

Report on the use of EU forms

Comments and recommendations by the working group

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Introduction

The working group dedicated to the use of EU forms in the implementation of European regulations in civil and commercial matters was developed within the framework of the project “EU judicial training for Court Staff and Bailiffs II”. The working group, headed by Arnaud Raynouard (Professor at the University of Paris-Dauphine) and Céline Brébion-Guerrin (Legal advisor at the former European Chamber of Bailiffs / now European Union Bailiffs’ Foundation), was composed of the following members:

- Julien Berna, French Bailiff, International expert for the French National Chamber of Bailiffs;
- Bénédicte Maret, Senior director of Judicial Court staff, District Court of Lille (France);
- Denis Smets, Head of Court Staff, Civil courts of Hainaut (Belgium);
- Jean Vanoverschelde, French Bailiff, International expert for the French National Chamber of Bailiffs;
- William Wing-Ka, head of Court staff, High Court of Justice of Rouen (France);
- Karolien Dockers, Belgian Bailiff, West Flanders.

The main objective of the working group was to produce an e-learning training module on EU forms for European legal practitioners. The purpose of the module was to train legal practitioners (Court staff and bailiffs) on how to properly fill EU forms while implementing European regulations. To achieve this objective, the working group developed several guidelines.

Furthermore, the working group aimed to draft a report to the attention of the European Commission. In fact, the following report aims to (i) deliver a set of recommendations to improve the presentation and the content of the EU forms, and to (ii) provide an analysis of the use of these forms by bailiffs and Court staff.

The methodology followed by the working group was collaborative, with regular input from the members at every stage of the work performed. Four periodical meetings were held since the launch of the working group.

1. Recommendations to improve the presentation and content of the EU forms

1.1. The importance of EU forms and the difficulties surrounding their use

As Věra Jourová, Commissioner for Justice, Consumers and Gender Equality stated: “Every year, there are approximately 3.4 million cross-border civil and commercial court proceedings in the EU. More and more people are living, studying and working in other EU countries, and businesses are expanding across borders”.

In fact, several EU instruments have been conceived in order to help European citizens access a faster and more affordable cross-border justice. The European Account preservation order, the European payment order and the Regulation 1393/2007 on service of documents are perfect examples of EU instruments aiming to facilitate cross-border litigation.

Although these instruments are directly applicable, they remain poorly understood by European citizens and occasionally by legal practitioners themselves. In fact, legal practitioners often succumb to the temptation of using their respective national legislations even in cases where EU law offers more rapid alternatives. Once the decision is issued in a Member State it can be subsequently recognized and/or enforced rather unproblematically in another Member State based on the regulations N° 1215/2012 also known as Brussels I bis.

While we can understand the impulse of turning to a more familiar set of laws, we remain fully aware of the loss of time that this habit represents. The main goal of the working group was to contribute to the effective and coherent application of the EU instruments by facilitating the use of the different forms attached to these instruments.

These forms are the key element of many EU procedures. The accurate use of these forms would significantly enhance the efficiency of EU instruments, thereby reducing delays, costs and resources. The variety of information as well as the language related problems lead to confusion for the practitioners in the implementation of European instruments and thus of their efficiency. Therefore, helping legal practitioners understand EU forms is crucial.

The working group identified several difficulties in using these forms. In general terms, the group concluded that it would be advisable to add a pop-up toolkit to the dynamic forms. Moreover, it should

be specifically stated that these forms can be found in the e-Justice portal. These arguments will be detailed further below.

1.2. Improving EU forms

As a consequence of what is mentioned hereabove, the working group focused on improving the presentation and content of the EU forms. The key challenge is to help users enter all relevant details and properly fill the mandatory fields.

In fact, the main idea that emerged during the discussions of the working group was to integrate a pop-up toolkit below each field. Where difficulties are encountered, the user can move the mouse pointer over a button and a pop-up tip will be instantly displayed. Ideally, the pop-up tip could explain in detail the function of the field and list the relevant information that the user must disclose. Similarly, when the user fails to enter a text under a specific field, a pop-up help tip could be automatically displayed.

In order to avoid any misunderstandings, the information contained in the pop-up tip should be, if possible, available in the user's language. This further "step" could have a very positive impact and reduce any recurrent mistakes that are made during the completion of these forms.

In terms of communication, the forms attached to the different EU instruments should mention that they can be found in the e-Justice portal. Additionally, the link to the forms could also be included.

The language barrier is a reality that also needs to be tackled. One of the recommendations that was given to users concerned the translations of documents. In fact, even if the translation of the documents is not requested for the implementation of the EU regulations, it is advisable to proceed with this step, in order to save time (i.e. to avoid the refusal by the defendant of a document in a foreign language). Thus, the idea of encouraging such translations was raised during the different meetings of the working group. Indeed, translating the relevant document would lead to significant time gain. Furthermore, free fields should be filled in in one of the languages that are accepted by the receiving country.

Finally, the group considers that the fields should be written legibly and, preferably, typed. In fact, typing the relevant information would avoid any miscomprehensions that may arise.

2. General recommendations for the use of the EU forms on civil and commercial matters

2.1. General observations concerning the vast majority of EU forms

As previously mentioned, the main goal of the working group was to aid European legal practitioners to properly fill and complete the forms attached to EU regulations. In order to achieve this objective, the working group drafted a detailed e-learning module dedicated to the accurate use of such forms. The working group remarked that most comments and recommendations were common to most of the EU regulations. The group came up with several recommendations aimed at the users in order to avoid any procedural mistakes that may arise during the completion of the forms.

2.1.1. The identification numbers

It was agreed that it would be useful, for natural persons, to mention their passport or national identity card number. With regards to legal persons, it would be useful to indicate the registration number.

2.1.2. In case of several claimants/applicants or several defendants/addressees

The group also advises users to copy/paste the fields of identification, when possible, to facilitate the understanding of the information concerning the different claimants and defendants.

2.1.3. The description of the case

A free field is often provided in the form to briefly describe the case. This free field should be filled in in one of the languages that are accepted by the receiving country, and preferably in English, to avoid any misunderstandings, even if the form in question is written in one of the other accepted languages. As mentioned above, the fields should write legibly and, preferably, typed.

2.1.4. The calculation of the interest's rates

It is important to specify the methodology for the calculation of the interest rates:

- . website with the information about the applicable rate;
- . period of the rate (6 months? 12 months?);
- . when applicable, differences of rates for natural or legal persons;

. when applicable, additional rates to the legal ones;
and more generally, all relevant information that will enable the authority to calculate this rate properly (since the responsibility could be held in case of miscalculation).

2.1.5. The exchange rate

Practitioners are encouraged to use the official exchange rate which is available on the website of the European Commission, for the conversion of your currency:

http://ec.europa.eu/budget/contracts_grants/info_contracts/infoeuro/index_en.cfm

2.1.6. The authority entitled to sign the form

The group recommends verifying, in the national law of Member State in question, which authority is entitled to sign the different forms. In fact, for the implementation of an EU regulation, some forms should be signed by Judges, others by Court staff or bailiffs.

2.1.7. The translation of the documents

Even if the translation of the documents is not requested for the implementation of the EU regulations, it is recommended by some practitioners to proceed to the translation in order to save time (i.e. to avoid the refusal by the defendant of a document in a foreign language).

2.1.8. The “acknowledgment of receipt”

Most of the EU Regulations provide “acknowledgment of receipt” forms which are important for the implementation of these instruments. In fact, they enable the follow up of the procedure at its different stages. Thus, it is important to send back this form upon receipt.

Apart from these general comments, the group pointed out that:

- “Dynamic forms” are available on the e-Justice Portal of the European Union (https://e-justice.europa.eu/content_dynamic_forms-155-en.do)
- Competent authorities can be found:
 - in the Court Database/European Judicial Atlas

- in the European Directories of the professions (Find a Lawyer, Find a Notary) on the e-Justice Portal (https://e-justice.europa.eu/content_find_a_lawyer-334-en.do; https://e-justice.europa.eu/content_find_a_notary-335-en.do)
 - in the Find a Bailiff Directory (www.eubailiff.eu)
- Relevant information can be also found on the e-Justice portal, in the section “Tools for Courts and practitioners” (https://e-justice.europa.eu/content_tools_for_courts_and_practitioners-68-en.do)
- Procedures, such as European Small Claims, European Payment Order and Service of documents¹ could be performed digitally very soon, thanks to e-CODEX.

2.1.9. Specific comments for EU forms on Service of documents

2.1.10. The “request for service of documents” (Annex 1)

The relevant information while filling the form are:

- the VAT number of the transmitting agency for the drafting of the invoice
- the number of documents to be served, including the number of pages

2.1.11. The “acknowledgment of receipt” (Annex 2)

Upon receipt, the second form must be sent back to the transmitting agency with, if relevant, the person’s bank account information or link to an online payment website. In fact, in some Member States, the payment should be made prior to the diligences of service of documents. When relevant, the user should also ask for the VAT number of the transmitting agency.

2.1.12. The “notice of retransmission of the request and document to the appropriate receiving agency” (Annex 3)

¹ Bailiffs who have been designated transmitting and receiving agencies under EU Regulation about Service of documents in Europe, can already securely exchange forms and acts thanks to the EJS platform : https://www.europe-ejs.eu/EJS/PAGE_0_HOME/5AkAAMAJN2lpa2dzc2R5ekh5AQA

In practice, the territorially incompetent bailiff shall transfer a specific request to a competent colleague. In such case, we advise the bailiff in question to inform the transmitting agency of such transfer by using the form “Notice of retransmission of the request and document to the appropriate receiving agency”. Should the bailiff omit sending this form to the transmitting agency, the latter cannot follow the course of the proceedings. As a reminder, the territorial competency is considered in accordance with the place of residence of the defendant/addressee.

2.1.13. The “notice of receipt by the appropriate receiving agency having territorial jurisdiction to the transmitting agency” (Annex 3)

Similarly, this form should also be sent back, upon receipt, to the transmitting agency with the bank account information or the link to an online payment website.

2.1.14. The “certificate of service or non-service of documents” (Annex 6)

French bailiffs should mention in the section 12.2.2 (and not in section 15) that the document is “considered as served” under French law even if the document hasn’t been delivered to the defendant/addressee. The document drafted by the French Bailiff under article 659 of the Civil procedure code should be attached to the form 6 as proof of the diligences.

2.1.15. Specific comments for EU forms regarding the European Payment order

The forms of this regulation are quite comprehensive and easy to fill in. However, one concern was raised about the documents referred in the form A: the proofs of the claim are not necessary to rule the decision of European Payment order. Consequently, a court cannot reject the application on this basis. The form D “Decision to reject the application for European Payment order” should specify the grounds for rejection listed from 01 to 08.

2.2. Specific comments for EU forms on European account preservation order

2.2.1. The application for a European account preservation order (Annex 1)

- About the debtors’ bank account (article 14 of the Regulation)

Practitioners are encouraged to provide the information concerning the debtor's bank account(s). In fact, even if the creditor can make a request for the obtaining of account information, in practice this procedure is really complicated. Actually, in some Member States the information about the debtors' bank account can be given only with the tax number or the social security number of the latter. In other Member States, the research can be made only if the court decision has been already ruled (not for temporary measures). The Member States are currently working on this issue to find out the appropriate solution(s).

Moreover, there is no specific form provided for the "Request for the obtaining of account information" thus the authorities can request different information or supporting documents and the procedure can be long. The EJM network is currently considering the opportunity of drafting a standard form in order to facilitate the implementation of this request.

- About the security to be provided by the debtor (article 12 of the Regulation)

Security (i.e. bank guarantee, mortgage...) is requested if there is no judgment, court settlement or authentic instruments obtained by the creditor. The amount might differ since the interpretation of "an amount sufficient to prevent abuse of the procedure and to ensure compensation" might vary from one Member State to another.

Legal practitioners should inform their client about this request and suggest the best option for him.

2.2.2. The declaration concerning the preservation of funds (Annex 4)

The declaration concerning the preservation of funds should be drafted by using the dedicated form, within a 3-day time-limit after the precautionary seizure of the bank account. This form should be transmitted, without delay, to the issuing court and/or the creditor or the competent authority for enforcement in the Member State of residence of the debtor, depending of the situation. The transfer by electronic secured means should be preferred, due to the short delays. Work is currently being performed to provide such electronic secure communication thanks to e-CODEX.

2.2.3. The service of documents on the debtor (Article 28)

There is no specific form for the service of documents of the debtor that is performed in accordance of domestic laws. It should be noted, however, that when the bank account is located in a different Member

State than the place of residence of the debtor, the bailiff should transfer (i) the declaration concerning the preservation of funds, (ii) the EU account preservation order (Annex 2 A & B), (iii) the application form (Annex 1) and all relevant documents to the competent authority for service. If the bailiff who handled the preservation of funds is French, he should also send the “denunciation of the seizure” to the foreign competent authority, for service of documents.