



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



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EFFORTS Practice Guide for cross-border enforcement of judgments, court settlements and authentic instruments under the Reg. (EU) No 1215/2012

Authors: Prof. Dr. Alan Uzelac, Assist. Prof. Dr. Marko Bratkovic, Dr. Juraj Brozovic



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List of abbreviations

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



I. Outgoing

When CROATIA is the Member State of origin

A. Outgoing judgments

When a party wishes to invoke a judgment or seeks its enforcement in another Member State, s/he shall produce certain documents, depending on each specific case, that shall be obtained in the Member State of origin, according to the applicable procedures and rules: (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (2) the certificate issued pursuant to Art. 53, either in the standard version or with mandatory information (see Art. 42(1)(b) and Art. 42(2)(b)-(c) BI bis Reg.); (3) a translation or a transliteration of the contents of the certificate or a translation of the judgment.

1. How and when to obtain a copy of the judgment which satisfies the conditions necessary to establish its authenticity. See Art. 37(1)(a) and Art. 42(1)(a)-(1)(b) BI bis Reg.

The application for such a copy can be filed with the court which has issued the judgement. It seems that a copy can be issued electronically as well, as it is signed electronically and available to the parties to dispute and their representatives.

2. How and when to ask for the certificate issued pursuant to Article 53. See Art. 37(1)(b) and Art. 42(1)(b)-(2)(b) BI bis Reg. The certificate attached in the Annex I, concerning a judgment in civil and commercial matters, contains the indication of the court of origin (name, address, and other relevant information), of the parties (identification of the claimant and of the defendant) and information regarding the judgment (date and reference number, if a default judgment, service of the judgment on the defendant, terms of the judgment and interests, information on the kinds of obligations contained in the judgment (monetary or otherwise), judgment ordering a provisional/protective measure, information on the costs and applicable interests).

The courts which have rendered the decision on the merits are the ones which will issue the certificate. Depending on the type of dispute, it can either be one of the municipal courts (in case of civil disputes) or commercial courts (in case of commercial disputes). All courts are listed on the official webpage: <https://sudovi.hr/en/node/4>. There are no special implementation provisions in the acts of the Republic of Croatia.



2 bis. Specific information for the enforcement. For the purposes of enforcement in a Member State of a judgment given in another Member State, the certificate shall certify that the judgment is enforceable and contain an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. Furthermore, when the judgment orders a provisional, including protective, measure the certificate shall contain a description of the measure and certify that the court has jurisdiction as to the substance of the matter and that the judgment is enforceable in the Member State of origin.

Arts. 2(a) and 42(2)(c): provisional measure ordered without the defendant being summoned to appear. When a provisional, including protective, measure was ordered without the defendant being summoned to appear, the creditor shall provide the competent authority of the Member State addressed also with proof of service of the judgment.

There is no specific rule on the rectification of the certificate in cases where the information contained in the certificate is insufficient and/or inaccurate. However, in our opinion, provisions regarding the rectification of judgement apply accordingly. Generally speaking, a provisional measure is ordered without the defendant being summoned to appear only in exceptional cases, as opposed to the standard procedure for issuing provisional measures, which dictates that the motion of the claimant is served on the defendant for her/his appearance.

2 ter. Enforceability of the judgment. A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

Art. 51(1): ordinary appeal against an enforceable judgment. The court of the Member State addressed to which an application for refusal of enforcement is submitted may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired.



Judgements that order performance are in principle enforceable as soon as they have become *res iudicatae* and the additional deadline for voluntary compliance has expired. In small claims proceedings, an appeal against judgement does not suspend its enforceability. A first instance judgement is subject to appeal, which is to be filed with the court that issued the judgement and decided by the appellate court. The deadline for such an appeal is, in principle, 15 days from the day the judgement is served to the party.

According to domestic enforcement rules (Arts. 65 – 71 EA), the enforcement can be suspended upon reasoned request of the debtor, the creditor, the third person or by mutual agreement of the parties.

The debtor can request suspension if he or she manages to prove, on the level of probability, that he or she would suffer irreparable or nearly irreparable damages as the result of enforcement, or if he makes probable that such deferment is necessary to prevent violence. Additionally, the debtor has to prove that the legal remedies were lodged either against the enforceable title, the enforcement order, certificate of enforceability or conduct of enforcement, or that there are extraordinary circumstances (e. g. disease pandemic) 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 his or her approval with a guarantee deposit, which the debtor must make within 15 days. If the creditor agrees with the suspension, 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 suspension.

The suspension 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 suspension with respect to such object if the person proves, on the level of probability, the existence of his or her right and that he or she is also facing irreparable or nearly irreparable damages, provided that he or she has initiated litigation as instructed by court after filing his or her objection. The suspension can also, upon creditor's request, be conditioned with the payment of a guarantee deposit.

The consequence of the suspension is that no enforcement activities can take place, except securing measures establishing mortgage. The enforcement is suspended until the court decides on the remedies that the debtor/third person has lodged or until the date determined by the court. The suspended enforcement proceedings start over on



court's own motion or upon timely request of the creditor or his or her payment of security deposit.

2 *quater*. **Art. 55: judgment ordering payment of a penalty.** A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Croatian law does not have a penalty comparable to the French concept of *astreinte*. Therefore, Art. 55 Brussels I bis Regulation is maybe not applicable to Croatian penalty, which is only one of the enforcement measures in specific circumstances (the obligations to perform that relate to doing something or abstaining from doing something, which may be performed only by the debtor her/himself).

3. How and when to obtain a translation or a transliteration of the contents of the certificate or a translation of the judgment. See Art. 37(2) and 42(3)-(4) BI bis Reg.

Translation or transliteration of the contents of the certificate. The court or authority before which the judgment is invoked or the competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Art. 57, a translation or a transliteration of the contents of the certificate ⁽¹⁾.

Translation of the judgment. The court or authority before which the judgment is invoked may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation. In addition, the competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

The parties do not have the possibility to ask the court of origin for a translated copy of the certificate directly in their application for a certificate. Translations must be certified by a qualified translator in one of the EU Member States.

¹ Please note that the translation or the transliteration of the certificate issued pursuant to Art. 53 shall be into the official language of the Member State addressed under Art. 57(1) as well as any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept under Art. 57(2) BI bis Reg.



B. Outgoing authentic instruments and court settlements

Authentic instruments

When a party seeks the enforcement of an authentic instrument in another Member State, s/he shall produce (1) an enforceable authentic instrument that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. How and when to obtain an authentic instrument which satisfies the conditions necessary to establish its authenticity.

1 *bis*. **Enforceability of the authentic instrument.** An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 58).

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the authentic instrument is suspended in the Member State of origin.

Croatian law recognizes notarial deeds as well as declarations of enforceability by a notary as authentic instruments. Such instruments may be enforced for the forced execution of the obligations contained therein.

In Croatian law, there is also a very specific instrument called *zadužnica* (“executory debenture”), which is a very often used enforceable title. This collateral has been transformed from simple signed and certified statement of the debtor into debt security in the form of a notarial instrument. There are some court decisions issuing the certificate according to the Brussels I bis for such instruments. However, that is highly questionable, in particular if one takes into account that its primary purpose is debt security and because it is (only) a statement of the debtor. Moreover, in one of the forms of the debenture (*bianco* executory debenture) the creditor is the one who can unilaterally fill in the amount of the debt up to a certain (prescribed) amount.



2. How and when to ask for the certificate issued pursuant to Article 60 for authentic instruments.

As there are no special implementation provisions in the acts of the Republic of Croatia, in our opinion, only courts are competent to issue the certificate pursuant to Art. 60. All courts are listed on the official webpage: <https://sudovi.hr/en/node/4>. There are no specific rules governing the application and the procedure applicable to the issuance of the certificate. The rules on issuance of the national certificate of enforceability apply accordingly.



Court settlements

When a party seeks the enforcement of a court settlement in another Member State, s/he shall produce (1) an enforceable court settlement that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. How and when to obtain a court settlement which satisfies the conditions necessary to establish its authenticity.

1 *bis*. **Enforceability of the court settlement.** A court settlement which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 59).

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the court settlement is suspended in the Member State of origin.

A court settlement is concluded as soon as the parties sign the protocol drawn up and read by the court. The rules provided for the judgements apply *mutatis mutandis*. There is no specific rule on challenging a court settlement in the Croatian CPA. Some scholars consider there is a possibility of a specific application for setting it aside, by analogy to an application for setting aside an arbitral award. A reopening of the proceedings in accordance with the CPA may be also one of the possibilities.

2. How and when to ask for the certificate issued pursuant to Article 60 for court settlements.

See answers regarding judgements above.



II. Incoming

When CROATIA is the Member State addressed

When a party wishes to invoke a judgment in the Member State addressed or seeks its enforcement, s/he shall invoke it before the courts of the Member State addressed or follow the procedure for the enforcement of judgments of the Member State addressed. The procedure for the enforcement of claims in CROATIA is dealt with in the Annex “Enforcement procedure”. In addition to national rules, the Regulation provides that enforcement must be preceded by (1) service of the judgment and of the certificate. Furthermore, the creditor may avail her/himself of: (2) the right to apply for a decision that there are no grounds for refusal of recognition as referred to in Art. 45; (3) the power to proceed to any protective measures which exist under the law of CROATIA; (4) the request for adaptation of a measure or an order which is not known in the law of CROATIA. On the other hand, the person against whom enforcement is sought (or, in case of the refusal of recognition, any interested party) may fight the recognition or the enforcement of the judgment issued in another Member State, either filing a claim for opposition to enforcement under national rules (which also will be dealt with in the Annex “Enforcement procedure”) or (5) filing a claim for refusal of recognition or enforcement, also with the power to apply for the measures under Art. 44(1). The person against whom enforcement is sought may also (6) apply for the suspension of the enforcement proceedings pursuant to the grounds of suspension provided for by national law (to the extent that they are not incompatible with the Regulation, see Art. 41(2)) or in cases where the enforceability of the judgment has been suspended in the Member State of origin in accordance with Art. 44(2) BI bis Reg.

1. Service of the judgment and the certificate prior to the enforcement. Alongside the conditions and the procedural steps applicable under the law of the Member State addressed, the Regulation requires the creditor to take a number of steps before proceeding with the enforcement. First, the certificate issued pursuant to Art. 53 BI bis Reg. shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43(1)). The certificate should be served on that person within a reasonable time before the first enforcement measure (Whereas (32)).

Generally, service of the certificate and of the judgment before the enforcement takes place could be classified as cross-border service, i.e., “service from one Member State to another Member State”, according to the definition given by the Service Regulation ⁽²⁾, applicable from 1 July 2022. However, in case the person against whom recognition or enforcement is sought is domiciled in the Member State of enforcement, such service could be out of the scope of application of the Service Regulation and therefore national rules on service could be applicable.

² Whereas (6) of the Reg. (EU) 2020/1784 of the European parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).



The enforcement based on the foreign enforceable title is done first by applying to the competent municipal court. Only municipal courts can order enforcement. The local competence depends on the location of assets. The enforcement order is served to the parties. General national rules on service are to be applied.

The service is usually done by post office or, exceptionally, by special court officials. The service can be much simpler in cases where debtors are legal persons, since they are since 2019 obliged to use electronic service system.

It is essential to understand that in Croatia, enforcement consists of two stages. First the competent court issues an enforcement order upon which, when that enforcement order becomes final, the enforcement is carried out by the competent body. Most of the enforcement activities are carried out by the Financial agency as it carries out the enforcement over monetary funds. The carrying out of other types of enforcement activities depends on the type of enforcement. When the enforcement is carried out by court, it is done by enforcement administrators as judicial bailiffs, who are public servants.

1 *bis*. **Language.** Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, s/he may request a translation *of the judgment* ⁽³⁾ if the judgment is not written in or accompanied by a translation into the official language of the Member State in which s/he is domiciled or a language that s/he understands (Art. 43(2)).

Where such translation is requested, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought (Art. 43(2)).

The official language is Croatian. In certain districts, Italian and Serbian language may be used, as well.

³ Creditors should be aware that translation of the certificate, unlike the translation of the judgment, is not strictly required at this stage of the enforcement but may be requested just afterwards by the enforcement authorities, according to Art. 42(3).



1 ter. Art. 41(3): authorized representative in the Member State addressed.

The party seeking enforcement of a judgment is not required to have an authorised representative in Croatia.

2. Protective measures. An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

There is a non-exhaustive list of provisional measures provided for in the EA. However, they are not used in practice as often as one would expect. There is no clear distinction between protective and provisional measures. The creditor has to propose the measure to the court and prove, on the level of probability, that he or she would suffer irreparable or nearly irreparable damages as the result of enforcement, or if he makes probable that such measure is necessary to prevent violence (*periculum in mora*).

3. Adaptation. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests (Art. 54). How, and by whom, the adaptation is to be carried out should be determined by each Member State (Whereas (28)).

No clear rule in Croatian law in that regard. However, the court is to be authorized to make a corresponding adjustment.

4. Claim for refusal of recognition or enforcement. On the application of the party against whom enforcement is sought (or, in case of refusal of recognition, of any interested party), the recognition or the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. The party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of Croatia, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in



that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present (Whereas (30)).

Procedure. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (Art. 47(1)).

Officially, it is stated that in the Republic of Croatia applications are submitted to the competent municipal courts in civil matters, and to the competent commercial courts in commercial matters. However, only municipal courts are competent to rule on the enforcement. There is no implementing rule on the application for refusal of enforcement.

4 bis. Authorised representative in the Member State addressed. The party seeking the refusal of a judgment given in another Member State shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

The party seeking the refusal of recognition or enforcement of a judgment is not required to have an authorised representative in Croatia.

4 ter. Grounds for refusal. National grounds for refusal of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)) ⁽⁴⁾.

There are special rules on limitations of enforcement. Exempt from enforcement are, for instance, funds amounting to 3/4 of the enforcement debtor's salary, but no more

⁴ For guidance see, amongst others: "This means that domestic grounds relating to, for example, the disproportionality of enforcement means, prohibitions on seizing certain (primary) goods or abuse of rights, or indeed set-off, may generally be allowed. However, for example disputes on the service of documents or a violation of jurisdiction rules beyond those set out in the Regulation, or a re-examination of the facts or the applicable law are not allowed.", X. KRAMER, *Cross-border enforcement and the Brussels I-bis Regulation: towards a new balance between mutual trust and national control over fundamental rights*, in *Netherlands International Law Review*, 2013, p. 360.



than 2/3 of the average net salary in the Republic of Croatia, and if the salary is below average, the 2/3 of the salary amount may not be enforced. There are also special rules on protection of home based on the case law of the EtCHR.

4 *quater*. **Appeal.** The decision on the application for refusal may be appealed against by either party. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged. The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

Officially, it is stated that in the Republic of Croatia an appeal against a decision on an application for refusal of enforcement should be lodged with the county court through the competent municipal court in civil matters, and with the High Commercial Court through the competent commercial court in commercial matters. However, only municipal courts are competent to rule on the enforcement. Therefore, only county courts are competent to decide on appeal. Under applicable national law, there are no courts with which a further appeal may be lodged.

4 *quinquies*. **Measures under Art. 44(1) BI bis Reg.**

Under national law, upon the request of the person against whom enforcement is sought courts have the power to (a) limit the enforcement proceedings to protective [provisional] measures; (b) make enforcement conditional on the provision of such security as it shall determine; or (c) suspend, either wholly or in part, the enforcement proceedings.

5. **Claim for a decision that there are no grounds for refusal of recognition.** According to Art. 36(2), the application for a decision that there are no grounds for refusal of recognition as referred to in Art. 45 is presented in accordance with the procedure provided for in Subsection 2 of Section 3 of the Regulation.

No specific rule in that regard in the national law.



6. **Suspension of the enforcement.** National grounds of suspension of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)).

6 *bis*. **Enforceability suspended in the Member State of origin.**

According to domestic enforcement rules (Arts. 65 – 71 EA), the enforcement can be suspended upon reasoned request of the debtor, the creditor, the third person or by mutual agreement of the parties.

The debtor can request suspension if he or she manages to prove, on the level of probability, that he or she would suffer irreparable or nearly irreparable damages as the result of enforcement, or if he makes probable that such deferment is necessary to prevent violence. Additionally, the debtor has to prove that the legal remedies were lodged either against the enforceable title, the enforcement order, certificate of enforceability or conduct of enforcement, or that there are extraordinary circumstances (e. g. disease pandemic) 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 his or her approval with a guarantee deposit, which the debtor must make within 15 days. If the creditor agrees with the suspension, 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 suspension.

The suspension 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 suspension with respect to such object if the person proves, on the level of probability, the existence of his or her right and that he or she is also facing irreparable or nearly irreparable damages, provided that he or she has initiated litigation as instructed by court after filing his or her objection. The suspension can also, upon creditor's request, be conditioned with the payment of a guarantee deposit.

The consequence of the suspension is that no enforcement activities can take place, except securing measures establishing mortgage. The enforcement is suspended until the court decides on the remedies that the debtor/third person has lodged or until the date determined by the court. The suspended enforcement proceedings start over on



court's own motion or upon timely request of the creditor or his or her payment of security deposit.

7. Measures for the indirect enforcement (payment orders). Art. 55 establishes the rules for recognition of a judgment given in a Member State which orders a payment by way of a penalty. However, it does not cover the case in which the incoming judgment has not a payment order attached to it. It may be possible that the competent authorities of the Member State of the enforcement have the power to issue measures of indirect enforcement.

Croatian law does not have a penalty comparable to the French concept of *astreinte*. Therefore, Art. 55 Brussels I bis Regulation is maybe not applicable to Croatian penalty, which is only one of the enforcement measures in specific circumstances (the obligations to perform that relate to doing something or abstaining from doing something, which may be performed only by the debtor her/himself).