



UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



Towards more Effective
enFORcemenT of claimS in
civil and commercial matters
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Annex I: Enforcement of titles in Croatia

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List of abbreviations

- “CPA” – Croatian Code of Civil Procedure
“EA” – Croatian Enforcement Act
“EtCHR” – European Court of Human Rights



Introduction

This section of the EFFORTS Practice Guide deals with the way judgments (and other enforceable instruments) are forcibly executed against the party against whom enforcement is sought [*hereinafter also* the debtor] for the benefit of the person who pursues the enforcement [*hereinafter also* the creditor] in the Member State addressed. In principle, foreign judgments must be enforced under the same conditions as a judgment given in the Member State addressed. Since it would not be possible to exhaustively cover the enforcement proceedings in civil and commercial matters as regulated by national procedural laws, the issues hereby addressed are limited to specific ones. These have been selected with the scope of presenting to foreign creditors and debtors the essential features of the enforcement proceedings in the Member State concerned, highlighting differences from one Member State to the other. Creditors and debtors involved in cross-border enforcement proceedings are left with the question of how to plan the enforcement and how to react to it. Without the presumption of substituting national expert practitioners in assisting their clients with these procedures, the EFFORTS Practice Guide Enforcement Annex aims at providing more clarity for the end-users and operators in the essential choices relating to cross-border claims enforcement. The rules and procedures hereby addressed are applicable insofar as they are compatible with the relevant EU regulation.

ENFORCEMENT OF TITLES IN CROATIA

1. Locating the debtor's attachable assets.

Planning the enforcement within the EU

Which are the categories of assets that are not attachable, wholly or in part, under your national procedural law? Are there any specific categories of assets (e.g. assets that might be covered by immunity) which are subject to specific additional requirements or procedures prior to execution?

Can the creditor, either directly or through the assistance of the enforcement agents or other public authorities, find official information regarding the domicile and residence of natural persons within the State? If so, please provide some details on how to access such information (e.g., what is the timeline for such request).

Person who claims that they intend to initiate enforcement proceedings is entitled to request from



- the Croatian Pension Insurance Institute to provide information on whether a natural person is an insured person in the Croatian Pension Insurance Institute, on what basis (employment, independent professional activity, trade or independent activity in agriculture) and with whom, i.e. whether he receives a pension, compensation for bodily injury or other permanent compensation about which he keeps records
- the Ministry of the Interior to provide information on whether a person is registered as the owner of the vehicle in the records on registered and marked vehicles and on the type, make, type, model, year of production, vehicle registration number and the existence of encumbrance on that vehicle
- the Ministry of the Interior to provide information on the number of the identity card, in addition to the information on the name, surname and date of birth
- the Central Depository and Clearing Company or other authorized persons with securities recorded in the accounts, dematerialized securities, shares, bonds, treasury bills, commercial papers, certificates of deposit and other securities issued in series to provide information on whether a person has registered securities in the register
- the Harbor Master's Office to provide information on whether a person is registered in the register as the owner of a ship, yacht, floating object, fixed offshore object, boat, or those objects under construction
- the body responsible for cadastral records to provide a printout of title deeds kept for a natural or legal person
- the employer or the payer of permanent income to provide information on the manner in which the person against whom the applicant intends to initiate proceedings is paid a salary, or other permanent cash benefits
- the Tax Administration to provide a certificate on the calculation of taxes, surcharges and contributions, including contributions for individual capitalized savings from the total determined amount, indicating the bank accounts to which these taxes, surcharges and contributions are planned to be paid
- other body or person who is in charge of other registries of rights which may be objects in enforcement proceedings, to provide information on whether a person is registered in the register or register and give information.

Additionally, the court can request from the person, nominated by the creditor as the debtor's debtor or that some parts of their property are in their possession, to declare, within eight days, whether the debtor has a claim against them, or to indicate the parts of their property that are in their possession.

Each of the above-mentioned bodies and entities are not obliged to act upon the request of the person requesting the data until receiving the down-payment of the costs for taking the action, but they generally must conform within 8 days of receiving the request. The persons and bodies are strictly prohibited from informing the debtor



that the information has been requested. They are responsible for any damage arising out of the breach of these duties.

Since the data is stored in public registries, generally accessible to everyone with legal interest to access them, there is no special obligation of the creditor to keep the information obtained secret. If they have different claims against the same debtor, they may, without repeating the inquiry, request enforcement on objects which are known to be in debtor's possession from previous proceedings (Art. 18 EA).

2. Jurisdiction over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

In cases concerning cross-border enforcement, what are the rules that define the jurisdiction of the courts in Croatia? In which cases the courts in Croatia do not have jurisdiction over the enforcement proceedings? I.e. rules of international jurisdiction over the enforcement proceedings

The court and other entities in charge of enforcement have exclusive jurisdiction related to persons or property located in the Republic of Croatia (Art. 57 PILA). For other questions, PILA calls for a subsidiary application of Brussels 1bis Regulation.

2-bis. Territorial competence over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

Which rules govern the territorial competence of the enforcement agents in Croatia?

Which rules govern the territorial competence of the courts of the enforcement proceedings in Croatia?

Only municipal courts are in charge of the enforcement proceedings, even in commercial cases (Art. 43 EA). However, some enforcement proceedings – the ones on the monetary assets – are carried out by special administrative entity – Financial Agency (Art. 2 EA).

In case of the enforcement over the movable property, the territorial competence depends on the fact if the creditor has specified the location of the movable items in



the enforcement proposal. If they have done so, the court, in whose territory the movable items are situated, is competent to decide on the enforcement proposal for movable items. If the creditor has not specified such a location, the court, where the debtor is domiciled, is competent to decide on the enforcement proposal (Arts. 133-134 EA).

The court in whose territory the immovable item is situated (*forum rei sitae*) is competent to decide on the enforcement proposal for immovable item (Art. 79 EA).

The court where the debtor is domiciled is competent to decide on the enforcement proposal for attachment on the debtor's debtor. The creditor is obliged to specify the claim, which is object of enforcement, in the request for enforcement (Art. 171 EA).

The court competent to decide on the enforcement proposal for attachment on the debtor's shares is the court on whose territory is the seat of the company, in which the debtor has their shares. If the debtor's shares in the company are in form of dematerialized securities, the court where the debtor is domiciled is competent to decide on the enforcement proposal for attachment of these dematerialized securities (Art. 233 EA).

The court of the debtor's domicile is competent to decide on the enforcement proposal for attachment of patent, the usufruct or any similar property right of the debtor (Art. 239 EA).

The court in whose territory the movable items are situated is competent to decide on the enforcement proposal with the purpose of handing over of one or more specific items, or with the purpose of delivery of certain amount of substitute items and for implementation of the enforcement (Art. 249 EA).

The court in whose territory the employer has its seat is competent to decide on the enforcement proposal based on enforceable title forcing the employer to reinstate the employee to work, or to assign them to appropriate position (Art. 267 EA).

The court covering the territory of real estate has competence to decide on the enforcement proposal for eviction and hand over of the real estate and for the commission of enforcement (Art. 255 EA).

The court on whose territory the debtor has to fulfill an obligation, arising from the enforceable title, is competent to decide on the enforcement proposal, if the debtor (based on enforceable title) has a duty to perform certain action, tolerate certain actions, or to omit from certain action (Art. 260 EA).



3. Preliminary steps and spontaneous compliance.

Taking preliminary steps for the enforcement and possibilities to avoid forced execution

Are there preliminary steps to be taken before starting enforcement proceedings? Is the enforcement authority involved in this phase? How does the debtor receive notice of the upcoming enforcement?

Are there specific instruments for the parties to seek spontaneous or amicable debt recovery to avoid the attachment of her/his assets? What is the deadline, if any, for the debtor to spontaneously comply with her/his obligation and avoid forced execution of the claim?

There are no special preliminary steps that have to be taken, once the creditor has an enforceable title (such as judgment, EOP, EOE, etc.) in their hands.

4. General outline of the enforcement procedure: classification and description of different modes of enforcement.

How to proceed with the enforcement (general and brief outline)

Which is the first act of the enforcement and does it differ from one mode of enforcement to the other? What is the deadline for the creditor to carry out the first measure of execution?

Which is the statute of limitations for the enforcement of a title in Croatia?

May the competent enforcing authority refuse to proceed with the execution if they consider that the creditor has not complied with the general enforcement requirements, such as e.g., the certainty, maturity and liquidity of certain claims; territorial competence relating to the enforcement authorities; further authorization or other formalities to proceed with the enforcement; etc.? What are the remedies available to the creditor in such scenario?

For monetary enforcement, may the creditor avail her/himself of several concurrent or cumulative enforcement procedures? How does coordination between different enforcement procedures for the same claim/enforcement instrument work? In particular, how does the debtor file an opposition for concurrent or subsequent enforcement procedures whose total added value exceeds the total sum due according to the judgment?



Are there secondary or ancillary effects or features of the judgments or other enforcement titles to be mentioned (e.g. the right to register a mortgage on the debtor's immovable property or the increasing in the interest rate attached to monetary claims)? In the affirmative, which are the applicable procedures and modes of execution?

The final court decision does not become enforceable before the period for voluntary fulfillment (usually 15 days of receipt of the judgment) has passed (Art. 328 CPA and Arts. 25-28 EA). After its expiry, the creditor is entitled to initiate enforcement proceedings, up until the moment the claim becomes statute barred. Statute of limitations for all claims arising out of judgments, court settlements, and other enforceable titles is ten years from the moment of their finality (Art. 233 COA). However, ancillary claims (such as interest) are statute-barred after three years from the moment each installment became due (Art. 226 COA).

The enforcement proceedings are divided in two phases: ordering enforcement (in case of cross-border enforcement, by the court) and carrying out of enforcement (by court or Financial agency, depending on the type of enforcement). The creditor chooses freely whether to enforce the total amount, or only part of it. Likewise, the creditor chooses freely which assets are going to be subject to enforcement (Art. 5 EA). In case of monetary claims, the following objects of enforcement are possible:

- movable property
- real-estate
- financial assets in bank accounts
- debtor's claims
- shares
- patents

The enforcement orders are issued by court and the request for its issuance is the first step regardless of the enforcement object. Exceptionally, if the creditor wishes to seize the bank accounts, no court order is needed. Instead, the so-called direct payments proceedings are initiated before the Financial agency. By way of using the debtors PIN number, the Financial agency has access to confidential information on debtor's bank accounts. It freezes the claimed amount for 60 days which gives opportunity to debtor to react (by lodging a legal remedy with the competent court). If they do not use that possibility, the frozen assets are transferred to the creditor's bank account (Arts. 204-213 EA). On the other hand, if there is no money on debtor's account, the creditor can request the change of enforcement object from the competent court, to continue proceedings on different object (e.g. movable or immovable property).

The request for enforcement, addressed to the court, must be clear and contain the name of the court of enforcement, the name and surname of the parties, their address



and personal identification number, the name and surname of legal representatives and proxies, if any, their address and personal identification number, general information on the enforcement title, request for relief and signature of the applicant. The request for relief, specifically, must contain an indication of the enforcement title, the claim whose fulfillment is requested, the means by which enforcement is to be carried out, and other data laid down for specific type of enforcement (Art. 39 EA).

The enforceable title can also be used to establish mortgage on debtor's real estate (Arts. 295-298 EA).

5. Opposition to the enforcement and stay of the enforcement.

How to challenge the enforcement in a broad sense (for the debtor)

In general, which remedies are available under national law to the party against whom enforcement is sought? Which are the national grounds ⁽⁴¹⁾ for opposition to enforcement or refusal of enforcement? How does the debtor file such claim(s)? *Please note that under Art. 41 Reg. (EU) No 1215/2012 such grounds are applicable as long as they are not incompatible with the grounds referred to in Art. 45 of the same Reg. Also, according to European jurisprudence (Court of Justice, 4 July 1985, case C-220/84, AS-Autoteile Service GmbH vs. Mahlè), grounds for opposition to enforcement do not include "a set-off between the right whose enforcement is being sought and a claim over which the courts of that state would have no jurisdiction if it were raised independently". How are these requirements interpreted in your jurisdiction?*

Which remedies are available to contest irregularities in the enforcement procedure? Is it possible for the parties to cure irregular acts?

Can the enforcement be stayed under national grounds for stay ⁽⁴²⁾ and which is the court before which the request for a stay is to be filed?

⁴¹ "Examples may include", according to the Opinion of Advocate General Pikamäe in Case C-568/20, J v H Limited, §46, "challenges to the seizable nature of certain assets or sums of money, the quantum of the debt as a result of payments or set-off occurring after the judgment, irregularities that may affect the enforcement instruments, but also to the existence of the title itself due to the effects of a limitation period or to its enforceability".

⁴² Please note that, unlike national grounds *for refusal*, there is no compatibility clause for national grounds *for stay*. It could be noted that a such clause has been adopted in other European legislative instruments, e.g. in the Reg. (EU) 2019/1111, which states, under Art. 57, that national grounds for suspension of enforcement, as well as national grounds for refusal of enforcement, "shall apply in so far as they are not incompatible with the application of Articles 41, 50 and 56".



If the enforcement proceedings are initiated based on directly enforceable title, such as incoming judgment, the debtor can lodge an ordinary appeal, which does not suspend enforcement. It should be filed within eight days of the service of the enforcement order. The debtor can base their appeal or objection on the allegation that:

- the enforceable title should not (or no longer) be considered enforceable
- the enforcement is, for a limited time or permanently, stayed upon parties' agreement
- the enforcement has not been requested within statutory period (should such period exist) or that the condition upon which it has been rendered was not fulfilled
- the creditor is not entitled to initiate the proceedings, or not against the debtor
- the claim ceased to exist or the decision upon which it has been based on was annulled or if the performance of the claim is postponed, prohibited, altered or in some other way prevented, even for a definite period of time
- the claim in the enforceable title became statute-barred

Since the last three groups of mentioned reasons require determination in court proceedings, the debtor is – upon court's request – supposed to file a special declaratory action to determine the enforcement inadmissible. If accepted, after such declaratory judgment has become final, the enforcement proceedings are terminated.

These last three groups of reasons may also occur later during the enforcement proceedings. In that case, the debtor can also lodge an extraordinary appeal latest until the end of the enforcement proceedings. Again, the court will order them to initiate court proceedings with the same effect, as if the appeal was lodged (Arts. 50 – 56 EA).

The enforcement can be stayed upon reasoned request of the debtor, the creditor, the third person or by mutual agreement of the parties Arts. 65 – 71 EA).

The debtor can request stay if they manage to prove, on the level of probability, that they would suffer irreparable or nearly irreparable damages as the result of enforcement, or if they make probable that such deferment is necessary to prevent violence. Additionally, the debtor has to prove that the legal remedies were lodged either against the directly enforceable title (judgment, arbitral award, settlement, notarial deed), the enforcement order, certificate of enforceability or conduct of enforcement, or that there are extraordinary circumstances officially declared by the Government preventing him or her from undertaking economic activity, or that there



are criminal proceedings pending with regards to the claim which is subject to enforcement.

The creditor is entitled to answer such a request and even condition their approval with a guarantee deposit, which the debtor must make within 15 days. If the creditor agrees with the stay, the court does not have to assess the abovementioned prerequisites. If the creditor himself deposits the amount as a security for the damages that might occur to the debtor, the court will automatically deny debtor's request for stay.

The stay can also be ordered, without any special prerequisites met, upon request of the creditor, although only once. Such suspension can last maximum 6 months. The creditor needs to request continuance of the enforcement, under the threat of its termination.

Third party, who requested the enforcement on a specific object to be declared inadmissible, may also request stay with respect to such object if the person proves, on the level of probability, the existence of their right and that they are also facing irreparable or nearly irreparable damages, provided that they have initiated litigation as instructed by court after filing his or her objection. The stay can also, upon creditor's request, be conditioned with the payment of a guarantee deposit.

The consequence of the stay is that no enforcement activities can take place, except securing measures establishing mortgage. The enforcement is stayed until the court decides on the remedies that the debtor/third person has lodged or until the date determined by the court. The stayed enforcement proceedings start over on court's own motion or upon timely request of the creditor or their payment of security deposit.

The court fee of 150 HRK (ca. 20 EUR) is due only if the request to postpone is rejected.

If the creditor makes such a request, the same court which would be competent to carry out enforcement can issue an interim measure (Arts. 340-341 EA). The creditor must prove, on the level of probability, that their claim exists and that there is a serious threat that without such a measure the debtor would prevent or make significantly more difficult the collection of the claim, e.g. by hiding their property, concealing it or disposing of it in some other way. In cross-border cases this danger is deemed to exist (Art. 344 EA), which significantly improves the position of the creditor. Any appropriate measure is available, but the law explicitly mentions asset restraining orders, custodial orders, regulatory orders, cash deposit, etc. (Art. 345 EA). The applicable court fee is the same as the court fee due when initiating enforcement proceedings.



6. Costs of the enforcement proceedings, liability of the creditor and deposit of a security.

Considering potential downsides (for the creditor)

Is there any liability of the creditor in cases of irregular execution, abuse of forced execution of claims or even for malicious or fraudulent enforcement proceedings?

Please describe the calculation of the costs of enforcement proceedings, their allocation and the rules governing such matter. Are there any court fees or other taxes applicable? Who bears the costs of the procedure in case of anticipatory termination of the enforcement proceedings?

Does the law of enforcement establish that the creditor must post a security in some cases? If so, under which conditions?

The costs include initial fees (i.e. court fee) for filling the enforcement proposal with court, attorney's fees (if the creditor uses their services) and Fina's fees (in case of attachment on the bank account of the debtor). All fees are depending on the value of the claim, in principle according to the following tables.

a) Court fees

Value of the claim (in kunas; 1 EUR is about 7,5 kunas)		Fee (in kunas)
from	to	
0,00	3.000,00	100
3.000,01	6.000,00	200
6.000,01	9.000,00	300
9.000,01	12.000,00	400
12.000,01	15.000,00	500

b) Attorney's fees (in case of hiring a lawyer – not mandatory)

Value of the claim (in kunas; 1 EUR is about 7,5 kunas)		Fee (in kunas)
from	to	
0,00	2.500,00	250
2.500,01	5.000,00	500



5.000,01	10.000,00	750
10.000,01	100.000,00	1.000
100.000,01	250.000,00	2.500
250.000,01	500.000,00	5.000

Financial agency's fees (in case of attachment on the bank account of the debtor)

Value of the claim (in kunas; 1 EUR is about 7,5 kunas)		Fee (in kunas)
from	to	
0	199,99	65
200	999,99	85
1.000,00	4.999,99	175
5.000,00	9.999,99	475
10.000,00	99.999,99	1.245
100.000,00	499.999,99	2.000
>500.000,00		5.000

All enforcement expenses are paid in advance by the creditor. Once they occur, the creditor must demand reimbursement of enforcement costs from the debtor and the court orders such reimbursement to the creditor. At the end the debtor is obliged to cover all the enforcement costs. However, if the debtor is insolvent, in case of an ineffective (unsuccessful) enforcement, the creditor cannot successfully recover the enforcement fees from the debtor, except in insolvency proceedings.