

ODR E-Justice Scheme

Conceptual and Legal Layers

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Selected Problems Identified at the Point of Departure

- Lack of unified, European approach towards digitalization of e-justice processes
- Multitude of ODR platforms developed along different models and methodological approaches; ephemeral websites and services
- Inadequate use of quickly developing data-driven technologies
- Lack of a systematic reflection concerning ethical and legal (fundamental rights related) ramifications
- Lack of a usable conceptual scheme for modeling civil disputes in the context of European law

The Purpose

- Prepare a structure for describing a basic e-justice ODR system; and
- Develop this structure into a semi-specification from which it will be possible to design and develop building blocks and editor for designers and developers of e-justice ODR platforms.

- But...

- what is a basic e-justice ODR system?
- what should count as a building block for such a system?
- how such a system should be modeled to capture its richness

The Levels of Abstraction

Bottom Level

- Regulation-specific level: analyse and model a process subject to a specific regulation
 - Challenges:
 - Sensitive to regulation changes
 - Jurisdiction, language and legal culture – dependent
 - Lacking deeper structure

The Levels of Abstraction

Top Level

- Foundational level: analyse and model an abstract proces via a top-down approach
 - Challenges:
 - Too abstract for practitioners and for domain experts
 - Foundational work unnecessary for the purposes of the e-justice proces modeling
 - Existing solutions on the market

The Levels of Abstraction (golden mean)

- Core level: abstraction from the knowledge of actual processes
 - Challenges:
 - Navigating between the foundational issues and regulation specific issues
 - Level of abstraction may still be too high for (some) practitioners – we need use cases and prototypical models
 - The need for establishing spaces of possible options, within ethical and legal ramifications
 - Structural modeling vs. dynamic process-oriented modeling, e.g. focus on data structures vs. focus on workflows

Basic Questions

- **Who** (in what **role**) may perform what **actions** (speech acts and other) towards **whom** and what **consequences** follow from these actions in the **process**, taking into account the normative (**ethical** and **legal**) context?
- How should the process itself be developed, taking into account the **ethical** and legal **context**?
- What **technical means** should be used to model the processes? (we evaluated number of process modeling notations to focus on the conceptual scheme compatible with the BPMN modeling)
- What actions may be **automatized** and what types of technological solutions should be used to attain this goal?
- What **data** will be needed to effectively adopt these solutions?

The Two Spheres

- Extra-judicial: modeling processes outside of the state justice system
 - However, legal rules and principles constrain the processes and assign consequences to some actions and events in the extra-judicial processes
 - The importance of predictive analysis concerning judicial procedures: BATNA, WATNA, MLATNA
 - The actions and their consequences may not be strictly defined by any fixed normative system, but rather follow from market conditions and other factors
- Judicial: modeling processes within the state justice system
 - They include not only litigation processes, but also ADR taking place within these boundaries
 - Typically, the actions and their consequences are strictly defined by law

The Substantial Basis for the Modeling

- A legal relationship based on obligation, typically resulting from a contract between a consumer and a vendor
 - Purchase of goods or services
- The basic structure of sales contract
- Jurisdictional variations

Actions of the Buyer

- Informing about certain states of affairs
- Asking questions and responding to them
- Filing a complaint
- Providing evidence
- Requesting information
- Requesting decision
- Presenting options
- Decisionmaking

Actions of The Seller

- Informing about states of affairs and applicable norms
- Asking questions and responding to them
- Accepting a complaint or rejecting it / in total or partially
- Providing evidence
- Presenting options
- Decisionmaking

(some) existing ODR solutions...

- Require a relative high level of digital competence
- Are imperfect with regard to providing information about the facts, possible options, deadlines, alternative solutions, BATNAs
- Do not make use of the recent technology
- Employ obscure communication channels
- Are intransparent with regard to their characteristics and structure (proprietary information)
- Cannot account for ethics by design approach

ODR E-Justice Scheme

- ...is created to enable the developers to design, develop and implement an ODR system
 - Making sure that all possible actions, decisions and consequences thereof are foreseen in the system, enabling flexible amendments
 - Accounting for the ethical standards and legal ramifications, including fundamental rights protected in the EU
 - Enhanced with automated data driven elements

A General Structure

- What? – building blocks based on the core concepts, enabling BPMN modeling
- How? – using (for instance) the available BPMN based applications, taking into consideration the open checklists concerning normative contexts (ethical and legal, including fundamental rights)
- What for?
 - to broaden access to justice (in both extra-judicial and judicial contexts), including the protection and enforcement of consumers' rights

The Results of Literature Review

- Systematic Literature Review (EBSCO, Scopus) reveals that the layer of fundamental rights is an under-researched theme in the research on ODR systems
- There are numerous blind spots eg. specificity of specialized disputes, lack of systematic reviews of current legal regulations, fragmentary analyzes of legal disputes/ODR systems
- The researched themes include, eg. right to a fair trial, right to information, freedom of expression and protection of persons with disabilities, discrimination, privacy
- Lack of a systematic approach

A Proposal for a Method

- Development of an open and extensible fundamental rights related issues critical questions system to enable accountability of the ODR system developer
- Discussion of prototypical use cases
- Addressing the constraints resulting from different types of vulnerabilities

Many thanks for your attention