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# **EFFORTS Policy Recommendations for BE**

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## **Summary**

There is still much to be done in Belgium to improve effectiveness in the enforcement of the Brussels Ibis, EEO, EOP, ESCP and EAPO Regulations. There is not sufficient uniformity in the application of the investigated Regulations in Belgian legal practice.

Firstly, the implementation of the Efforts Regulations in Belgium has not achieved considerable success. This failure is mainly arising from the existing hurdles in finding relevant information about the applicable national rules (especially at enforcement level), insufficient practical assistance for lay citizens (i.e., consumers as creditors), and most significantly a lack of digitalisation.

Secondly, the following policy recommendations are put forward to national and EU policymakers to adopt relevant legislative amendments for improving efficiency of the ESCP Regulation.

Apart from the EAPO-Regulation, Belgium has not passed supplementary legislation to embed the Regulations in the Belgian legal order, whereas Belgian procedural law conflicts with the Regulations on various points.

This leads to many problems about the effectiveness of the procedure in Belgium and this has a substantial effect on the choices parties make between the different procedural routes.

Legal practitioners meet serious problems when they invoke the Regulations. Some have given up the Regulations, while others use the Regulations but in doing so pay close attention to the specific legal practice at the court.

Apart from the internal Belgian problems, it appears that the effectiveness of the procedures is still strongly influenced by the lack of harmonization regarding the service of documents and the execution phase of the payment of the debt.

The low application of the Regulations in Belgium is thus not (only) caused by the general reservation by practitioners to use new procedural rules. A targeted approach, especially improving a wider information and a training offer, will increase the success of these Regulations.

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### **First Recommendation: Supplementing public information**

The lack of full and clear information about implementation proceedings of the said Regulations has negative influence on their effective application.

This situation can favorably be addressed by supplementing information and publications constituting a sort of guidance on how to embed the Regulations in the existing Belgian legal order in a way that is compatible with EU law.

So, the first recommendation is to enact supplementing public information about how to use existing national proceedings in order to apply the parts of EU Regulations referred to national law (i.e., as EOP Regulation demands to national law the opposition phase, it is necessary to inform the public about competent domestic jurisdiction and relevant proceedings).

The general awareness of the aforementioned Eu Regulations in Belgium is relatively low.

Judges, lawyers, and bailiffs don't have sufficient knowledge of them, and this appears to be a general problem. So, it is necessary to increase the national training offer in European law.

This offer is still very inadequate. This needs to improve training concerns not only judges, prosecutors, lawyers, notaries, clerks, and bailiffs but also jurists and students. About Eu measures regarding free circulation of civil judgements, the training should include, in addition to EU Regulation, the more general concept of private international law, including procedural aspects.

In fact, all EU measures regarding civil cooperation in civil matters are strictly linked to the more general concept of private international law, so that the development of EU law in this matter is said to have produced the "comunitarization" of private international law.

### **Second Recommendation: Focus on language issues**

Other obstacles to the effectiveness of the procedures appear to be language issues. Nevertheless, these language issues are the same found in any general cross-border case in which two or more languages are used. Eu Regulations, in particular European Payment Order and Small Claims Procedures have standardized forms and offer the possibility to transform a model form of language X to a form of language of preference. The language transformation option,

however, only covers the text of the form and it could be better if it would extend the translation to the text boxes that are filled out (e.g., the reasons given by a judge). In practice, parties are often asked to provide the translation, and, in some cases, this has created a considerable delay.

The legal ground on which these Regulations are applied is different. While the implementation in Belgian system of Brussels Ibis, EOP, EEO, ESCP Regulations stays on their direct and immediate applicability, the EAPO Regulation has been implemented through a specific Belgian law, applicable also to strictly internal cases.

### **Third Recommendation: Uniformity of the service of documents**

The effectiveness of Regulations is still seriously affected by the lack of uniformity regarding the service of documents and the execution phase. This may be one of the reasons for which some Regulations have not been very frequently applied.

### **Fourth Recommendation: Improvement of a judicial database**

Last but not least, in Belgium, case law is not systematically published and not many cases are available to the whole public and also to the practitioners.

It is necessary to front the lack of a systematic and accessible publication of court' decisions for increasing the awareness of EU Regulations in this matter and favour the training on it among practitioners and citizens.

The level of gravity of this state of play depends on the peculiar characteristics of each Regulation and their connected problems.

### **Brussels Ibis**

The abolition of exequatur procedure, that is the main object of this Regulation, reduced times and costs of the enforcement. It is now necessary to go on promoting the effective free movement of judgements and authentic instruments in the EU territory, especially identifying measures of equivalent effect in the Member State of enforcement.

So it will be effective the adaptation of measures issued in another Member State not known in the law of Belgium.

The development of secure electronic communication tools offers new potentiality for exchange between people and institutions involved in civil cross-border enforcement procedures. These communication means will also implement the adoption and the circulation of preservation measures.

And therefore, it is increasingly important for practitioners to have more and more secure practical tools, which should make it easier for them to store and send their titles to be enforced abroad.

Not only for this Regulation, but it is also to be underlined that practitioners have approximate knowledge of EU Regulations, due to lack of training in European law offered by public institutions and lack of information about its objectives.

### **European Enforcement Order**

In Belgium, the Ministry of Justice initially drafted a Circular on 22 June 2005 to front the lack of national implementing rules. Nevertheless, the usefulness of this document was considered 'very controversial' to the point that both courts and scholars have expressed doubts as to the possibility of issuing EEOs in Belgium. Similarly, this Circular also granted the authority to issue or certify outgoing EEOs to the court's chief clerk of the court that delivered the judgment or approved the settlement. However, this was not very helpful in embedding the Regulation in the Belgian legal system, having created many controversial positions. In effect, Belgian procedural system conflicts strongly with EEOR.

Firstly, in Belgium it does not exist a review mechanism, as required by the Regulation.

Secondly, the notion and the interpretation of an 'uncontested claim' in default cases is very controversial. So, it is necessary clarifying these issues for the Belgian legislator.

### **European Payment Order**

On various aspects of the EOP Regulation the views and practices at the courts in Belgium may be different because the application of the Regulation is not centralized in a specialized court but spread among various courts.

In Belgium, the practical impact of the EPO Regulation on cross-border enforcement of claims appears to have been relatively small. This situation is partly linked to the lack of national implementing rules clarifying the concrete functioning of the EPO procedure.

First, it is necessary to centralize in a specialized court the competence, that it is nowadays spread among various courts.

In fact, the large variety of competent judges does not help in creating a uniform approach. The absence of guidance leading to a common approach in supplementing law is not sufficiently clear for the judges. The uncertainty of the

proceedings enables the lawyers to clarify the expected costs and duration of the procedure for their clients.

Furthermore, it is necessary to increase the means of communication accepted by and available to the Belgian courts for purposes of the Regulation.

In fact, they are limited to two<sup>1</sup>: the form A application in Annex I may be lodged directly, with the supporting documents, at the registry of the court with jurisdiction; or the same form, with the supporting documents, may be sent to the court by registered post.

The situation is set to evolve when EU provisions on digitization are implemented in this field.

### **European Small Claims Order**

The implementation of the ESCP in Belgium, despite its huge potential specifically for low threshold disputes – that are mostly consumer claims – has been remarkably under-used to the present day. The main reason behind this limited application mainly refers to the lack of awareness among citizens and some practitioners (e.g., lawyers and judiciary staff) about the existence and function of this procedure.

National policymakers are recommended to take actions necessary for providing citizens with relevant and easily accessible information about the competent enforcement bodies within their respective jurisdiction. The full contact details of the pertinent executing agents (e.g., bailiffs) should be included in the publicly accessible websites such as judiciary and the consumer protection center (e.g., ECC-Net). This information should be available not only in the official language of the country but also in English to ensure enhanced accessibility for EU citizens. To simplify and expedite the enforcement of ESCP judgements, it is also recommended that national policymakers create interactive roadmaps (entailing national enforcement rules) which help articulate the various steps to be taken by creditors towards executing an ESCP judgement within that respective jurisdiction. Finally, national policymakers are highly recommended to foster the use of advanced ICT infrastructures in digitalization of the European Small Claims Procedure and the enforcement of its judgements.

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<sup>1</sup> See the communication made by the Belgian Government to the Commission pursuant to art 29(1)(c) EPOR and published on the e-Justice Portal: ‘The means of communication that are accepted by and available to the Belgian courts for purposes of the Regulation are confined to two: the form A application in Annex I may be lodged directly, with the supporting documents, at the registry of the court with jurisdiction; or the same form, with the supporting documents, may be sent to the court by registered post’.

## **European Account Preservation Order**

The EAPO-Regulation is seldom applied in Belgium, but this can be explained by its recent entry into force.

It is however important to note that it seems that the Belgian legislator made a mistake in the implementing act regarding the conditions under which the claimant must provide security. Article 12 EAPO-Regulation requires that the claimant must put up security in an amount that is sufficient to avoid abuse in the situation where the claimant does not yet have title. In this way, the implementing act has partially turned on its head what is ruled in the Belgian Judicial Code.

According to national code, the claimant who does have a title must provide security while the claimant who does not have a title clearly does not have to provide security. This must obviously be an error because there is no logic to this provision.

So, it would be advisable to clarify this issue, being useful integrating this implanting rule in the Belgian Judicial Code, in order to create a higher level of awareness of EU measures.