

**USE OF ICT SYSTEMS IN HANDLING MONETARY
CIVIL CLAIMS IN POLAND AND ENGLAND
(UNITED KINGDOM):
A COMPARATIVE ANALYSIS**

Abstract. The article aims to compare how ICT systems are used in handling monetary civil claims in Poland and England through an analysis of both legal and technical regulations and limitations. This objective is achieved through critical analysis of existing literature together with the official documentation available for both systems, as well as direct inspection of the systems. As a result of said analysis, it is apparent that the system utilised in England, despite being significantly older than the Polish system, has much more technical limitations, although they are also clearly specified in the relevant law. On the other hand, some such limitations in the Polish system are not present anywhere in statute law. Nevertheless, both systems seem to be mainly designed for handling smaller claims and reducing the amount of mainly administrative labour that was usually done manually by the court staff. In conclusion, some *de lege ferenda* propositions and future suggestions were formulated for both systems arising chiefly from the results of the comparative analysis.

Keywords: civil procedure, comparative law, English law, ICT system

**WYKORZYSTANIE SYSTEMÓW TELEINFORMATYCZNYCH
W POSTĘPOWANIACH W PRZEDMIOCIE CYWILNYCH
ROSZCZEŃ PIENIĘŻNYCH W POLSCE I ANGLII
(WIELKA BRYTANIA): ANALIZA PORÓWNAWCZA**

Streszczenie. Celem opracowania jest porównanie, w jaki sposób systemy teleinformatyczne są wykorzystywane w postępowaniu w przedmiocie cywilnych roszczeń pieniężnych w Polsce oraz w Anglii poprzez analizę prawnych oraz technicznych regulacji i ograniczeń. W wyniku tejże analizy zauważyć można, że system używany w Anglii, choć jest znacznie starszy od systemu polskiego, ma również więcej ograniczeń technicznych, choć są one dokładnie opisane we właściwych aktach prawnych. Z drugiej strony niektóre tego rodzaju ograniczenia występujące w systemie polskim nie

* University of Warsaw, Faculty of Law and Administration, f.skawinski@student.uw.edu.pl

są w ogóle zawarte w żadnych przepisach prawa. Niezależnie od tego obydwie systemy zdają się być zaprojektowane przede wszystkim do procedowania roszczeń o mniejszej wartości i zmniejszenia ilości przede wszystkim administracyjnych czynności, które musiały być wcześniej wykonywane ręcznie przez pracowników sądu. W podsumowaniu przedstawione zostały pewne postulaty *de lege ferenda* oraz propozycje ulepszenia obydwu systemów sformułowane przede wszystkim w oparciu o wyniki przeprowadzonej analizy porównawczej.

Słowa kluczowe: polskie postępowanie cywilne, prawo angielskie, system teleinformatyczny, komparatystyka

1. INTRODUCTION

For several decades, various countries around the world have attempted to utilise information and communication technologies (ICTs) to provide government services more effectively to their recipients, such as citizens and businesses, or even other organisational units of the government itself. This process is defined by the United Nations as e-government (United Nations, n.d.). This process is also visible in the administration of justice.

This article intends to focus on civil proceedings for monetary claims and to compare and contrast the solutions implemented in Poland and England regarding the legal framework, as well as the practical functioning of systems available in those countries. Online services also exist in other types of proceedings e.g., possession, divorce, or bankruptcy in one or both of the analysed countries, but civil monetary claims have the longest history and cover the widest category of civil claims, which is the reason the scope of the articles is narrowed only to such cases. This analysis focuses only on England and Wales because other parts of the United Kingdom, such as Scotland and Northern Ireland, have their own separate judiciary and legal systems. In the course of this article, any reference to England means England and Wales collectively, as the judiciary is shared between them.

As a result of the analysis, it should be established what are the main similarities and differences between the approaches taken by both countries and the implemented solutions, which will be the basis for an attempt to formulate proposals that might enhance said systems both in the legal framework field and their practical functioning.

2. OVERVIEW OF EXISTING SYSTEMS

In both Poland and England, there are currently systems that allow for the electronic filing of monetary claims. The Polish system is the electronic order for

payment procedure¹ (*Elektroniczne Postępowanie Upominawcze – EPU*²), which was launched in January 2010 as specified in the Act of 9 January 2009 on the amendment of the Code of Civil Procedure and other Acts (Journal of Laws 2009, issue 26, item 156) and is available at <https://e-sad.gov.pl/>. The court currently responsible for processing all claims is the Lublin–Zachód District Court in Lublin, 6th Civil Division (*Sąd Rejonowy Lublin–Zachód w Lublinie, VI Wydział Cywilny*). The court itself is an ordinary common court, which also deals with standard civil and criminal cases; however, the 6th Civil Division only handles claims filed electronically through the system and has a separate building. Around 1.9 million claims were processed in 2021 (Lublin–Zachód District Court in Lublin, 2022).

In England, the main system is Money Claim Online (MCOL), which is available at <https://www.moneyclaim.gov.uk/> and was launched in the December 2001 – February 2002 period (Kallinikos 2009, 177). The claims are handled by the County Court Business Centre (CCBC) based in Northampton, which is part of the County Court. It also processes electronic claims made through some of the other systems, but not standard civil cases. Therefore, this solution is comparable to the Polish one, as separate buildings and staff are assigned only to claims made through the electronic system. Around 1.1 million claims were processed by the CCBC as a whole, although it is not provided how many of these claims were filed through MCOL (Ministry of Justice of the United Kingdom 2022).

Currently said systems are designed mainly for uncontested claims. They allow the claimant to file a claim and perform some actions connected to the enforcement of a judgement or order. On the other hand, if any kind of defence is filed, this generally means the end of the online phase, and a transfer of the case to a traditional court is required for the proceedings to continue beyond that. It is not unexpected since this phase of civil proceedings generally consists mainly of procedural and administrative work (Lupo 2013, 123). The systems are also partially similar because the Polish EPU system was partially modelled after the successful English MCOL, however, many adjustments were made due to differences in procedures, and not all features of the MCOL system were implemented while a significant number of new ones was introduced (Wójcik-Krokowska 2018, 270).

The main difference between the systems that applies to the proceedings as a whole is that MCOL can be specified only as a system that assists in conducting

¹ The name electronic writ of payment is often used, however, to avoid using the word “writ”, which is considered outdated by many professionals and following the general trend visible in the United Kingdom to modernise legal terminology, a different name modelled after European order for payment will be used.

² The phrase “*elektroniczne postępowanie upominawcze*” is also the name of the whole electronic order for payment procedure, however, in this article, it will be used to describe the ICT system used in these types of proceedings. This is also the reason why the word is capitalised.

the proceedings, while EPU is the sole system used in the electronic order for payment proceedings.

Article 505³⁰ § 2 of the Polish Code of Civil Procedure (Act of 17 November 1964 – Code of Civil Procedure, consolidated text: Journal of Laws 2021 item 1805 as amended, hereinafter referred to as the CCP) concerning EPU specifies that actions taken by the court, judicial clerk, and the presiding judge shall only be recorded in the ICT system. It is also further specified in article 505³¹ of said Act that the claimant must always file pleadings in electronic form. The defendant is also under such obligation if they elect to file electronically and in such case, they must continue to file electronically until the end of the proceedings (Bodio 2017, 11), but they might also decide to file only paper pleadings. No special declaration is needed then, as it is the default option. As e-mail is not an accepted method of filing pleadings, electronic form practically only means directly through the ICT system. The case file in EPU has an electronic form with photocopies of paper pleadings filed by the defendant or received from third parties. The originals of such pleadings only form an auxiliary collection of documents. Save for the claim form, the EPU system generally does not have any pleading forms, and the user is allowed to freely type in the text. Certain types of pleadings, such as appeals, do have a pleading title and short description of the order being appealed, however, nothing more is provided. This is most probably connected with the fact the utilisation of pleading forms in standard civil cases in Poland is not compulsory, save for fee exemption proceedings. Facultative pleading forms do exist, but only for a small number of pleadings, and due to that, their usage in the current form would be significantly limited in EPU.

On the other hand, the MCOL system only allows the filing of certain types of pleadings directly through the system. The Practice Direction 7E of the English Civil Procedure Rules (The Civil Procedure Rules 1998, SI 1998/3132 as amended, hereinafter referred to as the CPR) provides an exhaustive list of the types of actions that may be undertaken through the MCOL system, encompassing various pleadings that may be filed through it. In addition, while the claims are issued and posted to the defendant automatically, the case files themselves are still in paper form. Senior President of Tribunals, Sir Ernest Ryder, criticised it in 2016 saying “(...) a civil servant at the other end has to print the e-form and make up a paper file. From that point on, we are back to square one (...)” (Ryder 2016). Some of the other types of pleadings may also be filed by e-mail; however, they must then conform to the standard e-mail filing guidelines for civil proceedings.

None of the aforementioned systems allow direct upload of pleadings in a format other than plain text, such as PDF. The EPU system allows the upload of XML files through the website or with the use of API,³ but both of these methods

³ Abbreviation for application programming interface used to exchange data directly between computer programs.

are available only to “mass claimants” and professional counsel. The status of “mass claimant” is not legally defined and in practice, it seems to be granted liberally, however, it does not confer any additional benefits other than the ability to file claims and pleadings in the XML form. As the generation of an XML file usually requires a specialised application, it is somewhat doubtful whether it would be used by non-professional users wanting to only file a few claims, even if this form of filing were available to them. When it comes to MCOL, it does not have any direct upload capabilities, however, a Claim Production Centre (CPC) service is available for the claimants who can demonstrate that they can meet the IT requirements to file and receive documents. Claims from the CPC are also handled by the CCBC, and the defendant can file pleadings through the MCOL system. The CPC itself predated MCOL, however, they both use the CCBC to process and handle the claims (Kallinikos 2009, 185–187).

3. BASIC LEGAL FRAMEWORK

Before proceeding to a more detailed analysis of the systems, it is first necessary to briefly present the regulations regarding the national civil proceedings, which mostly apply also to offline proceedings.

In Poland the order for payment procedure (*postępowanie upominawcze*), whether online or offline, is considered a separate procedure by the CCP, however, its application doesn't depend on any request made by the claimant (Marciniak 2020, 460). When a claim for a specified amount of money is filed and none of the negative conditions specified in article 499 of the CCP are met, the court should issue an order for payment. Such an order directs the defendant to satisfy the entire claim or file a statement of opposition within a set amount of time, which is dependent on the location of the defendant. A copy of the claim form is sent to the defendant together with the order of payment. If the opposition is not filed by the defendant within the prescribed period, the order has the effect of a final judgment and is enforceable. The claim must therefore be examined by a court official before the order for payment may be issued. This does not necessarily have to be a judge, as special highly qualified judicial clerks (*referendarze sądowi*) can also issue such orders, though there is still a need for human intervention. Currently in Polish civil proceedings, no final order may be issued automatically, and such orders always have to contain the name and signature of the person that issued them. The previously quoted article 505³⁰ § 2 of the CCP states that actions of the court, judicial clerk or presiding judge recorded in the ICT system shall bear a qualified electronic signature. The conditions of issuing an order for payment might imply that the orders are issued almost automatically by a judge or clerk, however one of them is that the facts presented do not raise doubt. This is a very elastic general clause, which is interpreted differently by the

courts. Some decide to issue orders for payment upon only the consideration of the most important elements of the claim form, while others conduct a detailed examination of not only the claim form itself, but also the supporting documents filed alongside it (Goździaszek 2017, 225). If the opposition is filed by the defendant, it results in the proceedings being discontinued, although the claimant may file the claim again in a standard paper way. If they do so within three months from the date of the order discontinuing proceedings, this preserves the initial filing date of the claim (article 505³⁷ § 2 of the CCP) and the fee paid for the claim filed electronically will be credited towards the fee for the paper claim (article 19(2)(2) of the Act of 28 July 2005 on the court fees in civil proceedings, consolidated text: Journal of Laws 2021 item 2257 as amended, hereinafter referred to as the CFCP Act).

In contrast to the Polish procedure in the English one the claim is issued and sent to the defendant automatically. This happens both in offline and online proceedings, however in the latter it must be performed by a court official. Nevertheless, this can still be called automatic, as only the very basic elements of the claim form are checked, such as whether the correct fee was paid. After the defendant receives the claim form, they may either admit the amount claimed, dispute the claim, or file an acknowledgment of service, which gives them additional time to perform one of the two previously stated actions. Of course, both admission and defence of the claim may be only partial, and both may be filed at the same time if they concern different parts of the claim. If an admission is filed a judgement may be issued for the admitted part. The same can happen in case the defendant's default⁴ when they do not file any of the documents described within the prescribed time. This claimant may sometimes apply for the judgment online, which will be described later in the article. If the defendant intends to defend the claim, the proceedings advance to the trial planning stage.

Therefore, it is important to note the most important difference between the Polish and English civil proceedings. In Poland the order for payment procedure is technically a type of separate proceedings, and an order for payment may be issued by a judge or court clerk only after examination of the claim and before the defendant received the claim form, while in the English civil proceedings there is no similar procedure, and the claims are issued and sent immediately. The judgment may only be issued if the defendant has not filed any answer and is in default or admits the amount owed.

⁴ Contrary to regulations common in the United States, in England no separate default of the defendant may or needs to be entered and it is only necessary for the claimant to request a default judgement. For an example of American regulations see rule 55 of the Federal Rules of Civil Procedure (Congressional Committee Prints, 116th Congress, 2nd Session, No 8).

4. FILING THE CLAIM

Some elements of the filing of pleadings in general have already been presented in the previous chapters, however this part will focus mostly on the legal regulations regarding the claims that can be filed through the online system with some technical elements included.

Both systems may only be used to file a claim for a specified amount of money, and the sum claimed must be in national currency. The EPU system does also allow the claimant to include other procedural motions in the claim form through a special free text field, although it is not entirely clear for what kind of motions was this field intended. No examples are given in the claim form or the supporting documentation. One example of such motion would be a motion requesting security for a claim through such methods as e.g., the seizure of movable assets or the encumbrance of real estate with a compulsory mortgage, however such measures are rarely used even in the standard order for payment proceedings and especially in EPU. This is possibly because, although the CCP prescribes a period within which such a motion must be considered, which is generally one week under article 737 of the CCP, it is unlikely that the court will comply with this deadline in EPU. In addition, it seems that, due to the technical characteristics of the EPU system, such motion would be considered with the claim itself (Segit, Telusiewicz 2013, 329). This would largely defeat the purpose of securing the claim. There are also many other elements, such as the fact that in standard cases only the judge might issue an order securing a claim and whether it would even be technically possible to issue an order securing the claim in EPU, but it seems sufficient to say, that there does not seem to be any example of anyone requesting such order.

In addition, for both systems the claim form provided through the system is the only way in which a claim might be lodged, and everything must be contained within it. As previously stated, none of the systems allow the upload of PDF or similar files, therefore it is not possible to add anything not included in the form. In the CCP it is expressly stated that any evidence should not be attached to the claim form and all arguments supporting the claim must be set out in the claim form itself with reference to evidence (article 505³² § 1). There is no space limit for the claim particulars.⁵ As the claim must be considered by a judge or a judicial officer before an order for payment is issued this requires the claimant must be aware of the fact that it will not be possible to consult the evidence and any inconsistencies or omissions will most likely result in a refusal to issue said order and discontinuation of the proceedings. Some of the judicial

⁵ Such a limit might exist; however, it is not described in the used documentation, and it was never reported to be a problem. Claims in EPU are generally very short, therefore even a limit of around 10 pages would most likely be of little practical significance.

officers themselves have emphasised that this is not always the case, even with to mass claimants, which often use tools that automate the generation of claim forms, together with claim particulars (Segit, Telusiewicz 2013, 327). Many mass claimants prefer to keep the claim particulars as vague as possible to be able to apply the same template to many situations and reduce effort needed to prepare the claim form to a minimum. In practice this might often have the opposite effect, as such claimants are then required to either file the claim again in a standard court⁶ or decide not to pursue it further. In MCOL the space for claim particulars is limited to a maximum of 1080 characters (including spaces) in 24 lines, which is further decreased if the claimant wants to claim interest under the County Courts Act 1948, however as the claim is issued automatically and is not reviewed by any judge or judicial officer beforehand, the claim particulars do not need to be as precise as in EPU. It is also possible for the claimant to prepare detailed particulars and send them directly to the defendant. This does not relieve the claimant of the obligation to include some details about the claim in the claim form, however it might only be a summary with a statement that additional particulars will follow. Such particulars must also be served on the defendant within 14 days of service of the claim form, and a certificate of service must be filed with the court within 14 days of the service of the particulars, but the claimant is not required to file the particulars themselves, unless ordered to do so or the case is transferred to a standard court. This comes as no surprise since the particulars are not needed for the issuance an automatic judgement whether default or after admission.

It should also be noted that EPU does not have any statutory limit for the value of the claim. On the system's website it is mentioned that the technical upper limit for the claim is 100 million PLN and, while this limit does not seem to have any legal basis, it is unlikely that it would ever be an actual limitation. Such high value claims are unlikely to be filed through EPU, as they will most probably be contested, and the claimant may often wish to obtain security for their claim. In addition, judges might be somewhat reluctant to issue an order of payment for such high value claim, as the circumstances of the case might be very complicated, and it would be difficult to fully consider them without any evidence. On the other hand, in MCOL the limit is one penny less of 100 thousand GBP. This indicates that MCOL was intended to be used only for smaller (although not necessarily small) claims, while leaving the most high-value ones for the traditional courts. In a new pilot procedure that was launched in 2018 – the Civil Money Claim Online (CMCO) process, which is slightly simplified and more visually attractive compared to MCOL the claim value limit is even lower and equal to 10 thousand

⁶ Although it is not forbidden to file such a claim in EPU a second time, the claimant would lose all the court fees paid in the first proceedings and the second proceedings might also be discontinued.

GBP. There are plans to increase this limit for the CMCO, however they were not implemented yet (Cortés, Takagi 2019, 208).

When it comes to the number of defendants in a claim, no legal limit is imposed in case of EPU. No limit is also mentioned in any supporting documentation. Nevertheless, when 5 defendants are added the “add defendant” button disappears and is instead replaced by an information, that the maximum amount of defendants was added for a claim. For an overwhelming majority of claims such limitation would not cause any problems, however it might become important for claims against civil law partnership, where the claim might only be brought against the partners, as the partnership itself may not be sued. This also applies to claims against partners in a general partnership or general partners in a limited partnership that are made after enforcement proceedings against the partnership itself were discontinued as ineffective. On the other hand, it is possible to split the claim, as partners do not have to be sued together (Hasińska, Zedler 2019, 14). The claimant might still benefit from a lower court fee if less than 4 separate claims are filed. If there is more than one defendant the claimant might either choose the option that all of them are jointly and severally liable or describe the liability manually, although the former is probably the most common. Moreover, it is necessary to provide the PESEL (personal identity) number, NIP (tax identification number) or register number of the defendant. Alternatively, the claimant might state that the defendant does not have any of these numbers. In case of legal persons and sole traders this is generally not an issue as said numbers should be publicly available, but it might prove to be an issue in case of natural persons other than sole traders. The claim form and the order for payment must also be served on the defendant in Poland, although this does not mean that the defendant must permanently reside in Poland, as long as a given claim is within the jurisdiction of Polish courts. Such residence might only be temporary. In addition, if the defendant has a PESEL number and an address is entered in the PESEL registry, the service of claim will always be effective at that address, whether the defendant is actually resident there or not. If the inability to serve the defendant within Poland is discovered after an order for payment is issued, the court will set it aside and discontinue proceedings as if said order was never issued.

The MCOL system has much more limitations when it comes to possible defendants. The maximum number of defendants is two and the same sum must be claimed from both of them. No claims might also be brought against the Crown, children or protected parties.⁷ The defendant’s address for service must also be within England and Wales, therefore it is not possible to bring a claim against a person residing in Scotland or Northern Ireland or countries outside the United Kingdom, even if English courts have jurisdiction over a particular case. The

⁷ Parties who lack capacity to conduct the proceedings within the meaning of the Mental Capacity Act 2005 that is are unable to decide for themselves about the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

limit of possible defendants is also lower than in EPU, but in practice it probably is not a significant limitation. Many claims against multiple defendants such as e.g., claims against couples or a company and a single director as a guarantor are still possible.

In EPU there is also an additional limitation not present in MCOL and the due date of the debt claimed may not be earlier than 3 years before the date on which the claim is filed. This requirement was introduced in 2013 and it was supposed to limit the number of claims for which the limitation period has already expired as 3 years is the standard limitation period for claims arising from commercial activities. Such claims were filed in significant numbers by collection agencies or other similar entities and the court did not verify the limitation period *ex officio*. This was a reason for some criticism to appear when EPU was first introduced (Fik 2014, 125).

After the claim form is prepared it must be signed by the claimant or their representative. This process differs slightly between the systems; however, it is currently very similar. In EPU there is no need to utilise any advanced electronic signatures. The claimant or the representative only need to input their name into a designated field and confirm that they are signing the claim form. It is also possible to use a qualified electronic signature within the meaning of regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (2014 Official Journal of the European Union L257/73), however there are generally no benefits to doing so and it requires the claimant to possess a specialized qualified certificate for electronic signatures, which must be separately purchased from a commercial vendor. In other online proceedings in Poland e.g., registry or bankruptcy proceedings qualified electronic signatures or other electronic signatures providing a higher level of security must be used (article 126 § 5 of the CCP), however in EPU it was not deemed necessary. The requirements in MCOL are very similar as the claimant or their representative only type their name in a designated field and confirm that they accept the claim. This replaces the standard handwritten signature. The signature is very important as it is placed under a statement of truth as deliberately including false statements in a claim form in the UK might constitute contempt of court (CPR rule 17.6). There is no similar element in civil proceedings in Poland, where the signature mainly signifies that the claimant or their representative has finished preparing the claim form and accepted its contents (Knoppek 2014, 169–170).

After the claim form is signed, the court fee must also be paid. For both systems payment is possible only directly through the system and it must be made at the moment the claim form is lodged. It is not possible to successfully file the claim without payment and it is the last step in the filing process.

5. FEES

Electronic proceedings are often regarded as cheaper, however developing, and maintaining such systems is still a significant expense. In addition, not everything can be handled by an online system and therefore many elements from standard proceedings are still present. Nevertheless, reduced court fees are often introduced in such system as an encouragement for the claimant to utilize them.

For the EPU system fee reduction is very significant and without a doubt provides a strong incentive for the claimant. According to Article 19(2)(2) of the CFCP Act only a quarter of the standard court fee needs to be paid in EPU, although the minimum will always be 30 PLN. Therefore, currently only claims for amounts exceeding 500 PLN are less expensive in EPU and the reduction is applied in full only for claims with the claim value above 1500 PLN. For such claims the lowest standard court fee is 200 PLN, therefore the reduced amount would be 50 PLN, which is higher than minimal value. The maximum value of the court fee is 200 thousand PLN, hence the benefit from the reduction can be as high as 150 thousand PLN. The court fees changed throughout time, however the reduction rate remained stable. This makes proceedings in EPU significantly cheaper, especially since no additional costs such as printing, and postage need to be incurred. In addition, all appeals in EPU are exempt from court fees, although they are rather rare and may only concern procedural aspects as no judgments on the merits are issued in EPU. Regardless of all those reductions the claimant must pay the court fee in full, as it is not possible to apply for fee exemption, though if the claimant is exempted by law, they may file a claim without the court fee if they state the legal basis of such exemption. The claimant is always allowed to file their claim in standard proceedings and using EPU is entirely voluntary, therefore lack of fee exemption does not prevent access to court. It is also worth mentioning that the legal representatives' costs that the defendant might be liable for are generally fixed at the same level as costs in standard order of payment proceedings, thus the claimant will receive the same amount as in standard proceedings.

On the other hand, in MCOL there currently is no court fee reduction. For a long time court fees were reduced initially by a fixed value for all claims and later by a fixed value for claims below 10 thousand GBP and 10% for claims above that value.⁸ Since 18 May 2021 the Civil Proceedings Fees (Amendment) Order 2021 (Statutory Instruments 2021 No. 588, L. 9) repealed all MCOL-specific fee regulations which means that the fee for MCOL claims is currently the same as for claims made in any other way. This also applies to other claims handled by the CCBC. The court fees themselves start at 35 GBP and they can be as high as

⁸ Standard court fee was set at 5% of the claim value, while the MCOL fee was only 4,5% of said value, which is equal to a 10% reduction.

10 thousand GBP. It is also not possible to apply for fee exemption; however the MCOL procedure is also voluntary (same as EPU), therefore this impossibility does not prevent access to court.⁹ Nevertheless the court fee payable on starting proceedings is not the only fee that the claimant might be obliged to pay in MCOL. Another important fee might be payable on an application to issue a warrant of control and it is currently 83 GBP.¹⁰ However the claimant can also apply for the warrant manually and it is possible to obtain fee exemption in such case. Sometimes it may also be necessary to apply for said warrant manually, as MCOL cannot issue a joint warrant of control for two defendants. Therefore, if the claimant wishes to apply for such a warrant they must apply manually. In addition, enforcement in the High Court will always have to be manual, as MCOL is only used for proceedings in the County Court. Additional information about these enforcement methods will be provided in a relevant part below.

Despite there being no reduction in court fees, there still are many incentives for the claimant to use MCOL rather than file a paper claim, as making a claim through MCOL is generally easier, faster and nothing needs to be spent on printing and postage. Just as in EPU the legal representatives' costs are also fixed if the case is not transferred to any other court and there is not difference between standard and MCOL proceedings.

6. POST-ISSUANCE PROCEEDINGS

Although they are mostly governed by the national civil procedure regulations, it is necessary to briefly mention some crucial elements of proceedings after the claim is issued. For EPU this will also be after an order of payment is issued as the claim form is not sent to the defendant before that, while for MCOL it will be immediately after the claim is filed.

In EPU the order of payment together with the claim form is sent to the defendant by registered mail with return receipt, while the claimant (for further correspondence also the defendant if they chose to file and receive documents electronically) receives a notification in the ICT system. It is also possible to optin for e-mail notifications; however, they only contain basic info, and it is still needed to log into the system. Delivery is automatic upon successful login, and it is not important whether the document was actually opened. The time limit for electronic

⁹ It is also worth mentioning that in the new CMCO pilot it is possible to apply for fee exemption.

¹⁰ This fee is also currently the same for all types of proceedings. Immediately before 18 May 2021 the court fee for issuing a warrant of control was 77 GBP if the application was made on-line through MCOL or 110 GBP in other cases, including issuance after standard application in an MCOL case. The fee was therefore slightly raised for MCOL, however significantly lowered for other cases.

delivery is 14 days after the document was sent. If the party did not log into the system within that time, the correspondence is deemed to have been delivered on the last day. The party should therefore log into the system at least once every 14 days (Tchórzewski, Telenga 2010, 124). It is still possible to access it after this time and all periods such as for filing an appeal, remedying any errors etc. run as normal and this method of service does not interfere with them. When it comes to the correspondence sent to the defendant the time to file an opposition from an order for payment begins on the date that the letter is actually delivered. If it does not happen on the first attempt the letter will be stored at the post office for a period of 7 days with a notification being left in the mailbox or other visible place. After that period has elapsed a second notification will be placed. After 7 days from the second notification the letter is returned. Whether service was successful in such situation depends on the address to which the claim was sent and provisions in this regard are different compared to standard civil proceedings. Usually such service is only successful if the defendant is a legal person or a sole trader and the letter was sent to the address for service provided in the relevant registry.¹¹ In EPU said service might also be successful for a defendant being a standard natural person if the correspondence was sent to an address contained in the PESEL registry, while in standard proceedings it would have to be delivered by a bailiff or the claimant would have to prove that the defendant actually resided at the address where the service was attempted. If the address was different from the one contained in the PESEL registry or there is no address the court should order the claimant to provide the address at which the defendant may be served within 1 month. If this order is not complied with or the second service is also unsuccessful the order for payment is set aside and the proceedings are discontinued. Upon receiving the order for payment with the claim form, the defendant may file an opposition within the prescribed time. In standard order for payment proceedings this time varies from 14 days to 3 months depending on where the defendant was served, though in EPU it is always 14 days, as the defendant must be served in Poland. Requirements regarding the content and other requirements of the pleadings are the same as in standard proceedings. There is no court fee associated with lodging an opposition and it might be lodged either electronically or by posting it to the court's address. If the second option is chosen the opposition is deemed to have been filed at the day it is posted, although registered mail must be used, and it must be posted within the European Union. In all other cases the date of filing is the date the opposition is actually received by the court. A duly filed statement of opposition causes the order for payment to lose effect, although only insofar as is specified in the opposition. An opposition filed by one co-defendant does not alter the position

¹¹ Unlike in England, in Poland sole traders also must be registered in a public registry (*Centralna Ewidencja i Informacja o Działalności Gospodarczej*), therefore anyone can view their address for service.

of other co-defendants and the order for payment does not lose effect in relation to them. Currently after the order for payment loses effect the proceedings must be discontinued, though previously the case was transferred to the defendant's home court. The claimant may then file their claim again in a standard court and the claim takes effect as of the day it was filed in EPU. In addition, the court fee paid in EPU is subtracted from the court fee to be paid in the standard court. The same rules apply to cases an order for payment is not issued by the court.

In MCOL the service of claim is simpler as English courts do not utilize registered mail or return receipts. The claim form is always deemed to have been served on the fifth day after the claim was issued irrespective of whether that day is a business day or not. The procedure in case the defendant's address specified in the claim form is not current is outside the scope of this article, although it is generally possible to set the final judgment aside in such cases. The claim form cannot be served by the claimant as the process of issuing and posting it is done automatically and the claimant cannot receive a stamped copy of the claim form. The claimant must, however, serve the particulars and file a certificate of service if they chose that option when filing the claim. After receiving the claim form (or the particulars if they are served separately and arrive later) the defendant may either file an admission, oppose the claim, or file an acknowledgment of service within 14 days. That time may be lengthened to 28 days by filing an acknowledgment of service. If the defendant admits the amount stated in the claim form in full the admission should be sent directly to the claimant, in all other cases the answer is filed directly with the court. If the defendant does not take any action or fully admits the amount owed and the claimant accepts the admission offer, it is possible to apply for judgment online. In all other cases where the judgment may be issued the claimant must file a request for judgment form manually. If the defendant opposes the claim in whole or in part, the proceedings will be transferred to their home court, where they will proceed to the trial preparation stage.

7. ENFORCEMENT

Although a detailed overview of enforcement methods is not within the scope of this article, basic information about the enforcement steps that may be taken through each of the systems should be presented.

In EPU the court issues a declaration of enforceability *ex officio* and as soon as the order for payment becomes final and non-revisable. The claimant may then file an application to commence enforcement proceedings to a bailiff of their choice directly through the system or in a standard paper way. If the claimant chooses the latter option, they must download print the order for payment together with a declaration of enforceability and attach it to the application. In Poland court bailiffs are authorised to conduct most enforcement

action, including attachment of earnings or third-party debt orders. In rare instances where the application for a particular method of enforcement must be filed with the court, it must be filed on paper.

In MCOL it is possible to apply online for a warrant of control. It will be later executed by the County Court bailiffs who can seize property belonging to the debtor. The maximum amount for this warrant is 5000 GBP including costs and it cannot be a joint warrant. If the claimant wants to apply for court fee redemption or wishes to issue a joint warrant of control they must apply manually in a standard way. Judgments over 600 GBP may also be enforced by a High Court Enforcement Officer who also may only seize the goods belonging to the debtor after a writ of control is sealed by the High Court. The claimant must first apply for an order to enforce the judgment in the High Court to the County Court in a standard way and then send it to the High Court by post or lodge it there directly. All other enforcement methods are handled directly by the court and the process of applying for them does not differ from the standard proceedings.

8. CONCLUSION

As a result of the presented analysis, it is already apparent that both systems presented are different in many aspects not only due to differences in statute law covering civil proceedings, but also due to different approaches to a significant number of policy issues connected to the functioning of the system.

The main *de lege ferenda* proposition concerning EPU would be to include some of the technical limitations of the system in the Code of Civil Procedure or other acts or ordinances. The current situation in this field cannot be regarded as satisfactory because the characteristics of the ICT system influence important legal provisions and cause certain actions to be legally possible, while simultaneously being practically impossible. Examples of such technical limitations include the 100 million PLN limit for claim value or the maximum number of defendants. Although they may not provide a significant practical limitation, they still should have a legal basis. In the current state if a claimant wishes to file a claim against 6 defendants, they may only discover the limitation when filing a claim as it is not specified in the CCP or the ICT system documentation. On the other hand, in MCOL the CPR precisely state, that a claim may not be filed against more than 2 defendants and the claim value must be less than 100 thousand GBP. Another possible suggestion is introducing the ability to apply for court fee exemption or reduction. This was already introduced in the CMCO pilot in England despite not being present in the MCOL system. Filing claims electronically is not only cheaper and faster, but it also has some procedural benefits e.g., the order for payment may be sent to the defendant's address in the PESEL registry and such service will always be successful. The reasons for not introducing this possibility are rather clear,

however it is an important direction of further development that would improve access to court for indigent claimants. Other possibilities of further development might also include increasing the degree of automatization and possibly utilising artificial intelligence technologies, although this should be analysed in more detail, which is already not within the scope of this article.

When it comes to MCOL the main element that could be improved seems to be the concept of the system itself. It should be developed not as a tool just for filing some pleadings with the court, but with the intent that it would be used to conduct the proceedings. Such approach includes introducing digital case files and expanding the list of pleadings that may be filed electronically or even including a free text field for the parties to file less common pleadings. This could be modelled after EPU, where such solution is already present. This also applies to enforcement. As in EPU it is possible to lodge an application directly with the court bailiff, MCOL could allow the claimant to apply for a writ of control directly to the High Court or file an application for a different mode of enforcement such as a third-party debt order or an attachment of earnings order. This would probably make MCOL more attractive for individual claimants, as they would be able to manage the whole case from filing the claim form to enforcement through the ICT system.

Nevertheless, both countries utilise systems, which simplify at least the most crucial steps in the process of filing a monetary civil claim. Such systems are useful for both individual and mass claimants and they greatly simplify the management of said claims, especially smaller and more repetitive ones. In addition, a significant amount of administrative labour is eliminated due to automating many that usually must be done manually. Without any doubt this trend should be considered as positive, and it seems that it should continue in the future.

BIBLIOGRAPHY

- Bodio, Joanna. 2017. "Pisma procesowe w elektronicznym postępowaniu upominawczym." In *Elektroniczne postępowanie upominawcze: doświadczenia i perspektywy*. Edited by Kinga Flaga-Gieruszyńska, Andrzej Jakubecki, Joanna Misztal-Konecka. 9–36. Lublin: Episteme.
- Cortés, Pablo. Toru Takagi. 2019. "The Civil Money Claims Online: The Flagship Project of Court Digitalization in England and Wales." *Computer and Telecommunications Law Review* 25(8): 207–212.
- Fik, Piotr. 2014. "Art. 505^{29a} k.p.c. na tle nowelizacji z 10 maja 2013 r. – uwag kilka." *Przegląd Sądowy* 5: 123–128.
- Goździaszek, Łukasz. 2017. "Perspektywy pełnego zautomatyzowania elektronicznego postępowania upominawczego." In *E-obywatel, e-sprawiedliwość, e-usługi*. Edited by Kinga Flaga-Gieruszyńska, Jacek Gołaczyński, Dariusz Szostek. 223–233. Warszawa: C.H. Beck.
- Hasińska, Izabela. Feliks Zedler. 2019. "Wybrane zagadnienia egzekucji ze wspólnego majątku współników spółki cywilnej." *Przegląd Prawa Handlowego* 5: 13–19.

- Kallinikos, Jannis. 2009. "Institutional Complexity and Functional Simplification: The Case of Money Claim Online Service in England and Wales." In *ICT and Innovation in the Public Sector: European Studies in the Making of E-Government*. Edited by Francesco Contini, Giovan Francesco Lanzara. 174–210. New York: Palgrave Macmillan. https://doi.org/10.1057/9780230227293_8
- Knoppek, Krzysztof. 2014. "Głosa do wyroku Sądu Najwyższego z 20 stycznia 2012 r., I CSK 373/11." *Palestra* 1–2: 168–171.
- Lublin–Zachód District Court in Lublin. 2022. "Statistics on civil, employment and commercial cases in the electronic order for payment proceedings for the year 2021." <https://www.lublin-zachod.sr.gov.pl/download/s01e20214.pdf> (accessed: 19.01.2022).
- Lupo, Giampiero. 2013. "The Case of Money Claim Online and Possession Claim Online in England and Wales." In *Building Interoperability for European Civil Proceedings*. Edited by Francesco Contini, and Giovan Francesco Lanzara. 111–160. Bologna: CLUEB.
- Marciniak, Andrzej. 2020. "Postępowanie upominawcze: wprowadzenie." In *Kodeks postępowania cywilnego. Tom III. Komentarz do art. 425–729*. Edited by Andrzej Marciniak. 459–461. Warszawa: C.H. Beck.
- Ministry of Justice of the United Kingdom. 2022. "Civil Justice Statistics Quarterly." Last modified 3 March 2022. <https://www.gov.uk/government/collections/civil-justice-statistics-quarterly> (accessed: 23.10.2023).
- Ryder, Ernest. 2016. "The Modernisation of Access to Justice in Times of Austerity." 5th Annual Ryder Lecture, University of Bolton, 7 March 2016. <https://www.judiciary.uk/wp-content/uploads/2016/03/20160303-ryder-lecture2.pdf> (accessed: 23.10.2023).
- Segit, Dariusz. Piotr Telusiewicz. 2013. "Możliwości usprawnienia współpracy e-sądu z powodami masowymi – uwagi na tle doświadczeń praktycznych." *Monitor Prawniczy* 6: 326–331.
- Tchórzewski, Mariusz. Przemysław Telenga. 2010. *Elektroniczne postępowanie upominawcze. Komentarz*. Warszawa: Wolters Kluwer.
- United Nations. n.d. "E-Government." United Nations E-government Knowledgebase. <https://publicadministration.un.org/egovkb/en-us/Overview> (accessed: 23.10.2023).
- Wójcik-Krokowska, Natalia. 2018. "Sprzeciw od nakazu zapłaty w postępowaniu upominawczym oraz w elektronicznym postępowaniu upominawczym." *Monitor Prawniczy* 5: 267–273.