

# The circulation of judicial agency in Europe:

Designing for interoperability and complexity

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Research Conference ***“Building Interoperability for European Civil  
Proceedings Online”***

Bologna, 15-16 June 2012

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# *Practical problem and research question*

- How can we provide effective e-services to European citizens across national borders in the domain of civil justice?
  - How can we get different national judicial systems to communicate with one another in order to deliver the services?
  - How can the systems be made interoperable so as to support the circulation of judicial agency?
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# *Circulation of agency*

- *Agency*
    - the capacity of an entity – human and nonhuman – to produce effects, thus modifying the state of affairs
  - *Circulation of agency*
    - the possibility for such capacity to be transmitted and be performative across different media, national borders, and functional domains
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# *Judicial agency*

- For agency to be 'judicial' or 'legal' it must produce legally valid effects (performativity)
  - The circulation of judicial agency does not only amount to transmission of bits, data, information, but also to enactment of changes of status
  - In order to produce legal effects agency must itself be made legal across media, functional domains and territorial jurisdictions
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# *How can judicial agency circulate in the EU?*

- Judicial agency can circulate only if it is supported by an underlying infrastructure that allows systems interoperability
    - the trans-border transmission of judicial data,
    - the recognition of the data's and documents' legal validity,
    - the constancy of the meaning of the data, documents and specific legal actions,
    - the performativity of judicial decisions across national jurisdictions
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# *Agency problems: some illustrations from EPO and ESCP experiment*

- Ambiguous identification of the jurisdiction and the seized court
  - Complex description of case and claim
  - Difficulties in payment of court fees
  - Ambiguities in rule application by courts
  - Even simple procedural slippages or minor interruptions can raise the cost of judicial transactions and hinder the circulation of agency
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# *Interoperability and infrastructure*

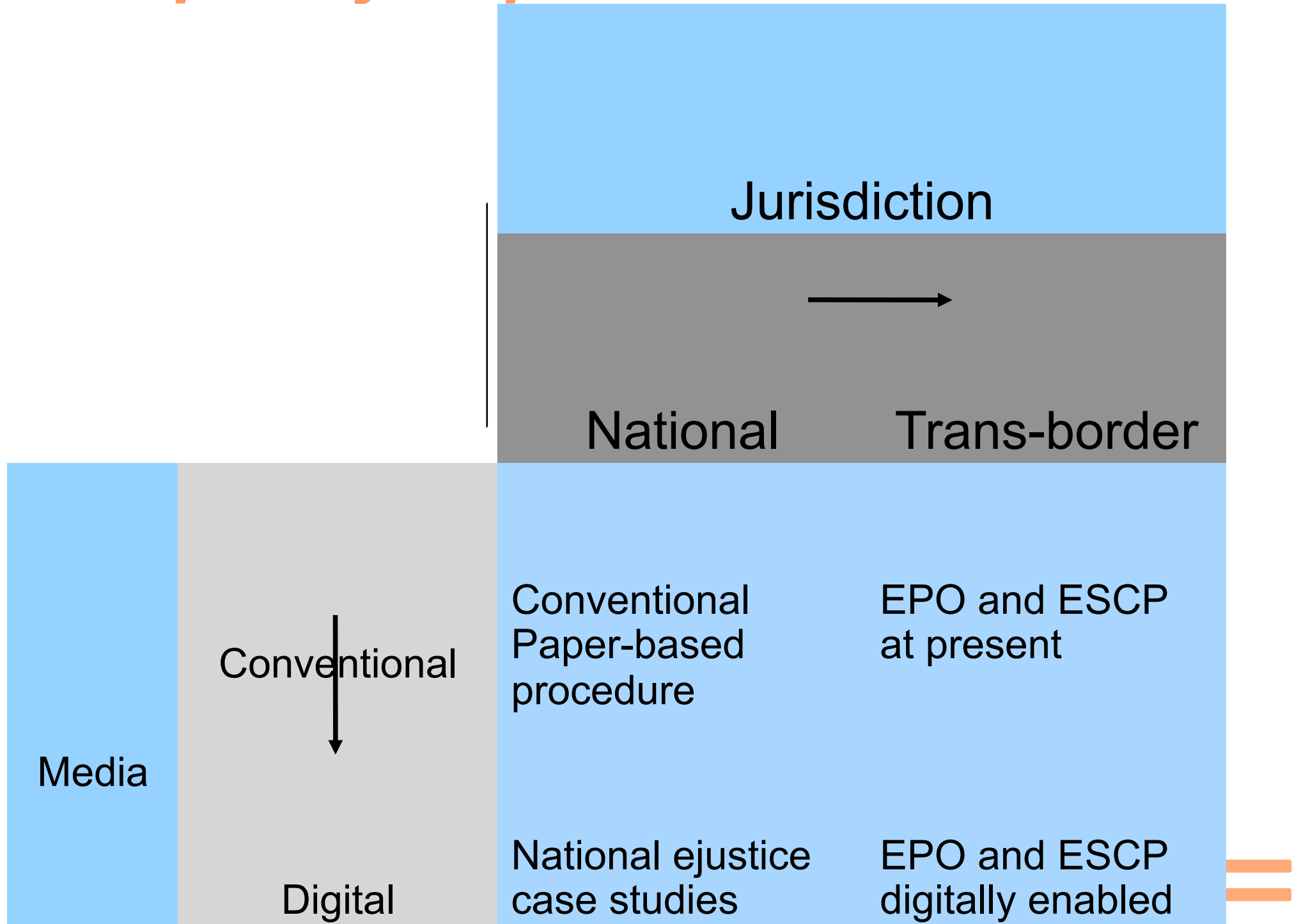
- No circulation of agency without interoperability
  - No interoperability without infrastructure
  - An infrastructure is an open, heterogeneous, evolving assemblage of components
  - ICT, legal, organizational, semantic components
  - Building interoperability is not just “enchaining” systems, but requires developing the infrastructure
  - European infrastructure in the judicial domain is still in the process of being assembled
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# *Sources of complexity*

- Complexity is the most serious problem for the circulation of judicial agency
  - Interactions between different functional domains (law, technology, organization, language)
  - Interactions between media
  - Interactions between national jurisdictions
  - Interactions in time
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# Complexity leaps



# *Critical design problem*

- How to reduce and distribute the complexity arising from growing interdependencies
  - Complexity may overwhelm the agents' capabilities to undertake effective action and obtain judicial service
  - Unbalanced handling of complexity may create conditions that impair the circulation of judicial agency
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# *Pushing at the edge of complexity and simplicity*

*How simple can you  
make it?*

Maximum  
Feasible  
Simplicity

(compatible with  
functionality)

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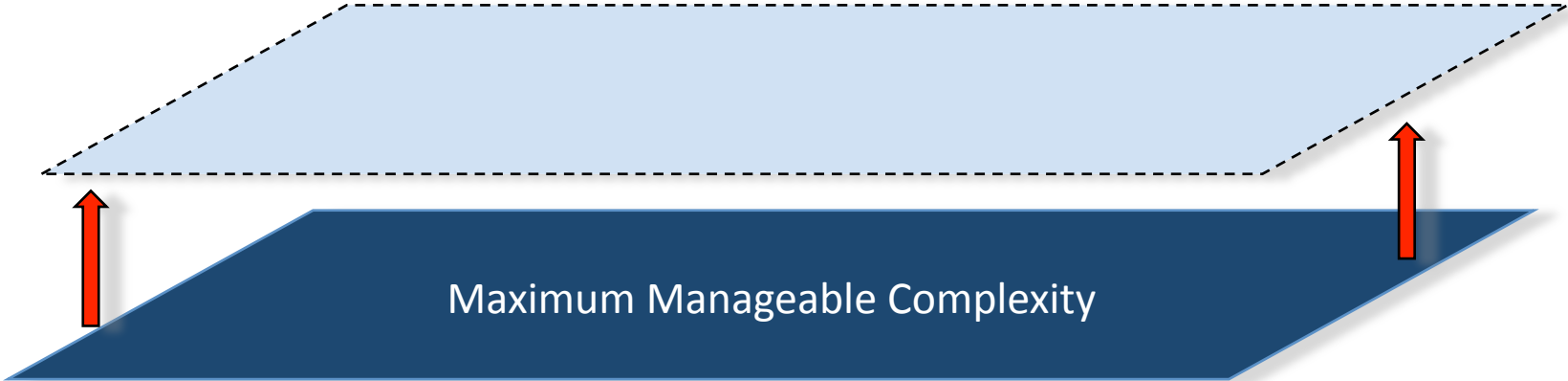
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*How complex does it  
have to be?*

Maximum  
Manageable  
Complexity

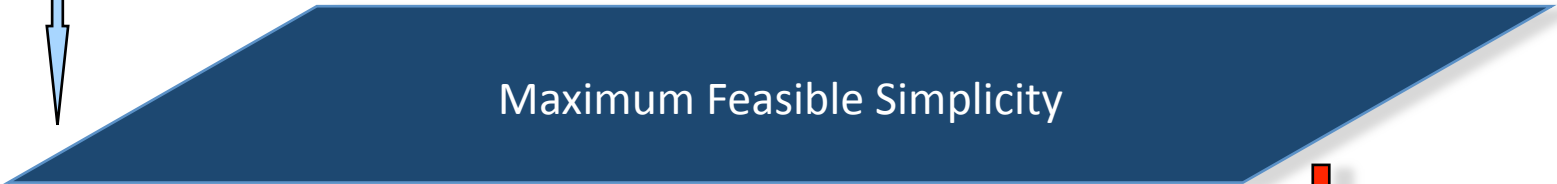
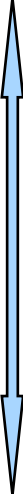
(compatible with user  
and ICT capability)

Too much variety, too complex for users, need of mediators



Maximum Manageable Complexity

The Dynamic Space of Design Solutions



Maximum Feasible Simplicity

Too little variety of options  
too much functional simplification





# *Interactions between media*

- In online procedures the digital medium remediates judicial agency, its instruments, and the channels through which it flows
  - Data and agency which are legal in the conventional environment must be kept legal in the digital environment
  - The complexity leap across media must be carefully handled to prevent agency blockages
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# *Interactions between functional domains*

- The law may feed technological complexity
  - Delegation of legal procedures to ICT may lead to more organizational and legal complexity
  - Functional simplification of legal procedures and their delegation to ICT applications can be achieved at different degrees in different jurisdictions
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# *Interactions between national jurisdictions*

- MSs' legal systems and NIF start out at different stages of development
- They sit upon different infrastructures (technical, legal, organizational)
- They respond to different bureaucratic and legal requirements in each MS

All this will influence the path of transformation and adaptation of each single NIF to EIF, thus increasing the level of complexity

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# *Inter-temporal interactions*

- Users needs, technologies, legal rules, organizational routines change over time
  - Interoperability-over-time
  - Flexibility and evolvability as critical design requirements
  - Inter-temporal harmonization affects both the national and the trans-border levels
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