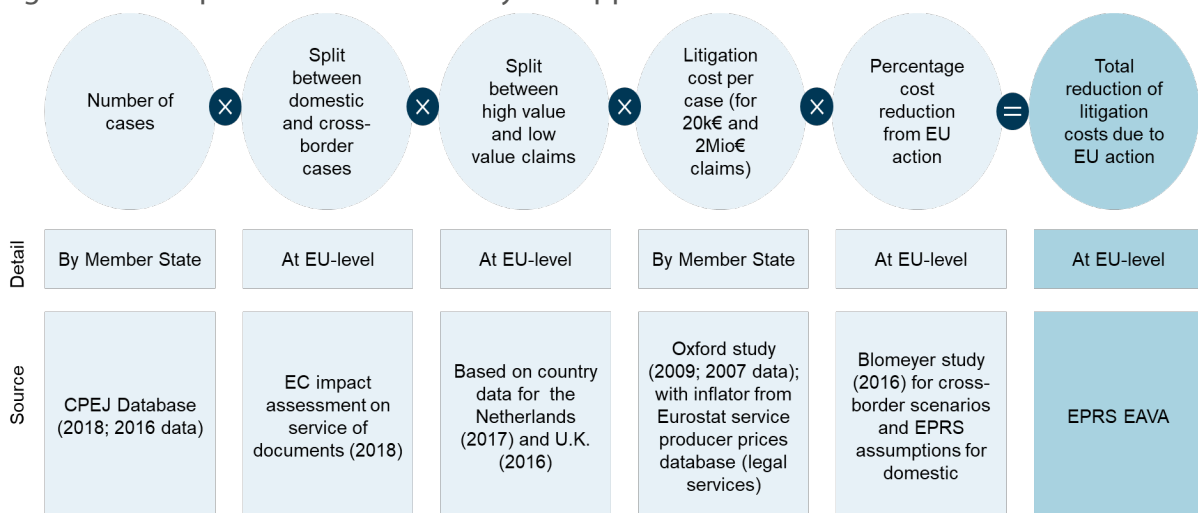
The European added value is estimated as a percentage reduction of the total cost of litigation in civil and commercial matters. Divergent procedural rules, especially in the cross-border context, generate uncertainty and unnecessary delay costs. To quantify these it is therefore assumed that the added value could be generated by enhancing procedural rules, specifically by introducing minimum standards of procedure across the EU. The main assumption is that enhanced procedural rules would reduce uncertainty and delay costs and therefore the total cost of civil and commercial dispute settlement would decrease.

The cost reduction analysis is based on the total estimated cost of civil and commercial litigation in the EU. For the cross-border cases the quantification takes three possible scenarios into account. The first scenario presumes only a minimum level of EU action and thus assumes only 5 % in cost reduction. The second scenario is based on the adoption of EU legislative measures and thus assumes a higher rate of cost savings of 10 %. The third scenario is most ambitious and assumes the largest cost saving potential of 15 %.

Minimum standards of civil procedure in the EU would mostly benefit those involved in cross-border disputes. However, based on experience with the EU procedural rules already in force, it is assumed that minimum standards of civil procedure would also contribute to modernisation and cost reduction in the procedural costs of national cases. We assume only a modest estimated 0.5 % cost reduction in national civil and commercial disputes.

The total cost reduction is therefore the sum of potential cost reduction in cross-border cases (5-15 %) and domestic cases (0.5 %).

Figure 1 – European added value analytical approach



5.2. Number of cross-border civil and commercial cases

The first element of the analytical model is the total number of civil and commercial matters in the EU and the number of cross-border cases. It is expected that minimum standards of civil procedure, would benefit disputes with a cross-border element to a large degree. The number of cross-border cases however is difficult to estimate with precision.⁸⁸ The available estimates on cross-border cases are provided in Table 9 below.

Table 9 – Estimates on the number of cross-border civil and commercial proceedings

	Number of cross-border cases	Methodology
Tulibacka et al.	83 222 cases (excluding family law)	Narrow scope of cross-border cases, excludes family law and total number is based on extrapolation of data from Germany to all EU countries. A cross-border case is understood as a case where at least one party resides outside the country of litigation.
Deloitte /Commission impact assessment on service of documents ⁸⁹	3.4 million (including family law) 1.2 million (commercial cases)	Adopts a broader understanding of the cross-border implications, to include all cases that have a cross-border element and not only cases where one party legally resides outside of the country of litigation.
EAVA/on the basis of the CEPEJ-STAT database	1.5 million (civil and commercial cases)	2018 CEPEJ-STAT ⁹⁰ database: <ul style="list-style-type: none"> - assuming 5 % cross-border cases; - 2016 number of cases per country or latest available data if 2016 data is not available; - for countries where data is not available, extrapolation based on the total EU average number of cases per unit of GDP.

Tulibacka et al. provide a very cautious estimate of the number of cross-border disputes in the EU.⁹¹ This estimate is based on the statistical data available on the number of cross-border cases in Germany. The definition of a cross-border case is very narrow and includes cases where claimants reside outside of Germany while litigating in German courts. Cases with cross-border implications in a wider sense are therefore excluded, as are family law cases. Based on this understanding of cross-border civil litigation, the number of cross-border cases (excluding family law) in Germany was 18 573 cases (in 2014). Extrapolating German numbers to other EU Member States, based on the relative share of GDP, leads to an estimated of total number of at 83 222 cross-border cases.⁹²

In the recent impact assessment on service of documents, the European Commission has estimated the number of cross-border commercial cases at 1.2 million, and with family law included, at

⁸⁸ National court systems do not collect statistical data on cases with a cross-border element.

⁸⁹ Commission staff working document accompanying the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

⁹⁰ Council of Europe database of European judicial systems

⁹¹ See Annex I to this publication.

⁹² For methodology of extrapolation, see Annex I to this publication.

3.4 million. The Commission estimate is based on the total number of civil and commercial cases and assuming a share of cross-border cases between 4-14 %, depending on the type of the case.⁹³

In this EAVA, the total number of civil and commercial cases are calculated on the basis of the data included in the Council of Europe database of European judicial systems (CEPEJ-STAT). The EAVA dataset includes 2016 data on litigious and non-litigious civil and commercial cases of first and second instance.⁹⁴ Assuming the lower estimate for the cross-border cases (5 %), the total number of cross-border civil and commercial cases is 1 542 486 cases.

Table 10 – EU-28 Incoming civil and commercial cases – courts of first and second instance

Incoming civil and commercial cases (EU-28)	
Incoming cases, first instance (EU-28)	
Civil and commercial litigious cases	11 251 414
Civil and commercial non-litigious cases	17 836 338
Incoming cases, second instance (EU-28)	
Civil and commercial litigious cases	1 367 922
Civil and commercial non-litigious cases	394 042
Total 1st and 2nd instance	30 849 715
Total cross-border first and second instance cases	1 542 486

5.3. Cost of civil litigation

The most comprehensive, comparative studies on the costs of litigation are the 2007 Commission study on the 'Transparency of Costs of Civil Judicial Proceedings in the EU'⁹⁵ and the 2009 Oxford study.⁹⁶ These two studies use expert surveys and available data to estimate the total average costs of litigation per Member State.⁹⁷ The total average fees are estimated considering the type of procedure and amount at stake. The 2007 Commission study provides most comprehensive comparative data on the court cases with a value of 20 000, while the 2009 Oxford study provides more detailed data on high-value commercial cases. The EAVA therefore uses 2007 Commission data for the small-value proceeding and 2009 Oxford study data for the high-value commercial cases. Eurostat data was used to adjust for the price increase in the legal services market between 2007 (the year of data collected in the Oxford study) and 2017.⁹⁸

⁹³ The basic assumptions used for quantification are detailed in Table 32 of [Study to support the preparation of an evaluation and impact assessment for the modernisation of the judicial cooperation in civil and commercial matters](#), Deloitte, Directorate-General for Justice and Consumers, European Commission, 2018.

⁹⁴ The 2018 CEPEJ-STAT dataset is based on 2016 national data. Where 2016 data was not reported, the quantification assumed the latest available data. For countries where data was not available, extrapolation based on the total average number of EU cases per unit of GDP.

⁹⁵ [Study on the Transparency of Costs of Civil Judicial Proceedings in the EU](#), 2006.

⁹⁶ C. Hodges, S. Vogenauer and M. Tulibacka (eds.), *The Costs and Funding of Civil Litigation: A Comparative Perspective*, Hart Publishing, Oxford, 2010.

⁹⁷ For the detailed review on the methodology for the cost calculation please refer to the two individual studies cited above.

⁹⁸ Eurostat – Dataset 'Service producer prices – annual data'/legal services (sts_sepp_a)

Table 11 – 2017 Cost of civil litigation for low and high-value cases in EU-28

Country	Cost for 20k case (adjusted) 2017	Cost for 2Mio case (adjusted) 2017	Country	Cost for 20k case (adjusted) 2017	Cost for 2Mio case (adjusted) 2017
Austria	10 709	422 932	Italy	7 151	686 966
Belgium	2 774	19 370	Latvia	3 479	686 966
Bulgaria	3 134	2 008 352	Lithuania	3 310	42 954
Croatia	4 813	686 966	Luxembourg	4 577	686 966
Cyprus	4 488	686 966	Malta	1 907	686 966
Czechia	4 106	104 102	Netherlands	9 064	686 966
Denmark	3 626	360 059	Poland	5 544	61 238
Estonia	7 731	232 398	Portugal	3 778	7 139
Finland	7 438	61 816	Romania	4 813	2 526 059
France	5 797	686 966	Slovakia	1 462	686 966
Germany	2 042	269 408	Slovenia	7 006	686 966
Greece	2 840	82 591	Spain	4 746	300 078
Hungary	3 390	1 319 580	Sweden	2 992	686 966
Ireland	4 712	296 745	United Kingdom	7 329	3 456 988

5.4. European added value

The total cost of civil and commercial litigation is quantified on the basis of the number of cases and the cost of litigation. The cost of litigation significantly depends on the value of the claim. In order to account to the differences among the cases, we have assumed, based on the review of the empirical data on the distribution of the cases in the national jurisdictions, that 97.5 % of all cases are cases with a value below €20 000, while 2.5 % are cases with a value over €2 million.⁹⁹ The key assumptions used to calculate the total cost of civil litigation for the EAVA are summarised in Table 10 below.

⁹⁹ WODC database '[Rechtspleging Civiel en Bestuur](#)', Dutch Ministry of Justice and Security, 2017 and United Kingdom, Civil Courts Structure Review: Final Report, July 2016.

Table 12 – Key assumption for the quantification of the European Added Value

Variables	Value	Assumptions and sources
Total number of legal proceedings in 2016 for civil and commercial cases in EU-28	30.8 Mio (available per Member State)	Based on the CEPEJ database, taking the sum of civil (and commercial) litigious and non-litigious cases – both first and second instance (incoming cases). Taking the 2016 number of cases by Member State (or latest available year if 2016 number is not available). For Member States without data, the number of cases is estimated based on the GDP and the average number of cases per unit of GDP for Member States with available data
Share of cross-border cases	5 %	Based on 2018 Commission impact assessment of service of documents
Share of low-value cases in 2017 (claim amount <€20-25 000)	97.5 %	Based on available figures for the Netherlands (WODC database 'Rechtspleging Civiel en Bestuur', Dutch Ministry of Justice and Security, 2017) and United Kingdom (Civil Courts Structure Review: Final Report, July 2016).
Average cost of case handling in 2007	Figures from Member State experts	Average cost of case handling by Member State – differentiated by value of claim amount (€20 000 and 2 million) based on Commission Study and Oxford study (2007 data)
Price change of legal services in 2007-2017	13 %	Eurostat – Dataset 'Service producer prices - annual data'/legal services (sts_sepp_a).
% reduction of litigation cost for cross-border cases	5-15%	Based on three scenarios as described in the Tulibacka et al. assessment.
% reduction of litigation cost for domestic cases	0.5%	EPRS assumption based on a modest decrease in costs for domestic cases thanks to pushing modernisation reforms of the existing national procedures

Based on this data and analysis the total cost of civil and commercial litigation in the EU-28 is 647,6 billion EUR annually (Table 13 below).¹⁰⁰

Table 13 – Total cost of civil and commercial litigation in the EU-28

	Number of cases (per annum)	Total cost (€)
Cross-border cases	1 542 486	32 380 734 044
Domestic cases	29 307 229	615 233 946 827
TOTAL	30 849 715	647 614 680 871

The European added value is quantified in terms of percentage of reduction from the total cost of civil litigation. The EAVA cost reduction framework distinguishes between cross-border and domestic cases. For the cross-border cases, the price reduction is in the range of between 5-15%. This assumption is based on the expert surveys conducted by Tulibacka et al.

The range of price reduction differs based on the policy option adopted.¹⁰¹ The higher level of harmonisation, combined with the binding legal instrument, is expected to contribute to a higher percentage of cost reduction. The European added value would be generated by the reduction of

¹⁰⁰ The total cost includes all main costs related to the litigation for both parties as well as court fees, bailiff's fees, expert fees and translation fees.

¹⁰¹ See Annex I for details.

costs related to the uncertainty costs for the parties and delay costs of the procedure. The coordination measures will also contribute to the reduction of costs, however, to a lesser degree. The empirical evidence related to trust and judicial cooperation suggests that coordination measures without a legally binding instrument establishing minimum standards would be unlikely to contribute to enhancing trust among judiciaries. This means that delay and uncertainty costs would be reduced to a lesser degree. The adoption of minimum standards of civil procedure is also expected to benefit purely domestic cases by pushing modernisation reforms for existing national procedures. It is difficult to estimate the percentage of cost reduction for domestic proceedings with precision. EAVA therefore makes a very cautious estimate of 0.5 % in total cost reductions for domestic cases.

Table 14 – Estimated cost-reduction potential of policy options

	Potential to reduce uncertainty costs for the parties	Potential to enhance trust between judiciaries and reduce delay costs	Assumed % of cost reduction for cross-border cases	Assumed % of cost reduction for domestic cases
Scenario 1: Compilation and consolidation of the existing minimum standards in one instrument	+	+	5 %	0.5 %
Scenario 2: Comprehensive review, a 'Roadmap' and subsequent further legislation	++	+ / ++ (after adoption of the legislation)	10%	0.5 %
Scenario 3: A binding instrument containing minimum standards	+++	+++	15 %	0.5 %

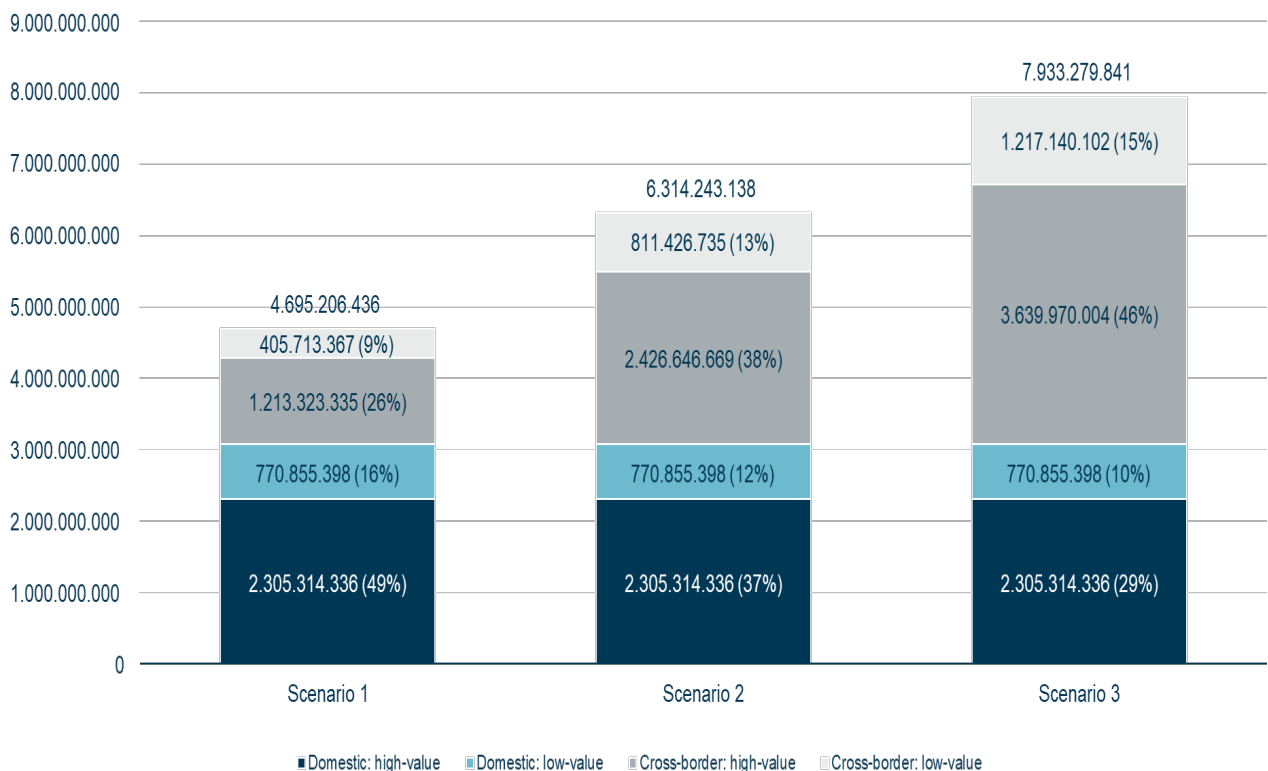
All three policy options are based on EU legal competences in the area and do not infringe principles of subsidiarity and proportionality. The three policy options, however, have a different extent and logic of regulatory intervention and consequently, the expected European added value. The first policy option analysed would require minimum regulatory intervention. It has a potential to reduce costs related to civil litigation in the EU by €4.7 billion per year. The European added value would be generated through compilation and consolidation of the current EU law instruments related to civil procedure. The more ambitious policy option, which would require adoption of a binding EU law instrument, could potentially reduce the costs by up to €7.9 billion per year. The adoption of an EU law instrument containing minimum standards of civil procedure applicable to all stages of the procedure would have the potential to reduce fragmentation of the procedural rules, enhance transparency and contribute to the building of trust between EU judiciaries. The 'middle way' policy option could potentially reduce the costs by up to €6.3 billion per year. This policy option, which would take longer to implement, would also potentially reduce fragmentation and therefore reduce costs. However, the approach to address fragmentation would be different. This policy option would focus first on the comprehensive review of the current system and then fill the gaps in the specific aspects or stages of civil procedure. Therefore, instead of a comprehensive EU law instrument applicable to all stages of civil procedure, this policy option would proceed with a partial, procedure specific, approach to reducing current fragmentation.

Table 15 – Estimated European added value

	Scenario 1 (5 % reduction in cross-border)		Scenario 2 (10 % reduction in cross-border)		Scenario 3 (15 % reduction in cross-border)	
	Cost reduction (€)	Share of total	Cost reduction (€)	Share of total	Cost reduction (€)	Share of total
Cross-border	1 619 036 702	34 %	3 238 073 404	51 %	4 857 110 107	61 %
- Low value	405 713 367	9 %	811 426 735	13 %	1 217 140 102	15 %
- High value	1 213 323 335	26 %	2 426 646 669	38 %	3 639 970 004	46 %
Domestic	3 076 169 734	66 %	3 076 169 734	49 %	3 076 169 734	39 %
- Low value	770 855 398	16 %	770 855 398	12 %	770 855 398	10 %
- High value	2 305 314 336	49 %	2 305 314 336	37 %	2 305 314 336	29 %
Total cost reduction	4 695 206 436	100 %	6 314 243 138	100 %	7 933 279 841	100 %

The results of quantitative assessment suggest that the three scenarios would have different impacts on the total redistribution of the cost reduction source. In Scenario 1, the largest cost reduction would be generated by the domestic high value cases. This reduction is expected to result from the indirect effects (push factor for optimisation of national procedures) of the adoption of common minimum standards of civil procedure. In Scenario 3, the largest cost reduction would be generated by the cross-border high value cases. The breakdown of the major expected cost reduction sources is visualised in Figure 2 below:

Figure 2 – Estimated European added value from cost reduction in litigation on civil and commercial cases



6. Conclusions

The EU has developed a complex regulatory framework related to the EU civil procedure. This framework includes sector specific regulations, regulations covering specific elements of the procedure, and autonomous, optional EU procedures. This complexity lacks coherence and is heavily criticised by practitioners. The fragmented regulation leads to the low use of the EU procedures and mistrust between judiciaries. At the same time, evaluations of the existing instruments point to the substantial potential reductions in uncertainty and delay costs. Thus, in the limited areas where the EU has taken regulatory action to optimise the procedural rules, such as for example, in small claims disputes, efficiency gains both in terms of reduction of costs and reduction of litigation time are well evidenced.

The positive evaluations of the existing instruments indicate that optimising current rules, specifically by addressing the issues of incoherence and trust, can generate substantial economic gains. The adoption of an EU instrument on minimum standards of civil procedure is analysed as one of the possible policy options to optimise the current EU civil procedure system. This policy option has potential to generate European added value in the range of between €4.7 to 6.3 billion. This includes both direct effects, including reduction in the cost of cross-border cases, as well as indirect effects in reducing the costs of domestic proceedings. The adoption of an EU legal instrument on minimum standards, applicable to all stages of the procedure, has the largest potential for cost-reduction. This policy option, would generate the highest degree of certainty for the parties and contribute to the framework of mutual trust between judiciaries.

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The European Added Value Assessment (EAVA) estimates whether and to what extent adoption of EU minimum standards of civil procedure could generate European added value. The European added value is quantified as a percentage reduction of the total cost of civil procedure. The total cost of civil procedure is estimated based on data on the number of civil and commercial proceedings in the EU-28 and the cost of litigation in the Member States.

Based on this analysis, the EAVA estimates that introducing EU common minimum standards of civil procedure could reduce annual costs for citizens and businesses in the European Union by as much as €4.7 to 7.9 billion per annum. The European added value could be potentially generated through reduction of fragmentation, simplification and filling gaps in the current EU procedural rules. Furthermore, EU common minimum standards would contribute towards building mutual trust between judicial authorities of different Member States. Increasing trust has the potential to enhance legal certainty and stability for citizens and businesses, further reduce uncertainty and delay costs.

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