

Elena Alina Ontanu, *Cross Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures*. Cambridge: Intersentia, 2018. 534 pages. ISBN: 9781780686097. EUR 125.

Ontanu has written an ambitious book. She addresses the issue of cross-border debt recovery with reference to two “new generation” European procedural Regulations, namely Regulation 1896/2006 on the European Order for Payment (EOP) and Regulation 861/2007 on European Small Claims Proceedings (ESCP). Ontanu did not content herself with “describing” the rules introduced by these regulations, in the light also of the amendments introduced in one and the other by Regulations 2015/2421 and 2015/2421 respectively. Nor has she limited herself to

providing interpretations of the obscure points in these harmonized disciplines. Her book aims to play a much stronger role, through an empirical survey of the use (or non-use) of the new European uniform procedures in four Member States (one of which has since left the EU).

The author's task was not an easy one: in fact, the starting point is that the EOP and ESCP Regulations are among the least used in the European Area of Justice. It is therefore difficult to find a significant amount of "operational" data on which to reconstruct reliable conclusions on a statistical basis. Ontanu is well aware of this and her arguments and conclusions are always filtered by the warning about the relative scarcity of data, especially in some jurisdictions. An important first consideration emerges from the work: the lack of uniformity in the collection of data on the work of courts in the various Member States and the unavailability, in many cases, of disaggregated data on cross-border disputes and procedural remedies of European origin. This is a problem in itself, as the author repeatedly points out: a common area of justice which "does not know itself" is not able to understand adequately whether its regulatory policies are being successfully implemented and the reasons for any failure to implement them.

A problem of timely and up-to-date provision of data on uniform European legislation also emerges at the institutional level, both in the Member States and at the "central" level. The author highlights how the data available in the e-Justice Portal are often outdated or not available. She analyses the problem and tries to provide solutions, through the prism of the simplification of legal communication. The EOP and ESCP Regulations have been conceived with a view to their widespread application by claimants without a legal background and without legal assistance. Precisely because of this "lay" use, every single procedural step in the two Regulations takes place through the use of standard forms, available online in all the official languages of the Union. The idea that it is sufficient to make a form available to enable anyone to submit a petition for an unpaid claim is, however, fallacious because of the intrinsic complexity of certain legal concepts relevant to filling in that form properly. The author admits, at p. 400, "the forms appear to be a bottleneck for unrepresented lay users and business" and suggests some possible solutions, such as the provision of information and assistance centres.

The author starts her reasoning from an analysis of the fundamental objectives of the European Area of Justice and from a presentation of the questions addressed to the legal practitioners of the four jurisdictions considered. The aim of these questions is to verify whether the EOP and ESCP Regulations actually secure effective enforcement mechanisms while protecting the parties' procedural rights. Indeed, we are faced with a traditional dilemma: how to make civil proceedings a more effective instrument for protecting rights without sacrificing the principles of due process. In particular, can the duration of proceedings be significantly reduced without unduly restricting the right of defence? This is a debate that any "modern" system of civil justice is facing, all the more so in this time of economic crisis.

The first chapter is devoted to the presentation of the research methods used. The second chapter is perhaps the more "traditional" one, with a presentation of the main profiles of the two Regulations examined. The examination is complete and exhaustive and provides the perfect background for the comparative analysis of the following chapters. In this part dedicated to theoretical-general profiles of the examined Regulations, the lack of uniform rules is highlighted, in particular, in the context of the EOP Regulation, with regard to the passage from the phase governed by the latter and the one on the merits of the plaintiff's claim, which opens following the opposition of the debtor and which the regulation itself remits to the *lex fori*.

The central part of the book, as mentioned above, is dedicated to the analysis of four Member States (England and Wales, France, Italy and Romania). The author collected interviews among lawyers and academics from these four countries and from their answers she tried to draw conclusions about the local implementation of the two Regulations, with reference to their respective strengths and weaknesses. The method chosen is certainly to be appreciated, as it tries to combine theory and practice, in a comparative perspective. The author's aim is to provide *de jure condendo* indications for a better implementation of the two Regulations and, more generally, with respect to the development of a uniform European procedural law.

Each of these chapters opens with an examination of the judicial system of the Member State, with reference to the ordinary procedures and to the specific remedies provided for the

recovery of debts, in particular those of a “special” nature and with a simplified structure. These are informative parts, of a certain interest, especially with regard to Romania, whose legal system is undoubtedly the least known to the general public among those examined. Of much greater interest, however, are the parts of each chapter devoted to national attitudes towards the EOP and ESCP Regulations. It is here, in fact, that this book stands out for its originality and perspective. As mentioned above, the author has collected the views of the legal practitioners of the legal systems involved through specific questionnaires and assembled quantitative data on case law practice. Such analysis is accompanied by informative graphs and illustrative tables.

The empirical data on the four jurisdictions mentioned lead the author, in Chapter 7, to an assessment of the comparative perspectives on the functioning of the Regulations. This is an extremely interesting part, since the precipitate of the empirical analysis from the previous chapters proposes insights of great relevance and topicality. The author’s perspectives are probably not unexpected, but their importance is that, unlike other scientific papers on this subject, they are here supported by quantitative data and evaluations on the concrete application of the examined remedies. The main element is the limited application of these European uniform remedies, with the aggravating circumstance that this application is contaminated by a certain tendency of local courts to filter the European rules through the lens of domestic procedural law. Most of the practitioners who replied to the author’s questionnaires claim to be at least aware of the existence of these rules if not familiar or very familiar with them. However, the author herself, at p. 410, admits: “for practitioners in general the procedures were not widely known.”

Another common element is the difficulty for potential “private” users in using the two Regulations without specialized professional support (which was one of the objectives of the EU legislation). On the other hand, there also emerges in the case of the EOP a modest incidence of debtor’s opposition (which somewhat surprised me, as my personal professional experience leads me to give a different assessment) and a reduction in the overall time for obtaining an enforcement title. From the analysis of some jurisdictions (in particular, Italy), it can be inferred that there is a defective link between the uniform European discipline and the *lex fori*, which leads to particular difficulties in the passage from the *ex parte* injunction phase to the opposition phase with respect to the EOP Regulation. As the author correctly points out, the crucial point is the competition between European and national procedures; at present, the former is clearly disadvantaged, also because of their scope of application limited to cross-border litigation and their merely optional nature.

At this point, Ontanu asks the right questions: how can uniform procedural remedies be made more competitive? But before that: is there really a need for uniform European procedures of this kind? This is in fact the crucial question, the answer to which affects the future of European uniform procedural law. The impression, reading the data collected and analysed in the volume, is that practitioners do not feel the pressing need for new procedural remedies, with which they are unfamiliar and which often coordinate poorly with national law. However, the positive answer to this question given by Ontanu can only be shared. The Regulations are a first step towards a simplification of procedural models at EU level and, despite their limitations, their application effectively guarantees faster remedies, facilitating parties in cross-border litigation. The positive effects of these Regulations vary from one country to another and are in fact complementary: on the one hand, Member States with a well-developed system of minimum procedural guarantees are not greatly affected by the uniform provisions on “minimum standards”, but take advantage of procedural models that guarantee faster proceedings; on the other hand, Member States characterized by greater procedural speed are stimulated to strengthen their system of minimum procedural guarantees.

The recommendations proposed by the author in the final chapter are undoubtedly correct and acceptable: first, a training problem, to be addressed in a diversified way for the different categories of stakeholders (potential users, court clerks, lawyers and judges). Ontanu, on several occasions highlights the need to make more information on the Regulations available to the general public. Indeed, she considers free assistance for parties not using legal representation, “as part of national administration, court system, or professional

organizations”. Among the solutions she proposes is the idea that a more effective treatment of these uniform procedures can be guaranteed by assigning the relevant competence to a small number of very specialized courts, making massive use of computerized procedures to compensate for the overcoming of the principle of proximity that this approach implies.

The author undoubtedly sees things clearly in relation to another issue: a need for a greater coordination between European and national rules, given that in the Member States analysed there is a common tendency to apply procedural requirements and prerequisites of national law to EU Regulations as well. On the other hand, it is also clear that the link between EU law and national law is not always satisfactory, which makes it urgent to take action at various levels to overcome the resulting difficulties. Top-down intervention, as is the case with uniform regulations, is not in itself sufficient. Ontanu’s book should therefore be read, in the first place, by the legislative offices of the Ministries of Justice of at least some Member States, so that they understand that the creation and development of the European Area of Justice requires proactive interventions also by individual States.

On the other hand, Ontanu notes that “in the long term, the European uniform procedures should rely less extensively on national procedural rules”. I agree with this approach, which does not imply the standardization of the internal rules of the Member States but European uniform provisions of a more detailed nature and more respectful of the procedural rights of the parties in their field of operation, going beyond, in some way, the “minimum standards” approach in order to implement a “higher standards” policy. In fact, considering that, as the author points out, “European civil procedure is still in its infancy”, future developments require “a more systematic approach”, going beyond the piecemeal approach of these years, towards a “procedural integration” in order to fully implement the mutual trust of which the European Area of Justice presupposes the existence, but which in reality appears to be an objective still largely to be achieved.

The author concludes that the EOP and ESCP Regulations, although they have not yet attained their full potential, “have laid the foundation for further steps towards harmonization”. And so, talking about two procedural instruments whose practical relevance is, in substance, irrelevant, Ontanu’s book actually speaks of a much broader and more ambitious horizon, involving the whole European scientific community in a common effort. The author evokes the groundwork for the harmonization of European procedural law set by the Storme Commission in the 1990s. In fact, Storme’s harmonizing dream for many years remained in a drawer, blocked by political contingencies and diplomatic compromises. If, as it seems, the time has come to get that dream out of that drawer, this beautiful volume makes an important contribution to a leap forward in procedural harmonization at the European level.

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