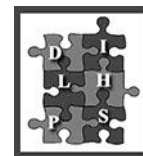




UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



Towards more Effective
enFORcemenT of claimS in civil
and commercial matters within the
EU EFFORTS

Project JUST-JCOO-AG-2019-
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Croatia

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I. Pre-selection

Case law of the Croatian courts on the regulations covered by the EFFORTS project is relatively scarce. However, there has been a noticeable gradual increase in the number of such cases. One has to bear in mind that Croatia has been a Member State of the EU only since 1 July 2013. Regarding the selection of cases, since 2015 (*Official Gazette*, No. 35/2015) for cases involving the application of EU regulations there have been special court registers (P-eu, Gž-eu, Ovr-eu, R1-eu, Pom-eu). However, the cases are not easily accessible, as most of the decisions are decisions of first instance courts and, as such, they have not been published in publicly available case law databases, which includes most of the decisions of the Supreme Court and appellate courts. That is why we owe special thanks to Mrs. Ana Lovrinov, judge of the Municipal Civil Court in Zagreb, Mrs. Marija Lovrić, court adviser at the Municipal Civil Court in Zagreb, and Mr. Radovan Raduka, judge of the Commercial Court in Zagreb, for their help in selecting the cases for this Report on National Case Law. They tried to select cases which illustrate problems in the application of EU regulations before the Croatian courts. However, full responsibility for presenting the case law in this Report stays with the authors of this Report.

It may be illustrative to mention that up to today in total 24 European enforcement orders and 22 European payment orders have been filed with the Financial Agency, which is in charge of enforcing monetary claims on all bank accounts opened in Croatia. So far, no European account preservation order has been filed with Financial Agency.

II. Brussels I bis Regulation and its predecessor Brussels I Regulation

The case law on Brussels I (*bis*) discovered for this project does not have any major issues which would deserve a more extensive elaboration. Therefore, it is presented in a summary manner, especially as most of the cases relate to the issues of jurisdiction, which are outside of the scope of this project.

In the case **Gž Ovr-569/2021-2 of 24. 5. 2021 the County Court in Zagreb** emphasised that the certificate issued pursuant to Article 53 of the Regulation shall be served on the person against whom the enforcement is sought prior to the first enforcement measure.

In the cases **R1-eu-6/2016-2 of 25. 5. 2016** and **R1-eu-8/2016 of 11. 12. 2019** the **Municipal Civil Court in Zagreb** pointed out that the Regulation lays down the conditions necessary for a foreign judgment to be enforced in another Member State, but the manner in which it is enforced depends on the procedural rules of the requested State, i.e. rules of the Croatian Enforcement Act.

A line of national cases is related to specific decisions of the CJEU. According to the **CJEU judgements *Zulfikarpašić*, C-484/15, EU:C:2017:199** and ***Pula parking*, C-551/15, EU:C:2017:193**; Croatian notaries,



issuing enforcement orders based on ‘trustworthy’ documents, cannot be considered a court within the meaning of Regulation No. 805/2004 creating a European Enforcement Order for uncontested claims or of Regulation Brussels I *bis*. The CJEU reasoned its decision by invoking the principle of mutual trust in the judicial system in the EU, which requires a narrower interpretation of the notion of ‘court’ in order to facilitate for national authorities the identification of judicial decisions delivered by courts in other member states. In addition, it is primarily the national courts in member states that should take care that at least the minimum standards of protection of a debtor’s rights, as provided in the said Regulations, are observed. Exceptionally, this task can be performed by other bodies provided that they are independent and impartial, and that they adjudicate in *inter partes* proceedings. Considering that Croatian notaries do not adjudicate *inter partes*, a notarial enforcement order based on a trustworthy document is enforceable only in the Republic of Croatia within the EU.

In the aftermath of the *Pula parking* case, the High Commercial Court had to emphasise that the reasoning of the CJEU is not applicable to purely domestic legal situations with no cross-border element (**High Commercial Court, 11. 9. 2019, Pž-5240/2019-2**).

While uncontested notarial orders cannot be enforceable outside Croatia, if a notarial payment order is issued against a debtor whose residence is outside of Croatia, and such a debtor lodged an objection against the notarial payment order, the Croatian courts found that they have jurisdiction in accordance with Regulation Bruxelles I *bis* (**High Commercial Court, 6. 5. 2021, Pž-1620/2020-2; High Commercial Court, 25. 6. 2021, Pž-1881/2020-2**).

For some cases related to Brussels I bis Regulation see also *infra* at IV (jurisdiction issues after opposition to the EPO).

III. European Enforcement Order Regulation (EEOR)

Municipal Civil Court in Zagreb, 24. 11. 2016, R1-EU-7/2016; Municipal Civil Court in Zagreb, 5. 11. 2017, R1-EU-24/2017; Municipal Civil Court in Zagreb, 13. 12. 2018, R1-eu-7/2018; Municipal Civil Court in Zagreb, 30. 09. 2020, R1-eu-50/2020; High Commercial Court, 15. 11. 2016, Pž-20143/2016

unpublished

Summary

Pursuant to Art. 26 of Regulation (EC) No 805/2004 of 21 April 2004, the Regulation applies solely to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after the entry into force of the Regulation, which happened on 21 October 2005, pursuant to Art. 33 of Regulation. Although the request to certify European Enforcement Order has been filed after the succession of the Republic of Croatia to the European Union, the title for which the applicant requests the issuance of a European Enforcement Order certificate was drafted and certified by a competent national authority at the time when the Regulation was not in force in the Republic of Croatia, thus the request had to be rejected. The Court applied by way of analogy the opinions and case-law of the CJEU in the case *Wolf Naturprodukte v. SEWAR* (C-514/10), in which it took a similar view on the temporal application of Regulation (EC) no. 44/2001.



Municipal Civil Court in Zagreb, 10. 7. 2017, R1-eu-3/2017

unpublished

Summary

Pursuant to Art. 10(4) of Regulation (EC) No 805/2004 of 21 April 2004, no appeal is permitted against the issuing of a European Enforcement Order certificate. The fact that the claim has been settled, alleged by the opposing party, cannot be pointed out in these proceedings, which only determine whether the conditions for issuing a European Enforcement Order certificate are met. These objections can be submitted only if and when the creditor decides to use that certified EEO in enforcement proceedings.

Municipal Civil Court in Zagreb, 28. 2. 2018, R1-eu-17/2018; Municipal Civil Court in Zagreb, 24. 10. 2018, R1-eu-60/2018; Municipal Civil Court in Zagreb, 16. 3. 2021, R1-eu-47/2020; Municipal Civil Court in Zagreb, 7. 5. 2021, R1-eu-70/2020

unpublished

Summary

Pursuant to Art. 3(1) of Regulation (EC) No 805/2004 of 21 April 2004, the Regulation applies to judgments, court settlements and authentic instruments on uncontested claims. The claim is deemed to be uncontested if the debtor expressly agreed to it, if the debtor has never objected to it, or failed to participate in the court hearing after initially objecting to the claim in the course of the court proceedings. In the case at hand, the claim cannot be deemed “undisputed”, because the defendant disputed the plaintiff’s claim, and the court rendered a verdict after a contradictory hearing.

Municipal Civil Court in Zagreb, 25. 6. 2020, R1-eu-4/2019; Municipal Civil Court in Zagreb, 18. 6. 2021, R1-eu-55/2020

unpublished

Summary

Pursuant to Art. 1 of Regulation (EC) No 805/2004 of 21 April 2004 and its Preamble, the purpose of issuing a European Enforcement Order is solely to simplify cross-border enforcement in civil and commercial matters in the Member States. Considering that both parties are citizens of the Member State of origin (Republic of Croatia) with residence in the Republic of Croatia and that neither the proposal nor the case record imply the necessity of cross-border enforcement in terms of Art. 1 of the Regulation, the request should have been rejected. The applicant lacks legal interest for its issuing. This court decision seems to be manifestly wrong.

Commercial Court in Zagreb, 1. 12. 2016, Ovr-eu-5/2016

unpublished

Summary



Commercial Court in Zagreb is not competent to order and carry out enforcement based on European Enforcement Order, as the court enforcement in the Republic of Croatia is ordered and carried out solely by municipal courts, according to the Art. 37 of Enforcement Act (*Official Gazette*, no. 93/2014).

IV. European Payment Order Regulation (EPOR)

Municipal Civil Court, 14. 6. 2021, P-eu-5/2021-2; High Commercial Court, Pž-4533/2020-2

unpublished

Summary

After lodging of a statement of opposition against the European order for payment, the national courts were faced with the objection to the jurisdiction of Croatian courts due to prorogation clauses contained in the main contract. The courts accepted the objections with reference to Art. 25(1) Brussels I *bis* (also dismissing the claim that national international private law rules should be applicable).

High Commercial Court, 5. 11. 2018, Pž 3245/2018-5

unpublished

Summary

In this case the High Commercial Court pointed out, partly quoting Article 507.1 of the Civil Procedure Act, that, if the defendant lodges an objection against the European order for payment, the further procedure will be carried out according to the national procedure regarding objection against a payment order. It has to be mentioned that the court skipped the part of the quoted Article, according to which the further procedure will be carried out according to the rules of the European Small Claims Procedure set out in Regulation no. 861/2007, if they are applicable.

Supreme Court, 17. 12. 2019, Rev 3480/2019-4

unpublished

Summary

The Supreme Court quashed the ruling of the High Commercial Court, which confirmed a Commercial Court's decision declining jurisdiction after submission of an opposition against the EPO issued in that matter. The subsequent litigation regarded a case dealing with the payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain right. With reference to CJEU decision in *Kerr*, C-25/2018 (ECLI:EU:C:2019:376), the Supreme Court found that such a case must be regarded as falling within the concept of 'matters relating to a contract' within the meaning of the Rome I Regulation.



High Commercial Court, 1. 3. 2019, Pž 1413/2019-2

unpublished

Summary

In this case, the court emphasised that a party is obliged to pay a court fee for the request for the issuance of a European payment order as well as for a decision on a payment order. The latter relates to both, the decision issuing European payment order and the decision rejecting the request for its issuance, all in accordance with Tariffs, which are an integral part of the Law on Court Fees. The total amount of court fees for European order for payment procedures as well as ordinary civil proceedings following in the event of an objection against a European order for payment in a Member State shall not exceed court fees for ordinary civil proceedings not preceded by a European order for payment procedure.

V. European Small Claims Procedure Regulation (ESCPR)

Municipal Civil Court in Zagreb, 8. 5. 2020, P-eu-1/2020; Municipal Civil Court in Zagreb, 10. 6. 2020, R1-eu-17/2020; Municipal Civil Court in Zagreb, 12. 6. 2020, R1-eu-14/2020; Municipal Civil Court in Zagreb, 15. 6. 2020, R1-eu-6/2020; Municipal Civil Court in Zagreb, 2. 7. 2020, R1-eu-5/2020; Municipal Civil Court in Zagreb, 28. 10. 2020, R1-eu-15/2020; Municipal Civil Court in Zagreb, 16. 10. 2020, P-eu-21/2020; Municipal Civil Court in Zagreb, 17. 12. 2020, P-eu-11/20; Commercial Court in Zagreb, 19. 5. 2020, P-eu-2/2020

unpublished

Summary

Pursuant to Art. 5(1) of Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, the court is to hold an oral hearing if it considers this to be necessary or if a party so requests. In the presented cases the court opted for written proceedings, as the written evidence had already been submitted in the parties' pleadings, no further evidence was needed and no additional relevant facts were disputed, as the answer to the claim had not been submitted by the defendant.

Commercial Court in Zagreb, 20. 7. 2020, P-eu-121/19

unpublished

Summary

Pursuant to Art. 5(1) of Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, the court is to hold an oral hearing if it considers this to be necessary or if a party so requests. In the



case at hand the court opted for written proceedings, despite the fact the claimant proposed to hold an oral hearing, as the written evidence had already been submitted in the parties' pleadings and it was sufficient to decide on merits.

High Commercial Court, 12. 5. 2021, Pž-761/2021

unpublished

Summary

Pursuant to Art. 4(1) of Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, any counterclaim, to be submitted using standard Form A, and any relevant supporting documents is to be served on the claimant in accordance with Art. 13 of the Regulation. Since the defendant did not submit its counterclaim by using the standard Form A, the court rendered a decision in European Small Claims Proceedings only with regards to the (main) claim. The court affirmed the decision of the lower court not to hold an oral hearing, as the defendant, in its answer to claim, merely stated that it had a claim of its own towards claimant. Since the claim essentially was not disputed, the prerequisites laid down in Art. 5(1) of the Regulation to opt for written proceedings were met.

Commercial Court in Zagreb, 12. 1. 2017, P-eu-115/2016

unpublished

Summary

As the jurisdiction for adjudicating in the European Small Claims Proceedings is divided between municipal and commercial courts, and the dispute between the parties who are natural persons is the jurisdiction of municipal courts, the court is not competent to adjudicate under Regulation (EC) no. 861/2007 f 11 July 2007 establishing a European Small Claims Procedure.

VI. European Account Preservation Order Regulation (EAPOR)

Case law regarding EAPOR is very scarce. There are no landmark cases yet. From most of the cases it is noticeable that the creditors have not presented sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a preservation order (e.g. **High Commercial Court, 5. 5. 2020, Pž-1847/2020-2; Municipal Civil Court in Zagreb, 24. 6. 2020, R1-eu-25/2020-2; Municipal Civil Court in Zagreb, 25. 6. 2020, R1-eu-46/2019-9; Municipal Civil Court in Zagreb, 25. 6. 2020, R1-eu-47/2019-9**). “(...) the fact that the debtor has not paid the debt to the creditor within one year of the final judgment is not in itself sufficient to fulfil the conditions for issuing a preservation order” (**High Commercial Court, 5. 2. 2021, Pž-157/2021-2**).



Another notable issue is the wrong impression of some Croatian courts that the Municipal Civil Court in Zagreb has exclusive competence for issuing a preservation order. On the contrary, national competence rules should apply. It means that in principle competence is had by the court of the debtor's residence or seat (see **Supreme Court, 7. 5. 2019, Gr1 194/2019-2; High Commercial Court, 5. 5. 2020, Pž-1231/2019-2; High Commercial Court, 7. 10. 2020, Pž-4056/2020-2**).

VII. Recurring issues

There are three common denominators of all collected national cases under regulations targeted in the EFFORTS project.

First, the number of these cases is still very low (though with some variations), which can partly be attributed to the size of national jurisdiction and the fact that, as Croatia was the last country that acceded to the EU, the period of application of many regulations has been significantly shorter than in the other MS of the EU. But, this cannot be the only (or even prevailing) explanation, as important additional reasons for the underuse of the regulations covered by the EFFORTS project are to be found in internal and external circumstances critically assessed *infra* at VIII.

The second common denominator is the fact that practically all cases collected in this national report have not been previously published in any law reports, law journals or official publications. While some of them are available in the publicly accessible website (<https://sudskapraksa.csp.vsrh.hr>) where court decisions of the Supreme Court (and some decisions of lower courts) are published, the national EFFORTS research team had to undertake a comprehensive pursuit for otherwise hardly traceable material. Several different bodies, persons and authorities had to be contacted in order to gain a more or less representative insight into current situation. Some of them were judicial bodies (courts of general jurisdictions such as municipal courts, and specialized courts such as commercial courts); some of them belong to the executive (the Ministry of Justice and Administration), and some are specific (e.g. Financial Agency FINA which is a state-owned agency which operates as a quasi-commercial entity). The problem has not only been in the lack of a central office or authority that would collect information on practical application of EU law by national authorities, but also in the inadequate architecture of the national case-tracking information system (so-called e-Spis system). While some metadata relating to EU law is included in the database, it is not possible to extract precise information on cases relating to particular regulation under EFFORTS project. Thus, tracking national case-law involved a lot of footwork and engagement of private connections. The most complete and easiest-to-find information was the information kept by non-judicial bodies, for instance information on enforcement under EPOR and EEOs that is entrusted to the Financial Agency (the entity which effects enforcement on monetary claims held in accounts at banks in Croatia).

The third recurring issue in national case law discovered for this report is the absence of any ground-breaking or landmark decisions. It is not entirely surprising as the large majority of court decisions in our report are the decisions of first instance courts (municipal and commercial courts). However, the reasoning of the cited decisions reveals that the courts are still getting acquainted with the EU regulations. Most decisions simply stick to the basics and refer to the text of the regulations or national implementation rules, without entering into deeper reasoning. Some of the collected decisions also show that differences in the rules on jurisdiction of national courts in different



EFFORTS regulations tend to cause confusion. The issues connected to temporal application of the EU regulations are also still occurring in various cases, also connected to relatively recent date of their coming into effect (partly connected to proverbial slowness of national court procedures). The examples of such cases are e.g. a number of cases related to the applicability of Bruxelles I *ratione temporis* (Municipal Civil Court in Zagreb, 19. 3. 2021, R1-eu-8/2021-4), and of Bruxelles I *bis* (Municipal Civil Court in Zagreb, 14. 1. 2019, R1-eu-84/18). The same goes for the cases related to the temporal application of the EEOR (Municipal Civil Court in Zagreb, 24. 11. 2016, R1-EU-7/2016; 5. 11. 2017, R1-EU-24/2017; 13. 12. 2018, R1-eu-7/2018; 30. 09. 2020, R1-eu-50/2020; see also High Commercial Court, 15. 11. 2016, Pž-20143/2016).

Finally, the reported case law also shows manifest errors in the interpretation of the regulations, which was the case both in the case of EEOR (Municipal Civil Court in Zagreb, 25. 6. 2020, R1-eu-4/2019; 18. 6. 2021, R1-eu-55/2020).

VIII. Summary and overall assessment

For the time being, the regulations covered by the EFFORTS project have not provoked a significant body of case law in Croatia. The main reason is that new procedural instruments created by EU law, such as European Enforcement Order, European Payment Order or European Small Claims Procedure, are not used as much as one would wish and expect.

Discussing the reasons of current situation with the colleagues working in judicial sector, several external and internal circumstances were raised as the reason why the case law on EFFORTS regulations is so scarce and practically invisible.

A frequently noted difficulty is connected to the general state of procedural legislation in the EU. The practitioners have problems coping with fragmentary and often overlapping regimes created by the EFFORTS regulations. The text of the EU regulations is difficult to follow and comprehend. The problem is exacerbated by the often catastrophically inaccurate translation of EU regulations into Croatian language (sometimes leading to a situation in which judges need to consult several language versions as Croatian “official” and “authentic” text fails to grasp the key provisions and legal institutes under the regulations).

However, not only external circumstances play a role. National implementation rules are also a source of practical difficulties. They are scattered in different laws and regulations (mainly as a sidecar of procedural laws, such as the Code of Civil Procedure, Enforcement Act or International Private Law Act). The approach in the implementation rules is not coordinated, and there is no uniform contact point that can assist with practical information. While some education on EU law is included in professional training and life-long learning seminars for judges, it is far from sufficient. There are no practical guides or written instructions for the application of the regulations covered by the EFFORTS project. As noted in this report (see *supra* at VII), systematic monitoring of the EU-related case law virtually does not exist, and thus practitioners have difficulties getting an insight into current cases and court findings in similar situations.

National bodies of judicial administration also do not engage in broader popularization efforts regarding regulations covered in this report. While paying lip-service to the benefits of EU instruments, the competent ministry and court administrations are focused on other pressing obligations related to national civil justice reform and have hardly any



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strategy of systematic support to the promotion of EU instruments (probably also considering that such initiatives are not within their capacity or competence). Thus, the exploration of issues occurring in connection with the EFFORTS regulation is left with individual courts and the academic community.

The trends are, however, mildly encouraging. The CJEU case law on Croatian notarial payment orders (*Pula parking* and *Zulfikarpašić* cases) has raised attention of the legal community for the relevant EU regulations. The number of cases where EEO certificates are issued, as well as the number of European payment orders, though still very low, has an increasing trend. The interest of judges and other members of legal community to gain more insight into various issues related to application of the regulations covered by the EFFORTS project is great, as witnessed by the overwhelming interest for their participation in the national EFFORTS exchange seminar.