

**European Association of Private International Law**

Association européenne de droit international privé

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Public consultation  
on the European Enforcement Order

Regulation (EC) No 805/2004 creating a  
European Enforcement Order for uncontested claims

– Position paper –

Submitted on behalf of the  
European Association of Private International Law (EAPIL)

Responsible EAPIL member:  
Prof. Dr. Jan von Hein, University of Freiburg (Germany)

Members of the Working Group:

*Marco Farina*, Adjunct Professor of Civil Procedure at Luiss University and practicing Lawyer  
in Rome, Italy

*Valeria Giugliano*, Postdoctoral Research Fellow in International Civil Procedure at the Uni-  
versity of Milan, Italy, during the IC<sup>2</sup>BE project and currently at Fondazione Fratelli Confalon-  
ieri

*Jan von Hein*, Professor of German, Comparative and Private International Law and a Direc-  
tor of the Institute for Comparative and Private International Law, Department III, at the Uni-  
versity of Freiburg, Germany

*Xandra Kramer*, Professor of Private Law at the Erasmus University in Rotterdam and Profes-  
sor of Private International Law at Utrecht University, The Netherlands

*Thalia Kruger*, Professor of Private International Law at the University of Antwerp, Belgium,  
and Honorary Research Associate at the University of Cape Town, Republic of South Africa

*Lidia Moreno Blesa*, Researcher at Complutense University of Madrid, Spain

*Elena Alina Onțanu*, Assistant Professor of Private International Law at the Erasmus University in Rotterdam, The Netherlands

*Carmen Otero García-Castrillón*, Professor of Private International Law at Complutense University of Madrid, Spain

*Fieke van Overbeeke*, Researcher at the University of Antwerp, Belgium, and Legal Counsel at 'International Legal Institute' ([www.iji.nl](http://www.iji.nl)) in The Hague, The Netherlands

*Francesca Clara Villata*, Full Professor of Private International Law at the University of Milan, Italy

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## A. Introduction

This paper contains the answers elaborated by a Working Group under the auspices of the European Association Private International Law (EAPIL). The EAPIL Working Group was coordinated by Professor Dr. Jan von Hein, University of Freiburg (Germany), and composed of the members (in alphabetical order) named on the title page. The members of the working group divided the answers to the questions among them as indicated:

*Marco Farina*, Questions 11–13

*Valeria Giugliano*, Questions 11–13

*Jan von Hein*, Questions 19–22

*Xandra Kramer*, Questions 5–7

*Thalia Kruger*, Questions 14–16

*Lidia Moreno Blesa*, Questions 17–18

*Elena Alina Onțanu*, Questions 1–4

*Carmen Otero García-Castrillón*, Questions 17–18

*Fieke van Overbeeke*, Questions 8–10

*Francesca Clara Villata*, Questions 11–13

The composition of this working group reflects the earlier participation of its members (except for Lidia Moreno Blesa, who is a “newcomer” in this regard) in the two-year research project “Informed Choices in Cross Border Enforcement” (IC<sup>2</sup>BE), which was co-funded by the EU Commission (JUST-AG-2016-02, Grant Agreement No. 764217). The findings of this study will be published shortly (J. von Hein and T. Kruger, eds., INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020).

As researchers who are not active as lawyers themselves, we occasionally rephrased the question in order to clarify that we are not talking about our personal experience as practitioners, but refer to interviews with practitioners that we conducted in the course of the IC<sup>2</sup>BE study.

## B. Questionnaire

### EC Response Indication:

*If you are an academic researcher and you would like to respond to all targeted questions, you have to reply “yes” to questions 1 and 2.*

*Please note that the term ‘cross-border claim’ in the questionnaire means a claim against a person residing or organisation having its seat in another EU country. ‘Cross-border enforcement’ means enforcement of any court judgment, court settlement or authentic instrument (e.g. notarial deed) in an EU country other than the one from which they originate*

Question 1. Have you ever been involved in a case where a court, notary or other competent authority issued an EEO certificate?

Answer: As researchers who are not active as lawyers themselves, we would like to rephrase the question as follows: “Are you aware of EEO certification requests issued by courts, notaries or other competent authorities in EU Member States?” Insofar, the research carried out within the framework of the IC<sup>2</sup>BE project led to the identification of 234 published national decisions concerning the EEO procedure across eight Member States: Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Poland and Spain (see J. von Hein and T. Imm, Introduction, in: J. von Hein and T. Kruger, eds., *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, forthcoming in 2020, p. 3, 25).

### How many times?

#### Answer: More than 5

As researchers who are not active as lawyers themselves, we would like to rephrase the question as follows: “How many EEO requests/decisions have you analysed/identified as part of the research carried out?”

In the course of the IC<sup>2</sup>BE project, we collected case law on the EEO Regulation, the European Order for Payment (EOP) Regulation, the Regulation on the European Small Claims Procedure (ESCP), and the European Account Preservation Order (EAPO) Regulation (see the answer to question 17 below for more information on these Regulations). All partners collected case law from their countries by using all available avenues for (electronic or paper) publications. We collected all case law as from the date of entry into force of the instruments. The Max Planck Institute in Luxembourg was responsible for collecting the case law of the CJEU to include in our dataset. The number of summarised, translated and uploaded judgments is 698. This figure includes 22 CJEU decisions and 676 national judgments (see Jan von Hein and Tilman Imm, *Introduction*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 3, 25).

The number of cases analysed about the EEO are reflected in Table 1 below. These cases were mainly collected from publicly available published case law. This is not a reflection of the total number of applications of the EEO in these Member States. In most Member States no national statistics are available. In databases the fact is that only more substantial cases are published. These are not necessarily the ones where an EEO is issued, but might be particularly those where problems arose, which made the cases 'interesting' to publish.

**Table 1. Cases in the IC<sup>2</sup>BE database on the EEO Regulation**

	EEO
<b>CJEU</b>	8
<b>Belgium</b>	24
<b>France</b>	21
<b>Germany</b>	51
<b>Italy</b>	19
<b>Luxembourg</b>	11
<b>Netherlands</b>	76
<b>Poland</b>	18
<b>Spain</b>	14

English summaries of all these decisions are available in the IC<sup>2</sup>BE national database at [https://ic2be.uantwerpen.be/?\\_ga=2.134674105.991229850.1605352007-1043580831.1590570831#/search/national](https://ic2be.uantwerpen.be/?_ga=2.134674105.991229850.1605352007-1043580831.1590570831#/search/national).

Following the abolition of the exequatur in the Brussels Ibis Regulation, the number of requests for EEO certifications seems to have been on a descending trend, and some practitioners and scholars wonder whether the EEO Regulation is still a useful instrument to maintain (from the publications related to the IC<sup>2</sup>BE project, see, arguing for an abolition of the EEO Regulation: Andreas J. Baumert, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 555, 557 et seq.; Haimo Schack, *Anerkennungs- und Vollstreckungsversagungsgründe im Europäischen Zivilprozessrecht*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), p. 237, 252; Michael Stürner, *Der Anwendungsbereich der EU-Verordnungen zur grenzüberschreitenden Forderungsdurchsetzung*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), p. 143, 162; but see, in favour of maintaining the EEO Regulation: Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 549, 554; Gerald Mäsch and Max Peiffer, *New Enforcement Regime under the Brussels Ibis Regulation – Does the Paradigm Shift Help Judgment Creditors?*, in: J. von Hein and T. Kruger, eds., INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, p. 31, 49; see also, arguing for conducting a comparative evaluation of Brussels Ibis first, Thalia Kruger and Fieke van Overbeeke, *European Enforcement Order*, in: J. von Hein and T. Kruger, eds., INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia,

forthcoming in 2020, p. 51, 63). Nevertheless, the IC<sup>2</sup>BE research revealed that the EEO Regulation remains interesting for certain types of cases (e.g. loan and mortgage agreements, lease agreements, factoring contracts, commercial contracts) and/or professions (e.g. notaries in France), and due to the lack of public policy exception for challenging enforcement abroad (compared to the Brussels *Ibis* Regulation). Some other reasons that contribute to the more limited use of the EEO Regulations relate to: (1) uncertainties as to the ‘uncontested’ nature of the claim (e.g. Belgium, Germany, Italy, Netherlands, Poland), (2) difficulties in the implementation into national procedural rules and correlation with national rules for their application (e.g. Belgium, see Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 178–181), and (3) more limited knowledge and familiarity with the EEO compared to the Brussels *Ibis* Regulation across analysed Member States.

Most of the EEO decisions in all eight analysed jurisdictions are Business-to-Business (B2B) claims, followed by Business-to-Consumer (B2C), Consumer-to-Business (C2B), and Consumer-to-Consumer (C2C) proceedings (for a more detailed analysis of these patterns, see Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 537).

### **In which EU country?**

**Answer:**

**BE - Belgium**

**FR - France**

**DE - Germany**

**IR - Italy**

**NL - Netherlands**

**PL - Poland**

**ES - Spain**

### **In what capacity?**

**Answer: Other**

**Please specify:** Academics conducting research on the application of the EEO in eight Member States.

**The EEO entailed:**

## Judgment

## Court settlement

## Authentic instrument

Answer: The national case law collected in the course of the IC<sup>2</sup>BE project reveals that the EEO procedure is used for certifying judgments as well as court settlements and authentic instruments. Most often, the certification requests concern judgments and occasionally court settlements (four German EEO cases, one French EEO case and six Dutch EEO cases) and authentic instruments such as notarial deeds (Germany, three Italian EEO cases, two Dutch EEO cases, one Luxembourgish EEO case and one Spanish EEO case).

The reasons for a more limited use of the EEO in comparison with other European Regulations appear to be related to: (1) the parallel application of the EEO and Brussels *Ibis* Regulation following the abolition of the exequatur in the latter Regulation; (2) the scope of the EEO that is restricted to uncontested claims within the meaning of Article 3(1) EEO; (3) the claimant's uncertainty as to the nature and/or qualification of the debt as being uncontested; (3) some issues of correlation and interaction with national procedural rules for the application of the EEO; and (4) familiarity and/or knowledge of the procedure.

Question 2. Have you ever been involved in cross-border enforcement based on an EEO certificate?

**Answer:** As researchers who are not active as lawyers themselves, we would like to rephrase the question as follows: "Have practitioners in the Member States that you did research on been involved in cross-border enforcement based on an EEO certificate?" Insofar, the answer is yes.

A quick search on the website of the CJEU is sufficient to show that the four second-generation Regulations – the EEO Regulation, the EOP Regulation, the ESCP Regulation, and the EAPO Regulation – only play a small role compared with the Brussels *Ibis* Regulation. Whereas the CURIA search engine retrieves 44 judgments and orders concerning Brussels *Ibis* alone, the case law on all four second-generation Regulations combined only adds up to half of this number, i.e. the 22 decisions that have been uploaded to the IC<sup>2</sup>BE database. The preponderance of the Brussels regime becomes even clearer if one searches for decisions applying the former Brussels I Regulation since 21 October 2005, the day that the EEO Regulation became applicable; in this case, the number of decisions on either Brussels I or Brussels *Ibis* climbs to a staggering 226 judgments and orders. Of course, one has to discount those figures by taking into account that, compared with the very general scope of Brussels *Ibis*, the second-generation Regulations cover more specific scenarios, i.e. uncontested (EEO, EOP) or small claims (ESCP) as well as provisional measures to freeze bank accounts (EAPO).



Nevertheless, the national reports confirm the impression that, with the notable exception of Luxembourg (Veerle Van Den Eeckhout and Carlos Santaló Goris, *Luxembourg*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 275, 277 et seq.), the awareness of average practitioners concerning the second-generation Regulations is still rather underdeveloped. The general awareness of the Regulations is described as ‘relatively low’ (Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 165; for a similar finding, see Veerle Van Den Eeckhout and Carlos Santaló Goris, *France*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 191, 192–194; Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *Italy*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 247, 249; Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz, and Agnieszka Lewestam-Rodziewicz, *Poland*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 337, 339 et seq.; Carmen Otero García-Castrillón and Samia Benaissa Pedriza, *Spain*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 361, 363 et seq.). The visibility of the Regulations for average practitioners can be increased by inserting implementing provisions supplementing the Regulations into the domestic Code of Civil Procedure, as in Germany and Spain (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 215; Carmen Otero García-Castrillón and Samia Benaissa Pedriza, *op. cit.*, p. 362 et seq.) or in special implementing laws, such as the various *uitvoeringswets* for each Regulation in the Netherlands (Elena Alina Onțanu, *The Netherlands*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 303, 305). The relationship between a low rate of application of the Regulations and the awareness that practitioners have of them is described as a kind of chicken-or-egg problem in the Italian report: a poor frequency of application leads to a lack of awareness about the existence and/or the functioning of the second-generation Regulations, and vice versa (Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *op. cit.*, p. 249). Furthermore, a low awareness is frequently attributed to a lack of specific legal training (*ibid.*). A certain inertia may also play a role in this regard, as lawyers tend to prefer legal tools they are already familiar with to experimenting with new ones (*ibid.*).

However, those practitioners who specialise in international civil and commercial law are aware of the Regulations and make use of their respective advantages (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 215; Elena Alina Onțanu, *The Netherlands*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 303, 305; Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz, and Agnieszka Lewestam-Rodziewicz, *op. cit.*, p. 339 et seq.). Nevertheless, even those early adopters or ‘repeat players’ complain that accessing information about the Regulations could be made easier (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 216; Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *op. cit.*, p. 249 et seq.). In particular, practitioners who have acquired experience in applying

the Regulations criticise uncertainties in the practical solutions adopted by the courts, the inadequate guidance offered by the Member States to potential users and a lack of transparency relating to national procedural rules supplementing the Regulations (Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *op. cit.*, p 249 et seq.; on the latter point, see also Veerle Van Den Eeckhout and Carlos Santaló Goris, *Luxembourg*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 275, 278). The amount of information at the EU level is considered better, but also criticised as still too technical and generic with regard to the implementation (Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *op. cit.*, p 249 et seq.). Many practitioners perceive the presentation on the e-Justice Portal as not very user-friendly; its structure is criticised as not very intuitive and not supporting users enough in making the right choice of instruments or standard forms to use in a specific case (Elena Alina Onțanu, *The Netherlands*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 303, 306 et seq.). Moreover, the information at the European level is regarded as at times incomplete, not detailed enough or not sufficiently up to date (Elena Alina Onțanu, *The Netherlands*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 303, 306 et seq.).

### **How many times?**

Answer: See Table 1 supra.

### **In which EU Countries?**

Answer:

Belgium

France

Germany

Luxembourg

Poland

Spain

### **In what capacity?**

Answer: Other

Please specify: Academics conducting research on the application of the EEO in eight Member States.

**The EEO entailed:**

**Judgment**

Court settlement

**Authentic instrument (two Dutch EEO cases and a German EEO case)**

Question 3. Have you ever been involved in cross-border enforcement based on the certificate provided for by the former Brussels I Regulation (Regulation (EC)44/2001)?

Answer: Yes, most practitioners had gained experience with Brussels I. In contrast with the former Brussels I Regulation, the EEO Regulation abolished the traditional requirement of obtaining a declaration of enforceability and thus soon became known as pioneering the so-called ‘second generation’ of EU Regulations on civil procedure. The relationship between the Brussels I Regulation and the EEO Regulations was characterised by their optional nature: within the respective scope of application of the various Regulations, creditors were generally allowed to freely choose between enforcing a claim under Brussels I or by means of the EEO Regulation. Empirical data show, however, that the second-generation Regulations were, in most Member States, only applied in a relatively small number of cases (see the answer to question 2 above). While at first the EEO Regulation had, from a claimant’s point of view, the advantage of dispensing with the exequatur requirement, the recast of the Brussels I Regulation in 2012 has significantly changed this equation because an exequatur is no longer required under the latter Regulation either. Thus, weighing the pros and cons of choosing between one of the various options of cross-border enforcement has become more difficult. It is very likely that practitioners familiar with standard Brussels I *lis* procedures will only opt for one of the second-generation Regulations if there is a clear benefit that outweighs the time, efforts and costs required to familiarise themselves with a less frequently used and therefore less well-known legal instrument.

In light of the optional nature of the EEO Regulation, the question has arisen in practice as to whether a creditor may apply for both an EEO certificate and a Brussels I certificate either simultaneously or consecutively. According to the German Federal Supreme Court (BGH), a creditor was barred from applying for a declaration of enforceability under Brussels I if he had already obtained a certification as an EEO, and vice versa (BGH 04.02.2010 – IX ZB 57/09, *NJW-RR* 2010, 571, para. 10; confirmed in BGH 14.06.2012 – IX ZB 245/10, *BeckRS* 2012, 13821, para. 2; see also OLG Stuttgart 20.04.2009 – 5 W 68/08, *NJW-RR* 2010, 134; contra: OLG Naumburg 06.07.2012 – 12 W 37/12, *BeckRS* 2012, 20176). In the first case, the creditor could simply proceed with enforcing the EEO and therefore lacked a legitimate legal interest for obtaining an additional exequatur; moreover, the debtor should be protected from multiple enforcement proceedings. This reasoning still

holds with regard to Brussels *Ibis* (Steffen Pabst, in: T. Rauscher (ed.) *EUROPÄISCHES ZIVILPROZESS- UND KOLLISIONSRECHT*, 4<sup>th</sup>. ed., Cologne, Dr. Otto Schmidt, 2015, Art. 27 EEO Regulation, para. 10; Peter F. Schlosser, in: P.F. Schlosser and B. Hess, *EUROPÄISCHES ZIVILPROZESSRECHT*, Munich, CH Beck 2015, Art. 27 EEO Regulation, para. 1).

In the reverse scenario, however, many academics argued that applying for the certification of a judgment as an EEO after already having obtained a declaration of enforceability under Brussels I ought to be allowed because the union-wide effect of the EEO certification went beyond the reach of a Brussels I exequatur, which was by its nature limited to the requested Member State (Jan Kropholler and Jan von Hein, *Europäisches Zivilprozessrecht*, 9th ed., Frankfurt/Main, Verlag Recht und Wirtschaft 2011, Art. 27 EEO Regulation, para. 4; S. Pabst, *op. cit.*, Art. 27 EEO, para. 10; Michael Stürner, *Die EuVTVO als Baustein des Europäischen Zivilprozessrechts*, in R. GEIMER et al., eds., *EUROPÄISCHE UND INTERNATIONALE DIMENSION DES RECHTS*, Vienna, LexisNexis, 2012, p. 587, 592). While this argument no longer convinces after exequatur has been abolished in Brussels *Ibis*, too, obtaining an EEO may still have practical advantages for the creditor in light of the various grounds for refusing enforcement under Brussels *Ibis* that are not available to the debtor under the EEO Regulation (S. Pabst, *op. cit.*, Art. 27 EEO Regulation, para. 10). The majority of interviewees think that it ought to be possible to apply for a certification under Brussels *Ibis* after having obtained a certification of a judgment as an EEO or vice versa. Only one of them had experience with applying for both documents, though.

There is only one indication in a Spanish case of a combined application of the EEO Regulation and the Brussels I Regulation in an enforcement procedure. The case concerned a French decision. Two parallel enforcement requests had been made, one based on the Brussels I Regulation and the other in the context of the EEO Regulation. The court of first instance suspended the enforcement of the EEO that was linked to a previously initiated enforcement procedure under the Brussels I Regulation. The court of appeal decided that the enforcement of the EEO in the same procedure (extension) or in a newly initiated one was a purely formal issue and that there were no reasons for the defendant's opposition to the enforcement (D. Sarl. Roj: AAP PO 1131/2011, ECLI:ES:APPO:2011:1131A; Spanish Report, IC2BE).

### **How many times?**

**Answer:** More than 5

### **In which EU Countries**

Belgium

France

Germany

Luxembourg

Poland

Spain

**In what capacity?**

Answer: Other

Please specify: Academics conducting research on the application of the EEO in eight Member States.

**The certificate involved:**

Judgment

Court settlement

Authentic instrument

Question 4. Have you ever been involved in cross-border enforcement based on the certificate provided by the Brussels *Ibis* Regulation (Regulation (EU) 1215 /2012)?

Answer: Yes, see the answer to question 3.

How many times?

More than 5

**In which EU Countries:**

Belgium

France

Germany

Italy

Luxembourg

Netherlands

Poland

Spain

**In what capacity?**

**Answer: Other**

Please specify: Academics conducting research on the application of the EEO in eight Member States.

**The certificate involved:**

**Judgments**

Court settlement

Authentic instrument

Question 5. To what extent does the EEO make the cross-border enforcement of uncontested claims easier?

**Answer: Somehow easier**

The abolition of *exequatur* has made the enforcement easier overall. As it is clear from the IC<sup>2</sup>BE study, however, the application of the EEO Regulation is not always unproblematic. Not in all Member States proper implementing legislation is in place and this complicates the application. For instance, in Belgium the lack of a mechanism similar to the review mechanism of Art 19 EEO Regulation, has led Belgian courts to refuse the certification (see Fieke van Overbeeke, Belgium, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 179). In addition, the application of a number of other provisions, including Art 3 EEO Regulation (determining whether a case is uncontested) raises issues in some Member States, which affects the effectiveness (Thalia Kruger and Fieke van Overbeeke, *The European Enforcement Order*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 53-55). Lastly, the answer to the question as to whether the EEO has made the cross-border enforcement of judgments more efficient also depends on what you compare it with and which Member State is involved. The EOP Regulation, which also applies to uncontested claims, works well in some Member States, and coupled with the abolition of *exequatur* under the Brussels *Ibis* Regulation, this would make the EEO Regulation no longer very useful, though it was when it was enacted (see the answer to question 21).

5a. How long did it take to obtain the EEO certificate (in *weeks, months, years*)? Note: If the request was lodged before the judgment became final, indicate the period from when the judgment became final to when the EEO certificate was issued. In all other cases, indicate the period from when the request was submitted to when the EEO certificate was issued. If there were multiple requests, give an average.

There are no firm data available as to how long it takes, and the present researchers have not been involved as practitioners in these cases. There are no quantitative data available as these data are generally not recorded in the Member States, while also the published case law doesn't systematically provide these data. In addition, an EEO can already be requested at the start of proceedings (cf. Art. 6(1) EEO Regulation) and the certificate is then provided together with the judgment (see Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 549, 551).

5b. Compared to obtaining the Brussels I certificate (before the recast), was this longer or shorter?

Answer: Don't know

The study we conducted does not provide data enabling to make a comparison between the length of time for obtaining a certificate pursuant to Art. 54 Brussels I and for obtaining the EEO certificate. One has to emphasise, though, that those certificates are not strictly comparable: whereas the EEO certificate, in principle, allows for a direct enforceability of the judgment in another Member State (Art. 5 EEO Regulation), the certificate according to Art. 54 Brussels I merely was a precondition for applying for a declaration of enforceability in the requested Member State (Art. 38(1) Brussels I). Insofar, it seems to be more appropriate to compare the length of time needed for obtaining this declaration of enforceability with the time span required for obtaining the EEO certificate. With regard to the time needed for obtaining an exequatur pursuant to Arts. 38–42 Brussels I, one may still refer to the data collected in the Heidelberg Report (B. Hess, T. Pfeiffer and P. Schlosser, eds., *THE BRUSSELS I REGULATION 44/2001 – APPLICATION AND ENFORCEMENT IN PRACTICE*, Munich, CH Beck 2008, para. 454).

5c. Compared to obtaining the Brussels I certificate (after the recast), was this longer or shorter?

Answer: Don't know

The study we conducted does not provide data enabling to make a comparison between the length of time needed for obtaining the certificate pursuant to Art. 53 Brussels Ibis and the time span required for obtaining an EEO certificate (Art. 9 EEO Regulation). However, it should be pointed out that the court issuing an EEO certificate has to examine whether the minimum

procedural standards (Arts. 12–19) EEO Regulation have been respected. This may be more time-consuming than issuing the less demanding Brussels *Ibis* certificate.

5d. How long did it take from the submission of the EEO certificate and other necessary documents to the first enforcement action (in weeks, months, years)?

Note: If there were multiple requests, give an average. The enforcement action is the action taken directly by the enforcing authority in order to enforce the claim, e.g. seizure of a property, identification of property etc. It does not include actions like serving a document upon the debtor.

Answer: one to three months

The study we conducted did not focus on the actual enforcement stage, and does not provide exact empirical data on this point. However, in his contribution to the first German IC<sup>2</sup>BE workshop, Professor Ivo Bach (University of Göttingen) made a hypothetical calculation based on the facts of the *Seramico/Trade Agency* case (Case C-619/10, ECLI:EU:C:2012:531), which was actually still decided under Brussels I. If the English High Court judgment had been simultaneously certified as an EEO in October 2009, Bach assumes that enforcement in Latvia could have started in early 2010 at the latest, but probably already in November 2009 (Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 549, 551).

5e. Compared to enforcement on the basis of the former Brussels I Regulation (before the recast), was this shorter or longer?

Answer: Much shorter

Although the IC<sup>2</sup>BE study does not provide empirical data enabling to make such a comparison between Brussels I and the EEO Regulation, we may again refer to the calculation made by Ivo Bach on the basis of the *Seramico* case (Case C-619/10, ECLI:EU:C:2012:531). In this case, the English High Court passed its judgment on 10 October 2009; a Latvian court issued the declaration of enforceability on 5 November 2009. Since the exequatur was opposed by the debtor and a preliminary reference to the CJEU was made, however, it is realistic to assume that no actual enforcement measures were started in Latvia before the end of 2013 (Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 549, 550).

5f. Compared to enforcement on the basis of the *former* (sic) Brussels I Regulation (after the recast), was this shorter or longer?

Answer: slightly shorter

The study we conducted does not provide data enabling to make a systematic comparison between Brussels *Ibis* and the EEO Regulation in this regard. However, as Brussels *Ibis* has, in



substance, maintained the grounds for a refusal of enforcement in Arts. 46, 45(1), one may expect that in the *Seramico* case (Case C-619/10, ECLI:EU:C:2012:531), for example, actual enforcement could not have been commenced much earlier than under Brussels I (Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 549, 550).

#### Question 6. Did the EEO reduce the costs of cross-border enforcement of uncontested claims?

The IC<sup>2</sup>BE research does not provide data as to cost reduction, because there is no information available as to what the costs were previously. However, what can generally be stated is that not having to obtain an exequatur in the Member State of enforcement, as was required prior to the enactment of the EEO Regulation, reduces the costs of cross-border enforcement. The costs additionally incurred in cross-border proceedings are the substantial translation costs and costs resulting from cross-border service of documents. Moreover, even in those cases where legal representation is not compulsory, cross-border cases often involve attorneys, and lawyer's fees are substantial. As regards court fees, the costs of certification can be included in the total fee for proceedings in case the certificate is requested at the start of proceedings. Some Member States charge a small fee in case the certificate is requested after judgment has been given. For instance, in Poland, a fee of 50 PLN (approx. € 10) is charged for issuing the certificate (see Agnieszka Frąckowiak-Adamska and Agnieszka Guzewicz, Poland, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 341).

#### Question 7. Did the EEO help recover the debt?

Answer: Though the IC<sup>2</sup>BE study does not focus on the actual enforcement stage, it is safe to say that requesting an EEO is generally helpful. In most cases the request for an EEO is granted. In Belgium, the application of the EEO has not been very successful as it was not properly implemented and the Belgian procedural system conflicts with the EEO Regulation. The required review mechanism is lacking, and the definition of an 'uncontested' claim under the Regulation has been problematic (see F. van Overbeeke, Belgium, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 179).

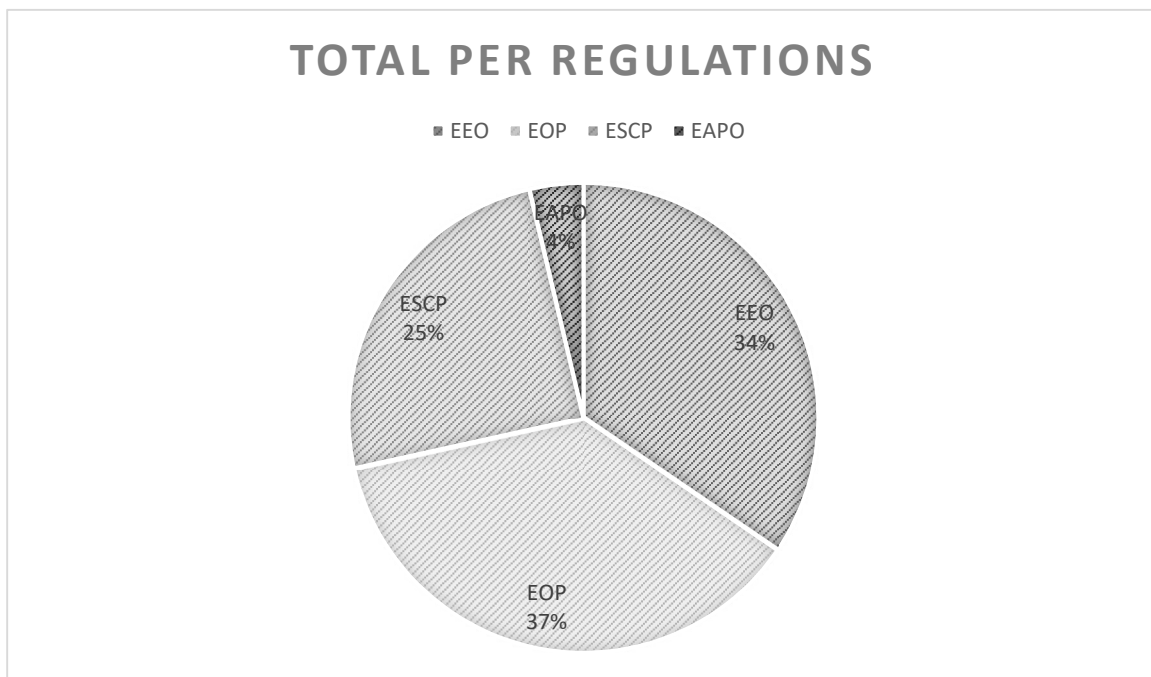
#### Question 8: How difficult is it to launch an enforcement action based on the EEO certificate compared to other instruments for the cross-border enforcement of claims?

Answer: Moderate

The response is different for the various Member States that we investigated in the IC<sup>2</sup>BE project: it depends on national procedures and on the habits and knowledge of local lawyers and bailiffs. It is difficult to tick one box for all Member States, which explains our choice for "moderate". Our response is not based on single experiences but on choices that lawyers seem to

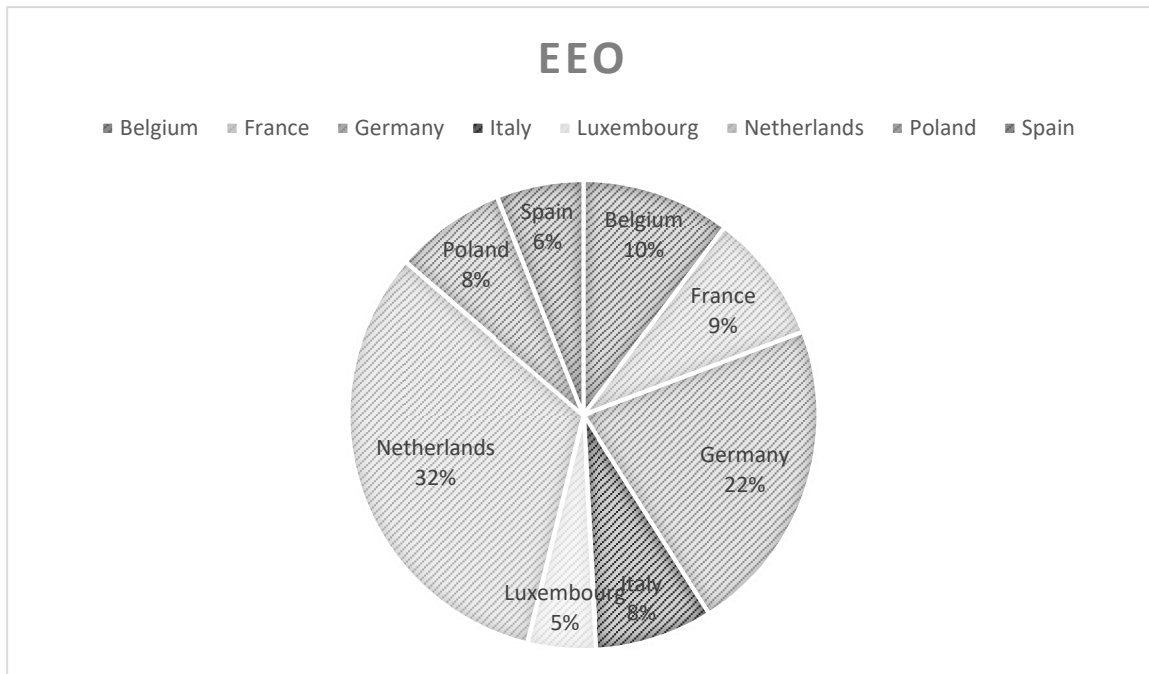
be making for the use of one or the other instrument. As explained above (answer to question 1, before table 1), our collection of *court decisions* is not comprehensive with regard to the total number of *cases* in which one of the second-generation Regulations is applied, because there may well be cases in which a certificate under one of those Regulations is issued without giving rise to any complications that are then litigated before a court. That being said, the number of published decisions may serve as a rough indicator of the importance of the Regulations in domestic court practice.

**Diagram No. 1: Domestic court decisions in the IC<sup>2</sup>BE database**



The following diagram No. 2 shows the percentage of court decisions involving the EEO as per Member State researched in the IC<sup>2</sup>BE database:

**Diagram No. 2: Court decisions involving the EEO as per Member State in the IC<sup>2</sup>BE database**



The EEO Regulation was used in varying frequency in the Member States investigated, notably in the Netherlands and Germany. After the entry of force of the Brussels *Ibis* Regulation, however, the use of the EEO Regulation has declined in these States as well.

The application of the EEO Regulations seems to be hampered in Belgium by the lack of embedding legislation, which creates pervasive legal uncertainty (see Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 178–181). In France, the EEO Regulation is still quite popular due to the flourishing practice of certification by French notaries (see Veerle van den Eeckhout and Carlos Santaló Goris, *France*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 191, 203). In Germany, the EEO Regulation has generated several cases; however, since the abolition of exequatur in the Brussels *Ibis* Regulation, the number of cases has dropped. Many German authors see no further need for the continuing existence of the EEO Regulation (from the publications related to the IC<sup>2</sup>BE project, see, arguing for an abolition of the EEO Regulation: Andreas J. Baumert, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, *RECHT DER INTERNATIONALEN WIRTSCHAFT* 2018, p. 555, 557 et seq.; Haimo Schack, *Anerkennungs- und Vollstreckungsversagungsgründe im Europäischen Zivilprozessrecht*, *ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT* 119 (2020), p. 237, 252; Michael Stürner, *Der Anwendungsbereich der EU-Verordnungen zur grenzüberschreitenden Forderungsdurchsetzung*, *ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT* 119 (2020), p. 143, 162; but see, in favour of maintaining the EEO Regulation: Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, *RECHT DER INTERNATIONALEN WIRTSCHAFT* 2018, p. 549, 554; Gerald Mäsch and Max Peiffer, *New Enforcement Regime under the Brussels Ibis Regulation – Does the Paradigm Shift Help Judgment Creditors?*, in: J. von Hein and T. Kruger,

eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 31, 49). German practitioners prefer the EOP Regulation to domestic orders for payment in international cases and appreciate the high predictability of the central EOP court in Berlin (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 216). In Italy, the EEO Regulation is regarded as still relevant and useful in practice, especially for claims flowing from sale, supply and distribution contracts. In Luxembourg, the demand for the EEO is declining. In the Netherlands, the EEO Regulation is still quite popular among practitioners; the procedure continues to be used, although the number of EEO certifications has declined in recent years. The same is true for Poland.

For a more detailed quantitative analysis of the pattern of court decisions in the IC<sup>2</sup>BE database and their distribution with regard to the various second-generation Regulations in the Member States, see the conclusions of this study (Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 556–571).

In some Member States, the EEO is recognised without further requirements and will be smoothly executed by a bailiff or other competent authority. Other Member States require additional steps to be taken in accordance with their domestic enforcement law, insofar as this remains applicable pursuant to Art. 20(1) EEO Regulation.

Question 9: What are the biggest difficulties in launching [an] enforcement action based on the EEO certificate?

Answer: (i) Information about national authorities and requirements and (ii) language.

(i) In some Member States, it remains unclear which authority is competent to deal with the enforcement action (see the answer to question 13a) and some Member States may impose additional requirements rooted in domestic enforcement law pursuant to Art. 20(1) EEO Regulation (see the answer to question 8 above). There is sometimes a lack of transparency about what these requirements are. Information provided at the EU level is better, but interviewees in the IC<sup>2</sup>BE project indicated that the e-Justice is not very user-friendly: its structure is not very intuitive and it does not sufficiently assist users in making the best choices for cross-border enforcement. Moreover, this information is at times incomplete or out of date (Jan von Hein and T. Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 533).

(ii) Language seems to be an obstacle in some Member States which require a translation of the EEO certificate and/or the underlying judgment (see the answers to questions 13b and c)

Question 10. To what extent do the procedural guarantees provided by the EEO Regulation ensure the rights of the parties to a fair trial?

Answer: To a large extent.

The EEO Regulation in principle follows the normal domestic procedure, so the rights of parties to a fair trial are, in principle, ensured to the same degree as in those procedures. The review requirements seem apt in light of the nature of the claim being uncontested. Thus, even though the review requirements are (seemingly) stricter than those of the Brussels *Ibis* Regulation, this seems to strike a fair balance.

Art. 19(1) EEO Regulation provides that, in the situations referred to in subparagraphs (a) and (b) of that provision, a judgment can be certified as an EEO only if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment in question. However, this provision does not require Member States to establish such a review procedure in their national law – if a Member State’s law is deficient in this regard, this merely means that a certification of claims as an EEO must be ruled out (Case C-300/14, *Imtech Marine Belgium NV v. Radio Hellenic SA*, ECLI:EU:C:2015:825, paras. 32–42). This open-ended approach in effect leaves it to the domestic laws of the Member States whether they provide for a review procedure or not. Some Member States have refrained from amending their domestic laws because those provisions already go beyond what is required by Art. 19(1) EEO Regulation (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 232 et seq.; Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz, and Agnieszka Lewestam-Rodziewicz, *Poland*, in the same volume, p. 337, 346). The question as to whether domestic review procedures comply with the Regulation’s requirements is controversial (see Francesca C. Villata, Elena D’Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *Italy*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 247, 257). The situation is particularly complicated in Belgium, the Member State from which the preliminary reference leading to the *Imtech* judgment originated (Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 178–181). As it is still uncertain whether a Belgian judgment can actually be certified as an EEO, most of the interviewees in Belgium avoid using this Regulation (*ibid.*). All national reports considered, however, the situation in Belgium seems to be an exceptional one.

Service as a procedural guarantee is sometimes problematic, as explained in Questions 10.a. and 10.b. below. Moreover, it emerged that debtors do not always understand the documents that are served on them (Veerle Van Den Eeckhout, *France*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 191, 197).

#### 10a. How was the document instituting proceeding of the summons served upon the debtor or the debtor's representative?

Answer: Considering the various national reports, all the boxes can be ticked. There is a wide variety of how service is done in Member States, even within one Member State. Sometimes even a single court uses a combination of various methods.

It emerged from the experiences in various countries (including Luxembourg, the Netherlands, Poland and to a lesser extent Germany and Italy) that postal service is not always optimal: postal services might not be reliable, causing delays and information on whether the defendant was actually served with the documents might be lacking. Practices relating to receipts differ (Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz and Agnieszka Lewestam-Rodziewicz, *Poland* in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 337, 341 et seq.). Moreover, obtaining information on the residence of the debtor is sometimes burdensome (Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 538 et seq.). These issues are being addressed in the current reform of the Service Regulation, 1393/2007.

Electronic modes of service is still not widely used, although interviewees, particularly in Italy and Poland, indicated that they are in favour of such service. However, they acknowledged that differences in national practices in this regard makes electronic service very difficult (Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *Italy*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 247, 252; Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz and Agnieszka Lewestam-Rodziewicz, *Poland* in the same volume, p. 337, 342).

#### **Was any lack of service/incorrect service of document remedied?**

Yes.

A lack of service of documents can be corrected in the Member States. We have discerned both possibilities as given in the answers of the boxes in the various national reports. However, remedies against defective service are not addressed coherently in the various second-generation Regulations (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 221).

In some instances, a lack of service is cured by a new service, and in other instances the court is satisfied that the debtor knew about the proceedings (for instance Regional Court Swidnica, 04.05.2017, II Cz 82/17, quoted in Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz and Agnieszka Lewestam-Rodziewicz, *Poland*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 337, 345 and available in the IC<sup>2</sup>BE database).

Language is the most frequent reason for refusal of service (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 220).

Moreover, debtors sometimes raise the lack of proper service for dilatory purposes, although there was no actual infringement of their rights (Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *Italy*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 247, 251).

10b. How was the information on how to contest the claim provided?

Answer: Mostly this information is given in writing, in a document accompanying the service of the judgment with the EEO.

10c. Was the review of the judgment certified as the EEO requested?

Answer: Considering the various national reports, we see that the review of the judgment certified as the EEO has been requested. However, due to the fact that official statistics are not published in the Member States, we cannot give a reliable overview of the number of review applications. In Member States where national implementation legislation has been adopted (such as the Netherlands), the review process works more smoothly. In some other systems (such as Germany), the existing national law was already sufficient to provide for review under the EEUO Regulation. In yet other systems (such as Belgium, see Question 10 above and Italy Francesca C. Villata, Elena D'Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *Italy*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 247, 257 et seq.) the review procedure continues to cause confusion.

10d. Was the suspension of the enforcement of the decision certified as an EEO requested?

Answer: Considering the various national reports, we see that the suspension of the enforcement of the decision certified as an EEO has been requested. However, due to the fact that official statistics are not published in the Member States, we cannot give a reliable overview of the number of review applications.

Question 11: In general, are the procedural guarantees provided for by the EEO Regulation correctly applied in practice?

Answer: Mostly applied

The EEO Regulation establishes certain 'minimum standards' to be fulfilled by the procedural rules of the Member States for a judgment applying those rules to be certified as an EEO. The minimum standards can be divided into two important subjects: (i) the service of documents and information to the debtor and (ii) review.

As far as the safeguards related to the service of documents are concerned, the CJEU issued various decisions highlighting the need of respecting the debtor's rights of defence: (a) in *Cornelius de Visser* (Case C-292/10, ECLI:EU:C:2012:142), the CJEU ruled that in a case where the defendant has no known address, the court of the Member State of origin could not issue an EEO certificate; (b) in *Collect Inkasso* (Case C-289/17, ECLI:EU:C:2018:133), the CJEU ruled that the name

and address of the court where the debtor could challenge the default judgment should be mentioned; (c) in *RD* (Case C-518/18, ECLI:EU:C:2019:546), the CJEU ruled that where a court is unable to obtain the defendant's address, it does not allow a judicial decision relating to a debt, made following a hearing attended by neither the defendant nor the guardian ad litem appointed for the purpose of the proceedings, to be certified as a European Enforcement Order. It seems clear that, due to the binding nature of the CJEU's judgment for the national courts, the safeguards related to the service of documents shall be considered fully applied. We did not obtain any evidence of national decision not complying with the aforesaid CJEU's rulings. We also consider that, to some extent, the CJEU in *Collect Inkasso* may have gone too far in protecting a debtor's right of defence: in cases where – according to the national rules of civil procedure – the debtor could not contest the claim in person but must be represented by a qualified lawyer, it seems less compelling to have the EEO certificate refused because the name and the address of the court where an opposition shall be lodged with were not mentioned.

As far as the safeguards on the review are concerned, the CJEU ruled in Case C-300/14 (*Imtech Marine Belgium NV v. Radio Hellenic SA*, ECLI:EU:C:2015:825) that Article 19(1) EEO Regulation must be interpreted as meaning that, in order to certify a default judgment as an EEO, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgment in the two situations referred to in that provision and that it allows the periods for challenging a judgment on an uncontested claim to be extended, not only in the event of force majeure, but also where other extraordinary circumstances beyond the debtor's control prevented him from contesting the claim in question. In this respect, though, doubts could arise in order to answer the question as to whether a certain national remedy provided for review meets the requirements set out by the CJEU, with regard to, for example, the need for a “full review, in law and in fact”. In Belgium, for instance, there is still uncertainty about the presence or not in the national civil procedure of a review procedure complying with Art. 19 EEO Regulation as interpreted by the CJEU (Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 178–181).

#### Question 12: Is the cost of obtaining the EEO certificate reasonable?

Answer: Yes.

The cost of obtaining an EEO certificate in the Member States appears to be reasonable and, in any case, lower as or equal to similar national proceedings where a certification is needed. Difficulties or particular issues related to the paying or the amount of such fees are not reported in the case law.

On the other hand, recurrent identified factors capable of increasing of the costs are (i) the de facto inevitability of the assistance of a lawyer in nearly all cases in both the Member States



of origin and of the enforcement (see below question 12b, 12 d) and (ii) the enforcement procedures e.g. translation costs, bailiff costs, representations costs.

12a: What were the costs of issuing the EEO certificate? (If there were multiple requests, give an average) – currency and amount:

Answer: See the answer to question 12.

12b: Were you represented by a lawyer when applying for the EEO certificate?

Answer: Among the pervasive problems identified by practitioners and academics, the first is without a doubt the lack of awareness on the (existence and) functioning of Regulations (see, in more detail, the answer to question 2 above). Many creditors consider themselves neither sufficiently informed nor sufficiently assisted by State authorities due to the lack of practical guidance. This implies that is often too complicated to start a European procedure without the assistance of a specialised lawyer. In most of cases analysed during the IC<sup>2</sup>BE project, the parties were assisted by a lawyer as of the moment of the application for the EEO certificate both in the Member State of origin and in the Member State of enforcement.

12c: Did you translate the request for the EEO certificate?

Answer: The request for the EEO certificate is, in principle, an act of the same proceedings that led to the certifiable judgment. Therefore, according to the respective Member States' rules on civil proceedings, the official language of the Member State of origin shall be used; as a consequence, no translation issue should arise in this regard.

Sometimes, however, parties resort to language issues to delay proceedings. For example, a (rejected) opposition to the enforcement of an EEO has been based on the fact that the original court decision was in German (Austrian court) whilst the certificate was issued in Spanish (enforcement State) (see Spanish case AAP AL 357/2008, 30 July, 2008 - ECLI: ES:APAL:2008:357A).

12d: Compared to obtaining a Brussels I certificate, the costs of obtaining the EEO certificate were:

Answer: The costs for issuing an EEO certificate could be slightly higher.

This is due to the fact that when a party seeks the issuance of an EEO certificate it must be aware of some circumstances related to the proceeding at the end of which the national title was issued. That could require in many cases assistance from qualified professionals (i.e. lawyers). On the contrary, the issuance of a certificate under Brussels *Ibis* Regulation could be seen as mostly automatic. The above observation is balanced by the fact that under EEO Regulation the issuance of the certificate leads to a situation where the debtor must seek withdrawal of the certificate in Member State of origin.

Question 13: Is the cost of enforcement based on the EEO certificate reasonable?

Each Member State has its own practices on enforcement and related costs, which may vary considerably.

In any case, the amount of court fees is equal to the amount of court fees for an equivalent national procedure of the same value. Normally the legislators refrain from privileging or disadvantaging an enforcement procedure based on an EEO.

13a: How difficult was it to find an appropriate authority to submit the EEO for enforcement?

Answer: The IC<sup>2</sup>BE study has shown that when enforcement has to take place abroad, it is not always easy for the party seeking enforcement to determine the competent authority to address. The practices on enforcement and, namely, the types of professionals involved in the enforcement procedure in the different Member States vary considerably. Whereas some systems, such as Italy, France, Netherlands, Belgium, Luxembourg, are relying on the services of bailiffs, other systems are more administrative-oriented, such as Finland, and, finally, other Member States such as Austria and Spain entrust the courts with enforcement. Accordingly, the different procedures implemented by those professionals diverge widely in each Member State. That is the main reason why in almost all cases analysed, the parties were assisted by a lawyer in the Member State of enforcement.

13b: Have you provided a translation or transliteration of the EEO certificate?

Answer: Language issues are arguably less important in the context of EEO Regulation than in cross-border enforcement in general because this Regulation relies on standard forms; accordingly, filling out the templates on the e-Justice Portal allows a swift transition from one language to another. However, the form sheets occasionally require the claimant to provide more specific information that goes beyond the mere ticking of boxes. In this respect, practitioners would welcome further technical assistance with regard to the open-text fields as well. Art. 20(1)(c), first sentence EEO Regulation provides that, where necessary, the creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with a transcription of the EEO certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. The Member States studied in the course of the IC<sup>2</sup>BE project have not formally exercised the option (Art. 20(1)(c), second sentence EEO Regulation) to allow the use of anything other than

their official language(s) (Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 540). However, some practitioners would favour the use of at least the English language (*ibid.*), while others warn of the difficulties that processing such documents would cause for the enforcement authorities (*ibid.*). Dutch courts also accept a language that the debtor understands, i.e. usually English or German, and seem to adopt a less formal attitude towards language issues in general (Elena Alina Onțanu, *The Netherlands*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 303, 308). In some Member States, lawyers complain that courts frequently demand more translations than actually required as ‘necessary’ by the second-generation Regulations (Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 167, with regard to the French-speaking courts; Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 218).

The question as to whether and in which circumstances a translation is “necessary” within the meaning of article 20(2)(c) EEO Regulation has given rise to divergent interpretations. The German national report indicates that some academics favour a restrictive reading, arguing that a translation is only ‘necessary’ insofar as the document contains information that goes beyond the mere ticking of boxes in the form (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 217 et seq., with further references). Others insist on a translation whenever the document in question is drawn up in any other language than German (*ibid.*, with further references). However, according to almost all German practitioners whom we interviewed, courts usually do not accept forms in other languages than German (Jan von Hein and Tilman Imm, *Germany*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 213, 218).

The Italian, Spanish and Polish national reports note that the language issues and translation requirements do not create major obstacles to the enforcement of an EEO certificate (Francesca C. Villata, Elena D’Alessandro, Lidia Sandrini, Gabriele Molinaro, and Valeria Giugliano, *Italy*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 247, 250; Carmen Otero García-Castrillón and Samia Benaissa Pedriza, *Spain*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 361, 364; Agnieszka Frąckowiak-Adamska, Agnieszka Guzewicz, and Agnieszka Lewestam-Rodziewicz, *Poland*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 337, 340). This is mainly because the EEO certificate shall be released using a standard form, what makes, in many cases, the translation into a different language not so complicated. In this regard, the Conclusions of the IC<sup>2</sup>BE study suggest that the model set forth in Art. 20(2) of the revised ESCP Regulation, according to which the translation requirement is limited to information entered in the free-text fields of the certificate, should be applied also to the cross-border enforcement of an EEO in a different Member State (Jan von Hein and Tilman Imm,

*Conclusions and Recommendations*, in: J. von Hein and T. Krüger, eds., INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, p. 529, 540). In any case, there is a wide consensus among practitioners about the fact that the courts should be obliged to accept forms in the most common European languages, particularly English.

13c: Have you been asked to provide a translation of the judgment, court settlement or authentic acts certified as EEO?

Answer: As far as the translation of the judgment, court settlement or authentic act to be enforced is concerned, the EEO Regulation does not provide for any such requirement (cf. Landgericht München II, 19 January 2010 – 6 T 6032/09, BeckRS 2011, 12370 para. 12, ECLI:DE:LGMUEN2:2010:0119.6T6032.09.0A). Accordingly, a translation of the judgment, (or court settlement and/or authentic act, respectively) is only required, according to Articles 5 and 8 of the European Service Regulation (No. 1393/2007), when the enforcement shall start by serving the judgment itself on the debtor (as happens in Italy) and the service has to be made in a Member State using an official language that is different from the one where the judgment was passed.

13d: Have you been asked to provide any other documents or information before the national enforcement procedures started?

Answer: Art. 20(1), 2<sup>nd</sup> sentence EEO Regulation provides that a ‘judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement’. Recital 8 of the EEO Regulation further clarifies this point by stating that ‘[a]rrangements for the enforcement of judgments should continue to be governed by national law’. It fully depends on the Member State where an enforcement action has to be initiated if further documents or information are requested. In some Member States, the EEO is recognised without further requirements and will be smoothly executed by a bailiff or other competent authority, whereas the IC<sup>2</sup>BE research showed that other Member States insist on the fulfilment of domestic requirement insofar as domestic law remains applicable pursuant to Art. 20(1) EEO Regulation.

A recurrent issue is whether the ‘enforcement clause’ shall be affixed to the decision prior to its enforcement, as a further requirement provided for in some Member States (Art. 475 of the Italian Civil Procedure Code (*spedizione in forma esecutiva*); Arts. 502 and 503 of the French Code of Civil Procedure (*expédition revêtue de la formule exécutoire*); §§ 724–725 ZPO (*Vollstreckungsklausel*)). This formality is mainly aimed at distinguishing the certified copy of the decision suitable for enforcement from all other copies. French and Italian case-law concluded that the EEO certificate supersedes the need for this further domestic formality, which lacks sense if the bailiff does not have the original of the decision in his hands. In Germany, the problem has been expressly solved by the law implementing the EEO Regulation, which has removed the domestic requirement of the ‘enforcement clause’ for decisions to be enforced in the context of the EEO Regulation, so that, also in Germany, the first person who

will be confronted with the foreign judicial decision to be enforced will be the bailiff (cf. § 1082 ZPO).

Question 14. Is the EEO useful for the cross-border enforcement of uncontested claims?

Answer: Rather useful

The EEO's simplified procedure is useful for uncontested claims. Often the debtor does not really have a ground to rely on for the refusal of enforcement. Forcing the creditor to go through cumbersome proceedings directed against the enforcement is then not the most efficient approach. For a more detailed analysis, see the answers to questions 16 and 19 below.

Question 15. Does the EEO certificate speed up the cross-border enforcement of uncontested claims?

Answer: Speeds it up somewhat

According to the research results of the IC<sup>2</sup>BE project, practitioners in the Netherlands, France, Germany, Luxembourg and Italy consider the speed of proceedings under the EEO Regulations as generally good or at least satisfactory (see Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 541).

This answer very much depends on how well the EEO Regulation is embedded in the national procedural law of the Member State of origin. In some Member States (like Belgium), the EEO Regulation was not accompanied by specific national legislation. As Belgian domestic procedural law does not contain a review procedure, judges have doubted about their capacity to issue an EEO certificate. The uncertainty remained, even after the CJEU judgment C-300/14, *Imtech Marine Belgium NV v. Radio Hellenic SA*, ECLI:EU:C:2015:825 (Fieke van Overbeeke, *Belgium*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 163, 180). If such certificate cannot be issued, the system of course cannot function properly.

Speed and efficiency can also depend on the court system in the Member State of origin (see Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 541).

Question 16. Would your responses to questions 14 and 15 be the same without having the possibility of enforcing uncontested claims under Regulation (EU) 1215/2012 (Brussels Ibis)?

Answer: Yes

The EEO's system is different from that of the Brussels *Ibis* Regulation.

Three main differences mean that the two systems might still usefully operate side by side (see also Aude Berthe, *L'impact du règlement Bruxelles I bis sur les règlement T.E.E., I.P.E. et R.P.I.*, in E. Guinchard (ed), *LE NOUVEAU RÈGLEMENT BRUXELLES Ibis*, Brussels, Bruylant, 2014, who argues at pp. 309-315 that the EEO still has place due to its undeniable speed and efficiency; for a similar assessment, see Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, *RECHT DER INTERNATIONALEN WIRTSCHAFT* 2018, p. 549, 554; Gerald Mäscher and Max Peiffer, *New Enforcement Regime under the Brussels Ibis Regulation – Does the Paradigm Shift Help Judgment Creditors?*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 31, 49).

Firstly, the EEO requires certain guarantees from domestic procedural law and a check of these guarantees to be done in the State of origin (see also Thalia Kruger and Fieke van Overbeeke, *European Enforcement Order*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 51, 57 et seq). Particularly with regard to potential defects of service, the review of a judgment is concentrated in the Member State of origin (Arts. 13–15 EEO Regulation), whereas Brussels *Ibis* allows for a control of whether service has been defective in each Member State of enforcement (see Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, *RECHT DER INTERNATIONALEN WIRTSCHAFT* 2018, p. 549, 552). Thus, the EEO makes union-wide enforcement more efficient for the creditor because he does not have to re-litigate those issues in each state of enforcement. From a debtor's point of view, however, the EEO system curtails his possibilities of defending himself against the enforcement (see answer to question 20).

Where minimum procedural standards are not guaranteed, the EEO fails to operate adequately and for these situations Brussels *Ibis* offers a better solution.

Secondly, Brussels *Ibis* offers a possibility to the judgment debtor to request non-enforcement in the Member State of enforcement, while the EEO forces the debtor to address the most important issues in the Member State of origin. While the Brussels *Ibis* approach makes sense generally, the EEO is arguably more appropriate for the creditor in the case of an uncontested claim. If the claim is uncontested, the balance might tilt in favour of a restriction of access to court to only the courts in the Member State of origin and not the courts of the Member State of enforcement, at least insofar as the former courts are better equipped to deal with the debtor's objection because they already possess the relevant information, e.g. regarding defects of service.

Thirdly, the grounds for a refusal of enforcement are still different under the EEO and Brussels *Ibis* (see also Aude Berthe, *op. cit.*, p. 310; Haimo Schack, *Anerkennungs- und Vollstreckungsversagungsgründe im Europäischen Zivilprozessrecht*, *ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT* 119 (2020), pp. 237–253). The only ground for refusal under the EEO concerns irreconcilable judgments (Art. 21(1) EEO Regulation). For all other matters, the judgment debtor would have to address his concerns to a court in the State of origin. On top of that, Brussels *Ibis* contains more grounds for refusal. It allows the enforcing authority to refuse enforcement on various grounds (Arts. 41(1) and

45). Moreover, the judgment debtor can apply for the refusal of enforcement, invoking one of several grounds (Arts. 45 and 46 Brussels *Ibis*).

In addition, the Brussels *Ibis* Regulation allows the authorities of the enforcing State to adapt foreign judgments (Art. 54 Brussels *Ibis*), while the EEO gives no such authority. Therefore, under the EEO Regulation, the judgment would just have to be enforced in the requested Member State, even if the authorities consider that the measure or order is unknown in its own legal system. Cuniberti explains that Article 54 Brussels *Ibis* could have the effect that remedies not available in the enforcing Member State cannot be enforced, and that this limits the rights of creditors (Gilles Cuniberti, *Making Cross-Border Enforcement More Effective for Creditors*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 413, 423).

Finally, it should be noted that we do not yet have enough information about how well the abolition of exequatur is working in Brussels *Ibis*. Whether the EEO would remain useful largely depends on this question (see also Thalia Kruger and Fieke van Overbeeke, *European Enforcement Order*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 51, 63). In the meantime, the EEO merely provides for an additional option for creditors. Insofar, it does not do any harm and it should not simply be revoked without considering accompanying changes in the Brussels *Ibis* Regulation with regard to uncontested claims (see the answer to question 20 below).

Question 17. Do you agree with the following statement: ‘The procedures for obtaining and enforcing EEO certificates are compatible with other provisions of EU law on the cross-border enforcement of claims’?

Answer: Strongly agree

**Please explain which EEO elements are not compatible with which provisions of other instruments**

These answers are based on case law analysis that we have done in the IC<sup>2</sup>BE project. Apart from the EEO Regulation the project included the European Order for Payment (EOP) Regulation, the Regulation on the European Small Claims Procedure (ESCP), and the European Account Preservation Order (EAPO) Regulation. For the EOP and ESCP Regulations, our research included both the original and the amended versions. We examined 678 cases from eight EU Member States (Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Poland and Spain) as shown in Table 2 below. Please note that this is not a representation of how many cases have been brought in the Member States under investigation, but merely the cases that we had access to (due to place of publication). Moreover, there are cases in which a judicial official such as the German *Rechtspfleger* issues an EEO without any further decision of the

court to which he is attached. The data is thus not meant to be conclusive with regard to the total figure of the cases in which the Regulations are applied.

**Table 2. Cases in the IC<sup>2</sup>BE database**

	<b>Total</b>	<b>EEO</b>	<b>EOP</b>	<b>ESCP</b>	<b>EAPO</b>
<b>CJEU</b>	22	8	11	2	1
<b>Belgium</b>	44	24	18	2	0
<b>France</b>	58	21	29	6	2
<b>Germany</b>	79	51	15	7	7
<b>Italy</b>	49	19	22	7	1
<b>Luxembourg</b>	79	11	36	31	1
<b>Netherlands</b>	213	76	26	101	10
<b>Poland</b>	53	18	27	7	2
<b>Spain</b>	101	14	78	7	2

English summaries of all these decisions are available in the IC<sup>2</sup>BE national database at [https://ic2be.uantwerpen.be/?\\_ga=2.134674105.991229850.1605352007-1043580831.1590570831#/search/national](https://ic2be.uantwerpen.be/?_ga=2.134674105.991229850.1605352007-1043580831.1590570831#/search/national).

Along with the EEO Regulation, a number of other, so-called ‘second-generation’ EU Regulations have abolished the need for obtaining an exequatur between Member States. Instead, those Regulations have established the direct enforcement of judgments, court settlements or authentic instruments regarding monetary claims. Those legal instruments are Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels *Ibis* Regulation), Regulation 4/2009 on jurisdiction, recognition and enforcement and applicable law in maintenance obligations (the Maintenance Regulation); Regulation 1896/2006 creating a European Order for Payment procedure (EOP Regulation) and the Regulation 861/2007, establishing a European Small Claims Procedure (ESCP Regulation). The judgment, court settlement or authentic instrument certified as a European Enforcement Order is treated as if it was given in the Member State of enforcement and it shall be enforced in the same way as a “national” one (Art. 20(1) EEO Regulation).

When looking at the compatibility of these Regulations, their respective territorial and substantive scopes have to be considered, as well as their working conditions (see Michael Stürner, *Der Anwendungsbereich der EU-Verordnungen zur grenzüberschreitenden Forderungsdurchsetzung*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), pp. 143–166).



As for the territorial scopes of the Regulations, the first thing to be noted is that, from 1 January 2021, the transition period after 'Brexit' ends and the UK will no longer be treated as a Member State of the EU (see Jonathan Fitcher, *Third State Relations and Cross-Border Enforcement after Brexit*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, pp. 463–482). Therefore, EU Regulations will not be applicable as such on its territory nor the rest of the Member States will apply them regarding decisions coming from this country. Before that date, the UK remains involved in all the concerned Regulations.

While the EEO, EOP and ESCP Regulations are applicable in all EU Member States except for Denmark, the Brussels *Ibis* Regulation and the Maintenance Regulation do also apply to this country. In other words, to enforce a judgment, a court settlement or an authentic instrument regarding a monetary credit of, or from, Denmark, the EEO Regulation is not available but the Brussels *Ibis* Regulation is.

Regarding the substantive scope of the Regulations, when the EEO Regulation was drafted, maintenance was still covered by the Brussels I Regulation, whereas, when the recast of Brussels I abolished exequatur, this topic was taken out from this Regulation. Hence, the EEO Regulation had originally opened the path towards the abolition of exequatur for uncontested maintenance claims. Once the Maintenance Regulation had dispensed with the exequatur for this type of obligations, the EEO Regulation merely entailed an additional means to enforce judgements in this area.

With regard to the grounds available for refusing enforcement, the Regulations show some marked differences (see Haimo Schack, *Anerkennungs- und Vollstreckungsversagungsgründe im Europäischen Zivilprozessrecht*, *ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT* 119 (2020), pp. 237–253). While the Brussels *Ibis* Regulation allows for up to five grounds to appeal the enforcement, including public policy (Art. 45(1)(a) Brussels *Ibis*), the EEO Regulation includes only one (the incompatibility with a previous judgement, Art. 21(1) EEO Regulation). From the creditor's point of view, the EEO Regulation's main advantage may be the reduction of the debtor's chances of opposition; thus, the enforcement can be facilitated. In practice, however, public policy is rarely invoked against monetary claims, and almost never successfully (see Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 550).

There are further differences between the Brussels *Ibis* Regulation and the EEO Regulation. Although both Art. 21(1) EEO Regulation and Art. 45(1)(c) and (d) Brussels *Ibis* Regulation provide that the enforcement shall be refused if the judgment is irreconcilable with a judgment given in another Member State, a third country or in the forum, in the EEO Regulation, also the domestic judgment must be older than the judgment which is meant to be enforced; moreover, this judgment must have been given between the same parties and have the same cause of action, whilst in the Brussels *Ibis* Regulation – at least if one only looks at the text of

the provision – it only needs to involve the same parties. However, this difference does not seem to have major practical consequences.

Moreover, it has been pointed out that the EEO Regulation implements the country-of-origin principle much more stringently than the Brussels *Ibis* Regulation. In particular, it does not grant any power of control over the legality of enforcement to the requested Member State. Apart from a conflicting judgment rendered in the requested Member State – in this case, the debtor can still achieve a refusal of enforcement directly in the requested Member State – the debtor is strictly obliged to defend himself against the judgment in the Member State of origin (*cf.* Art. 23 EEO Regulation and also the EOP and ESCP Regulation). There is no provision for an application to deny enforcement in the requested Member State comparable to Art. 46 Brussels *Ibis* Regulation. Already for this reason, the second-generation Regulations show a considerable conceptual distance from the Brussels *Ibis* Regulation (*see* Gerald Mäsch and Max Peiffer, *New Enforcement Regime under the Brussels Ibis Regulation – Does the Paradigm Shift Help Judgment Creditors?*, in: J. von Hein and T. Kruger, eds., *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 31, 48 et seq.).

Finally, it is important to note that resorting to one instrument or another is up to the creditor; whose autonomy in choosing the most suitable tool towards the prosecution of his interests is, therefore, protected (Art. 27 EEO Regulation). For a closer analysis of how this option may be exercised, see the answer to question 3 above.

Question 18. Do you agree with the following statement: ‘The procedures for obtaining and enforcing EEO certificates are compatible with provisions of EU law on the service of documents and taking of evidence in cross-border civil and commercial cases’?

Answer: Strongly agree

Please explain which EEO elements are not compatible with which provisions of other instruments.

Added value of the EEO.

### ***Service of documents***

The document instituting the proceedings as well as any summons to a court hearing must be served by way of a method recognised by the EEO Regulation (Arts. 13 and 14 EEO Regulation). When these methods do not allow for a successful notification, the EEO Regulation turns to Regulation 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

Both Art. 1(2) Service Regulation and Art. 14(2) EEO Regulation (particularly for services without proof of receipt) exclude the use of the service means provided for, in cases where the debtor's address is not known with certainty. Both equally provide minimum standards for the protection of the rights of defense to be interpreted in accordance with Art. 47 of the Charter of Fundamental Rights (expressly recognised in a recent Spanish Constitutional Court Decision as to the EEO – STC 26/2020, 24 February 2020). In general, the notification methods in both Regulations are practically equal.

In operational terms, though the utility of standard forms is unquestionable, it has been pointed out that the interplay between the Service Regulation and the second-generation Regulations, in particular the EEO Regulation, deserves closer scrutiny since the last ones frequently require the claimant to provide more specific information that goes beyond the ticking of boxes. In particular, in the light of the proposal for a reform of the Service Regulation, more advanced technological means of service must be considered (see Jan von Hein and Tilman Imm, Introduction, in: J. von Hein and T. Kruger, eds., *Informed Choices in Cross-Border Enforcement*, Cambridge, Intersentia, forthcoming in 2020, p. 3, 19 et seq.).

The added value of the service of documents prescriptions of the EEO (and, in general, the second-generation Regulations) may come from the adaptation to the particular instrument and the consideration of the available technological means that help to ease and speed the service procedure.

### ***Taking of evidence***

Art. 28 EEO Regulation does not expressly mention any kind of relationship with Regulation 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. This absence can be explained on the basis of the different objectives of these instruments. Whilst the EEO Regulation seeks the mutual recognition and enforcement of Member States' decisions (enforcement procedure), the Evidence Regulation aims to facilitate the main proceedings leading to a judgment. On this basis, the EEO Regulation does not contemplate any formality on obtaining proofs.

Question 19: How would the cross-border enforcement of uncontested claims in the EU be without the EEO Regulation?

Answer: More difficult.

The answer to this question largely depends on the circumstances of the individual case. Although both the EEO Regulation and the Brussels *Ibis* Regulation have abolished the need for obtaining a declaration of enforceability, the devil is in the details. Divergences persist between the two Regulations that may make the cross-border enforcement of uncontested claims easier for a creditor when he uses the EEO Regulation rather than the Brussels *Ibis* Regulation (see already the answer to question 16 above).

If, for example, a creditor is aware of the fact that the question as to whether the service of documents has been carried out properly may be contested by the debtor in various potential states of enforcement, a lawyer advising the creditor to adopt the most secure approach would rather recommend the use of the EEO Regulation, provided that the minimum procedural standards of the EEO Regulation have actually been observed. In such a case, the creditor quickly obtains a title that is directly enforceable in 26 Member States, whereas, under Brussels *Ibis*, the issue of proper service may have to be litigated anew in every Member State of enforcement (Arts. 46, 45(1)(b) Brussels *Ibis*). Since defects of service happen not infrequently in international litigation, this seems to be the most important practical advantage of the EEO Regulation compared to Brussels *Ibis*. Insofar, the EEO Regulation is clearly more onerous on the debtor. In comparing the different regimes, one must take into account, though, that Art. 45(1)(b) Brussels *Ibis* Regulation also eliminates defective service as a ground for refusal when the debtor has failed to fight against the judgment in the state of origin even though it was possible for him to do so. Thus, the debtor is, although to a lesser extent, obliged to exhaust legal remedies in the Member State of origin under Brussels *Ibis* as well.

Moreover, one may infer from the *Avotiņš* judgment of the European Court of Human Rights (*Avotiņš v. Latvia*, no. 17502/07) that the EEO Regulation's model of allocating the exclusive control of minimum procedural standards to the Member State of origin may only be justified in light of the guarantee of a fair trial (Art. 6(1) ECHR and Art. 47(2) of the European Charter) if two conditions are met: first, a strict scrutiny of those standards must be applied by the courts of this state; second, the organs of the EU, particularly the Commission and the CJEU, have to ensure that such a control is duly exercised. In compliance with the latter requirement, the CJEU has, in its case law on the EEO Regulation, consistently given a strict interpretation to the procedural minimum standards in order to effectively protect the rights of the debtor. Already in the *de Visser* judgment, the Court emphasised the fundamental difference between the mode of control under the traditional Brussels I regime and the exclusive allocation of safeguarding respect for minimum procedural standards under the EEO Regulation to the court of origin (Case C-292/10, *G v. Cornelius de Visser*, ECLI:EU:C:2012:142). The case dealt with the question as to whether a default judgment against a debtor whose address is unknown may be enforced under either the Brussels I or the EEO Regulation. The Court answered this question in the affirmative with regard to the Brussels I Regulation, but in the negative in respect of the EEO Regulation, stressing that

'[t]he [EEO] regulation institutes a derogation from the common system of recognition of judgments, the conditions of which are, as a matter of principle, to be interpreted strictly. ... [T]he abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of observance of the rights of the defence. ... [T]he defendant, by opposing, in accordance with Article 34(2) of Regulation No 44/2001 [now Art. 45(1)b Brussels *Ibis*], recognition of the judgment issued against him, will have the opportunity to ensure respect for his rights of defence. That guarantee

would, however, be lacking if ... a judgment by default issued against a defendant who was unaware of the proceedings was certified as a European Enforcement Order' (ibid., paras. 62–66).

Thus, in such a case, the usually more cumbersome model of Arts. 46, 45(1)(b) Brussels *Ibis* may actually be advantageous for the creditor.

A different scenario where the EEO Regulation has again – from a creditor's point of view – practical advantages compared to the Brussels *Ibis* Regulation exists where a judgment obtained in the country of origin might violate the public policy of the Member State of enforcement; this also applies if the creditor has reasons to believe that the debtor might rely on such arguments under Arts. 46, 45(1)(a) Brussels *Ibis*. Here, the EEO Regulation cuts off any defence based on public policy with a union-wide effect (BGH 24 April 2014 – VII ZB 28/13, BGHZ 201, 22), whereas Arts. 46, 45(1)(a) Brussels *Ibis* would again allow the question to be litigated anew in every Member State of enforcement. However, most practitioners interviewed in the course of the IC<sup>2</sup>BE project stated that public policy is only very rarely invoked and that this objection is hardly ever successful (see Jan von Hein and Tilman Imm, *Conclusions and Recommendations*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, p. 529, 550). Thus, this theoretical advantage of the EEO Regulation compared to the Brussels *Ibis* Regulation does not seem to be a major factor that actually guides practitioners' choices in a very significant way.

Finally, inconsistencies between the EEO Regulation and the Brussels *Ibis* Regulation with regard to irreconcilable judgments may occasionally be a factor that determines a creditor's choice between the two instruments (Haimo Schack, *Anerkennungs- und Vollstreckungsversagungsgründe im Europäischen Zivilprozessrecht*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), p. 237, 245 et seq.). In cases where a judgment from the Member State of origin conflicts with a decision that has been given between the same parties in the Member State of enforcement, Arts. 46, 45(1)(c) Brussels *Ibis* privilege the requested Member State's decision without taking the time sequence of the judgments into account. In contrast, Art. 21(1) EEO Regulation only regards a decision given in the state of enforcement as an obstacle if this judgment has been rendered earlier than the foreign decision. Thus, in a scenario where the debtor might invoke a later judgment given in the state of enforcement, the creditor would be well-advised to opt for the EEO Regulation rather than the Brussels *Ibis* Regulation.

In sum, certain divergences between the EEO Regulation and the Brussels *Ibis* Regulation remain which – in light of the particular facts of a given case – may still make the use of the EEO Regulation a preferred choice for the prudent practitioner. It is a question of policy, though, whether those divergences rest on a solid normative basis or whether one should try to achieve a higher degree of consistency in the course of a future revision of the EEO Regulation (see the answer to question 20).

Question 20: Should the EU continue to work on facilitation of cross-border enforcement of claims?

Answer: Yes

**Please indicate what aspects of the cross-border enforcement of claims require EU action and what this action could be.**

Based on the national reports written for the IC<sup>2</sup>BE study, one can identify three best practices in implementing the second-generation Regulations that lead to recommendations concerning future legislation and further practical steps (cf. already the recommendations by Elena Alina Onțanu, *CROSS-BORDER DEBT RECOVERY IN THE EU. A COMPARATIVE AND EMPIRICAL STUDY ON THE USE OF THE EUROPEAN UNIFORM PROCEDURES*, Cambridge, Intersentia, 2017, pp. 431–433). These practices relate to a proper implementation of the Regulations in the domestic legal order, a sufficient degree of specialisation of courts applying the Regulations, and improving the use of modern information technology in European procedure, i.e. further steps at digitalisation, particularly with regard to service issues and conducting the proceedings. Finally, yet importantly, one has to try to achieve a higher degree of consistency between the various EU Regulations on civil procedure (see Burkhard Hess, *Towards a More Coherent Framework for the Cross-Border Enforcement of Civil Claims*, in: J. von Hein and T. Kruger, *INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT*, Cambridge, Intersentia, forthcoming in 2020, pp. 389–411).

With regard to implementation, some Member States (e.g. Belgium, see the answer to question 10 above) suffer from a lack of domestic provisions supplementing the EEO Regulation, which leads to a number of frictions between the Regulation and domestic rules on civil procedure. Moreover, a lack of implementing legislation contributes to a low visibility of the second-generation Regulations for practitioners and to legal uncertainty with regard to gaps in those Regulations. On the other hand, other Member States (e.g. the Netherlands, Germany) have passed detailed provisions supplementing the EEO Regulation. This approach facilitates the practical application of the Regulation; in particular, the interface between the uniform European rules and the still applicable domestic rules on enforcement is structured in a clearer and more transparent fashion. This also ensures a high visibility of the EEO Regulation even for lawyers who do not specialise in private international law. Insofar, exchanging information about proper implementing legislation may be helpful to national legislatures and practitioners; the EU may also provide guidelines or recommendations in this regard (see Elena Alina Onțanu, *CROSS-BORDER DEBT RECOVERY IN THE EU. A COMPARATIVE AND EMPIRICAL STUDY ON THE USE OF THE EUROPEAN UNIFORM PROCEDURES*, Cambridge, Intersentia, 2017, p. 431).

Whereas some Member States have established specialist courts applying the EOP and, to a lesser extent, the ESCP Regulations (e.g. Netherlands, France and Germany on the EOP, and some German *Länder* with regard to the ESCP), other Member States (e.g. Belgium) lack any specialisation in this regard. The pros and cons of specialisation are well known: on the one hand, specialisation leads to a greater competence of judges and increases legal certainty. On

the other hand, establishing specialist courts may also contribute to a greater distance between the domicile of the parties and the place where the court is situated, thus making access to justice more difficult for weaker parties such as consumers. However, for largely standardised, automated procedures such as EOP proceedings, specialisation has worked well. With regard to the ESCP Regulation, concerns related to access to justice may be alleviated by improving the use of modern information technology (e.g. videoconferencing). In smaller Member States such as Luxembourg, specialisation is probably superfluous; there, the Regulations are applied frequently anyway, so that ordinary judges gain sufficient experience.

Art. 6(1) EEO Regulation provides that 'a judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as' an EEO. It is generally accepted that this provision only deals with the question as to which court is competent to receive the application for a certificate; it does not, however, prohibit Member States from allocating the decision about the issuance of an EEO certificate to a higher court (see Christoph Althammer, *Der Beitrag der Gerichtsorganisation zur Effizienz der grenzüberschreitenden Forderungsdurchsetzung*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), p. 197, 208 et seq.). Nevertheless, Member States such as Germany have also entrusted the court of origin (within the meaning of Art. 4 no. 6 EEO Regulation) with the issuance of the certificate (see Althammer, *op. cit.*, p. 208 et seq.). This certainly has the advantage that the court having given the judgment in question knows its own proceedings best, which lowers information costs and saves time (see Ivo Bach, *Die EuVTVO im System des Europäischen Zivilverfahrensrechts*, RECHT DER INTERNATIONALEN WIRTSCHAFT 2018, p. 549, 552). However, this advantage comes at a price: in deciding whether the minimum procedural standards of the EEO Regulation have actually been observed, the court of origin is evaluating its own work (Althammer, *op. cit.*, p. 209; see also Bach, *op. cit.*, p. 552). This problem is all the more acute as there will be no control available in the Member State of enforcement (see the answer to question 16 above). In light of the importance of a proper service (cf. European Court of Human Rights, *Avotiņš v. Latvia*, no. 17502/07), one may argue that it seems to be a more appropriate solution to attribute the competence for issuing an EEO certificate to a higher court in the Member State of origin (Althammer, *op. cit.*, p. 209). This solution would not only strengthen an independent review of whether the court of origin actually observed minimal procedural standards in the given case, it would also allow for a regional specialisation within larger units of a Member State. Thus, it could be ensured that judges (or equivalently qualified persons, cf. Case C-300/14, *Imtech Marine Belgium NV v. Radio Hellenic SA*, ECLI:EU:C:2015:825) sitting in such a court would acquire the necessary expertise and experience in matters related to cross-border enforcement. In contrast, the idea of saving time and costs by attributing the competence for issuing an EEO certificate to the court of origin is arguably less important today than it was sixteen years ago. As civil procedure and, in particular, the organisation of court files become more and more digitalised in the Member States, the court of origin will, in the foreseeable future, no longer be obliged to mail hard-copy files to a higher, specialised court; instead, an electronic file may be transmitted by a mouse-click. In sum, although the court-of-origin approach had strong arguments on its side in the year 2004,

the advantages inherent in having an independent and better qualified review of minimum procedural standards today arguably outweigh those concerns.

However, as the COVID-19 pandemic has shown in recent months, the use of modern information and communication technology in many Member States leaves much to be desired (see Florian Eichel, *Der Beitrag der modernen Informationstechnologie zur Effizienz der grenzüberschreitenden Forderungsdurchsetzung*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), pp. 220–236; Elena Alina Onțanu, *Technological Progress and Alternatives to the Cross-Border Enforcement of Small Claims*, in: J. von Hein and T. Kruger, INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, pp. 483–502). A further digitalisation of European civil procedure is recommended in order to fully unleash the potential of the second-generation Regulations (see Eichel, loc. cit.; Elena Alina Onțanu, *Technological Progress and Alternatives to the Cross-Border Enforcement of Small Claims*, in: J. von Hein and T. Kruger, INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, pp. 483–502). This would also alleviate concerns related to problems of service and language issues. In addition, the development of the e-CODEX platform should be further supported. Finally, yet importantly, the existing databases on EU private international law should be better connected and their maintenance be ensured even after the projects that led to their establishment (such as EUPILLAR or IC<sup>2</sup>BE) have been completed (see Jan von Hein and Tilman Imm, *Bessere Information durch öffentliche Datenbanken zum europäischen IPR und Verfahrensrecht*, ZEITSCHRIFT FÜR INTERNATIONALES WIRTSCHAFTSRECHT 2018, p. 143).

Another point of concern is the consistency among the second-generation Regulations and between those Regulations and Brussels *Ibis* (see Burkhard Hess, *Towards a More Coherent Framework for the Cross-Border Enforcement of Civil Claims*, in: J. von Hein and T. Kruger, INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, pp. 389–411). Although the CJEU has repeatedly insisted on a coherent, cross-systematic interpretation of the Regulations (see, e.g., Case C-508/12, *Walter Vapenik v. Josef Thurner*, ECLI:EU:C:2013:790, para. 25), the European legislature should try to avoid unnecessary deviations in the wording of substantially identical provisions and questionable differentiations related to the substantial scope of the Regulations (see Michael Stürner, *Der Anwendungsbereich der EU-Verordnungen zur grenzüberschreitenden Forderungsdurchsetzung*, ZEITSCHRIFT FÜR VERGLEICHENDE RECHTSWISSENSCHAFT 119 (2020), pp. 143–166) or grounds for refusing enforcement (on irreconcilable judgments, see the answer to question 19 above). A comprehensive codification of European civil procedure seems to be neither a realistic prospect in the medium-term nor the most urgent priority right now. In light of the abolition of exequatur in the Brussels *Ibis* Regulation, however, it is worth considering integrating the EEO Regulation as a special chapter for uncontested claims into a future Brussels *Iter* framework. Insofar, one could justify maintaining the concentration of controlling the observance of minimum procedural standards in the country of origin for uncontested claims, whereas for contested claims, Arts. 46, 45(1)(b) Brussels *Ibis* could remain applicable. On the other hand, it is debatable whether the currently diverging solutions approaches to public policy and irreconcilable judgments (on the issue of priority, see the answer to question 19 above) are normatively justified. The legislative momentum for abolishing public policy in Brussels *Ibis* as well has passed (Gilles Cuniberti, *Making Cross-Border Enforcement More Effective for Creditors*, in: J. von Hein and T. Kruger, INFORMED



CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, p. 413, 416). Keeping features of the EEO Regulation which reasonably facilitate the enforcement of uncontested claims while streamlining those points that, for historical or contingent reasons, deviate unnecessarily from the Brussels *Ibis* structure seems to be a sensible approach.

Finally, better information and training of legal practitioners should be fully supported, for example via the European Judicial Training Network or the Academy of European Law. In addition, the European Union should encourage the sharing of domestic experiences with the second-generation Regulations (see also Jos Hoevenaars and Xandra Kramer, *Improving Access to Information in European Civil Justice: A Mission Impossible?* in: J. von Hein and T. Kruger, INFORMED CHOICES IN CROSS-BORDER ENFORCEMENT, Cambridge, Intersentia, forthcoming in 2020, pp. 503–525). Although the competence of the EU with regard to the organisation of domestic court systems is limited, sharing experiences with regard to the specialisation of courts in matters of cross-border enforcement may help to establish best practices in more Member States.

#### Question 21: What's your overall opinion of the EEO?

Answer: Positive

When it was enacted in 2004, the EEO Regulation was a major achievement that pioneered the abolition of exequatur in the following second-generation Regulations (EOP, ESCP and EAPO Regulations) as well as in the recast of the Brussels I Regulation. Insofar, it deserves a largely positive evaluation. However, one must not overlook the fact that its importance has declined in recent years particularly because the EEO Regulation no longer offers creditors the 'unique selling point' of dispensing with the need for obtaining a declaration of enforceability. In certain scenarios, the current EEO Regulation still has practical advantages compared to the Brussels *Ibis* Regulation (see answer to question 19). It is a question of policy, however, whether the remaining advantages justify maintaining a separate Regulation for uncontested claims that is distinct from Brussels *Ibis* (see answer to question 20).

#### Question 22: For the future cross-border enforcement of an uncontested claim, would you choose the EEO or enforcement under the Brussels *Ibis* Regulation?

Answer: Both are suitable.

The choice that a prudent practitioner would make between the EEO Regulation and the Brussels *Ibis* Regulation largely depends on the divergences that we have already explained in our answer to question 19: a concentrated review of issues of service in the country of origin under the EEO Regulation as opposed to a multiple control in various states of enforcement (Arts. 46, 45(1)(b) Brussels *Ibis*), the lack of a public policy clause in the EEO Regulation in contrast to Arts. 46, 45(1)(a) Brussels *Ibis*, and the fact that the EEO Regulation only regards a conflicting judgment given in the requested Member State as an obstacle to enforcement if this judgment has been given prior to the foreign judgment whose enforcement is sought.