



UNIVERSITÀ DEGLI STUDI DI MILANO  
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GIURIDICI E STORICO-POLITICI



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## **EFFORTS Practice Guide for outgoing or incoming judgments, court settlements and authentic instruments certified as European Enforcement Orders**

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### List of abbreviations

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



## Introduction

Building upon the contents of the *Practice Guide for the Application of the Regulation on the European Enforcement Order of the Commission* ([here](#)), the *EFFORTS Practice Guide* seeks to supplement operators and end-users with clear practical instructions on how to proceed with the European Enforcement Order Regulation (Reg. (EC) No 805/2004) at a national level.

According to the general scope of the EFFORTS Project, the *EFFORTS Practice Guide for outgoing and incoming titles* covers the Member States addressed: Belgium, Croatia, France, Germany, Italy, Lithuania and Luxembourg.

The Guide is structured so that issues relating to outgoing and incoming titles are dealt with separately. *Outgoing* titles are the ones for which certification is sought in the Member State of origin: the interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how and when to ask for a European Enforcement Order, whether the requirements for the certification are met and which are the possible remedies/defences for the parties.

*Incoming* titles are the ones, certified as EEOs in another Member State, that must be enforced in the Member State addressed: according to the general principle of mutual recognition in judicial cooperation in civil matters within the European Union, the same conditions apply as for national titles, plus additional remedies specifically drafted for the European Enforcement Order (Arts. 20 ff. EEO Reg.). The interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how, when and under which conditions they may proceed with enforcement and the procedures and the conditions to ask for refusal of enforcement or for stay/limitation of the enforcement proceedings.



## I. Outgoing

When CROATIA is the Member State of origin

*The procedure and the requirements to obtain an EEO certification vary depending on the title to be certified. The following paragraphs will address in turn the certification of judgments that are yet to be given/that have already been issued (A), authentic instruments (B), and court settlements (C).*

### A. EEO for judgements

*Depending on whether the judgment has yet to be given or has already been given, the creditor may take certain steps in order to ensure its certification of as EEO. The Commission Practice Guide distinguishes between these two possibilities, and provides the creditor with separate step-by-step instructions for the certification of judgments as EEOs. In the present document, however, the requirements for the certification of existing and future judgments are dealt with together, leaving it then to the creditor to follow the different practical instructions (see Chapter II and III of the Commission Practice Guide) for an already given judgment or one that has not been given yet.*

**1. How and when to ask for the European Enforcement Order.** A request for a European Enforcement Order must be addressed to the competent authority in the Member State of origin. In principle this is the court seized on the merits (EC PG II.3.1 and III.2.1)

The request must be made in accordance with the national law of the court seized (EC PG II.3.2 and III.2.2)

The request may be made at any time when or after proceedings have been initiated (EC PG II.3.3) or at any time after the judgement was given (EC PG III.2.3)

In general, according to the Enforcement Act, Official Gazette of the Republic of Croatia "Narodne novine", 112/12, 25/13, 93/14, 55/16, 73/17, 131/20 (hereinafter referred to as: EA), the competence to issue the EEO certificate is attributed to "the competent courts, administrative bodies, notaries public and legal or natural persons with public powers" (Article 357 EA). In our opinion, only courts which have rendered the decision on the merits are competent to issue the EEO certificate for their judgements. Depending on the type of dispute, it can either be one of the municipal courts (in case of civil disputes) or the commercial courts (in case of commercial disputes). All courts are listed on the official webpage: <https://sudovi.hr/en/node/4>.

There is no distinction between the authority competent to decide on the certification and the authority competent "for the formal act of issuing the certificate". It is always a court decision, signed by the judge.



EEO certificates for judgements shall be issued without prior hearing of the debtor. The competent authority, which issued the certificate, shall serve a copy of the certificate to the debtor (Art. 358/1, 2 EA).

If the competent body dismisses the request for issuance of a certificate, the applicant has the right to appeal in accordance with the rules governing the appeal against the decision dismissing the motion for enforcement (Art. 358/3 EA).

There is no applicable court fee or similar tax.

So far, in most (if not all) cases a request for an EEO certificate has been submitted after the judgement was given. There is no time limit as regards the time between the filing of the application and the issuance of the certificate.

**2. The decision of certification.** In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex I. In doing so, the court must check a number of items (see EC PG II.4.1 and ff.). Amongst those, some relate to rules of national civil procedural law.

- a. Judgement relating to a pecuniary claim.** A European Enforcement Order may be requested with respect to judgments, i.e. any judgment given by a court of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (Art. 4(1) EEO Reg.) (EC PG II.1.3 and III.1.3). The claim which is the subject of the dispute must be a claim for payment of a specific sum of money that has fallen due (EC PG II.1.1, III.1.1 and III.3.1.2) or for which the due date is indicated in the judgment.
- b. (follows):** (i) payment of an *unspecified* sum of money or (ii) payment of a sum of money that has not fallen due (*Creditors should be advised that such claims may not be certified as EEOs*).
- c. The judgment is enforceable.** The judgment to be certified as a European Enforcement Order must be enforceable. However, a certificate may also be issued when the judgment is provisionally enforceable (EC PG II.4.3 and III.3.3)
- d. Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover not only the specific sum of money object of the claim, but also the amount of costs related to the court proceedings which are included in the judgment if the debtor has not specifically objected to his obligation to bear such costs in the course of the court proceedings in accordance with the law of the Member State of origin (EC PG II.4.1.2) (*If so, creditors should be advised that "an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which*



does not relate to an uncontested claim, cannot be certified as a European Enforcement Order”<sup>9</sup>).

In Croatia, the national procedures, relating to pecuniary claims, under which the creditor may obtain a judgment according to the definition provided in Art. 4(1) EEO Reg., are litigation (resulting with judgements *stricto sensu* (including default judgements) and orders on costs of the proceedings), payment orders issued by the courts (relatively rarely used in practice, but their number has increased after legislation amendments partly inspired by the *Zulfikarpašić* case), enforcement orders based on an enforceable title issued by the courts. It is somewhat questionable whether the same applies to enforcement orders based on a so-called trustworthy document issued by the notaries public, who, after legislation amendments partly inspired by the *Pula parking* and *Zulfikarpašić* cases, act as court commissioners in issuing enforcement orders based on a trustworthy document.

Under Croatian law, there are no pecuniary judgements providing for the payment of an unspecified sum of money. However, there are some claims for the payment of a sum of money that has not fallen due (for instance, claim for maintenance and some compensatory damages to be paid in installments), but even in such cases the due date is indicated in the judgment. According to established case law, interest that is not yet due is regularly awarded until the payment of the principal to which the interest relates.

It is somewhat questionable whether enforcement orders based on a so-called trustworthy document (e.g. invoice, extract from accounting records, bill of exchange), issued by the notaries public, who, after legislation amendments partly inspired by the *Pula parking* and *Zulfikarpašić* cases, act as court commissioners in issuing enforcement orders based on a trustworthy document, can be considered as “judgements”.

Judgements 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.

The debtor is entitled to object to the obligation to bear costs related to court proceedings in an appeal to be decided by the second instance court.

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<sup>9</sup> CJEU, 14 December 2017, in case C-66/17, *Chudaš v. DA Deutsche Allgemeine Versicherung*.





- e. **The claim has remained uncontested under Art. 3(1)(b) EEO Reg.** A claim is considered to be uncontested in the situations listed under Art. 3 EEO Reg. Amongst others, the claim is considered uncontested when the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of court proceedings (Art. 3(1)(b) EEO Reg.) (EC PG II.4.2.2 and III.3.2.2).

The debtor may contest the claim by arguing against it during the proceedings, usually in the written response to the claim.

- f. **The claim has become uncontested under Art. 3(1)(c) EEO Reg. after an initial objection.** A claim is also considered uncontested when the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin (Art. 3(1)(c) EEO Reg.); this situation occurs when the debtor did participate in the procedure and objected to the claim, but did no longer appear or was no longer represented at a subsequent hearing concerning the claim. In this situation, the court must check that the conduct of the defendant can amount to a tacit admission of the claim or of the facts under the law of the Member State of origin (EC PG II.4.2.3 and III.3.2.3).

This situation does not occur under Croatian law.

- g. **Additional checks in case the debtor has not expressly agreed to the claim.** If the debtor has not expressly agreed to the claim, i.e. in the situations under Arts. 3(1)(b) and 3(1)(c) EEO Reg., the court must check additional items. Some of them relate to rules of national civil procedural law.
- i. **Service of the document instituting the proceedings.** The document instituting the proceedings as well as any summons to a court hearing must be served by way of a method recognised by the Regulation <sup>(10)</sup>.

<sup>10</sup> If service needs to take place in another Member State, documents must be transmitted to that other Member State in accordance with the rules of Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters or Regulation (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 methods of service accepted are specified in Art. 13 and 14. In general, two types of service are possible: either service with proof of receipt by the debtor or the debtor's representative (Art. 13) or service without proof of receipt by the debtor or the debtor's representative (Art. 14) (EC PG II.2.2 III.3.5.2.1) <sup>(11)</sup>.

Any method of service that is based on a legal fiction as regards the fulfilment of minimum standards cannot be considered sufficient for the certification of a judgment as a European Enforcement Order (Recital No (13) EEOR). However, under Croatian law, electronic (which has been mandatory since 2022 for all legal persons, natural persons who perform a registered activity, attorneys-at-law, notaries public, insolvency practitioners etc.) and postal forms of service, if unsuccessful, may end up in fictional service by posting on the court's electronic notice board. In that case the document shall be deemed served after the expiry of the period of eight days from the publication.

- ii. **Mandatory information.** A creditor wishing to obtain a European Enforcement Order certificate should ensure that some procedural requirements are complied with. In particular, the document instituting the proceedings on the merits must be served on the debtor and must contain specified information for the attention of the debtor: due information about the claim (Art. 16) and due information about the procedural steps necessary to contest the claim (Art. 17). The information due under Art. 17 may be contained in the document instituting the proceedings or in an accompanying document and it may also be contained in any subsequent summons to a court hearing (EC PG II.2.1 and III.3.5.2.2).

In principle, all due information is already included in the claim, payment order and in subsequent summons to a court hearing served to the defendant.

- iii. **Cure of non-compliance.** If the European Enforcement Order is refused by the court due to a lack of due service of the document instituting the proceedings or any summons to a court hearing under Art. 13 or 14 due

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<sup>11</sup> *Cure of non-compliance:* if the document instituting proceedings or any summons to a court hearing was not served on the debtor in accordance with Art. 13 or 14, the court may nevertheless certify the judgment as a European Enforcement Order if it is proved by the conduct of the debtor in the court proceedings that s/he has personally received the document to be served in sufficient time to arrange for his defence (Art. 18(2) EEO Reg.) (EC PG II.4.5.2.1 and III.3.5.2.1.2).



to a deficient provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be cured and the claimant may make a new application for a European Enforcement Order to the court having delivered the judgment if the requirements under Art. 18(1) EEO Reg. are met (EC PG II.5.1.1, III.3.5.2.2.2 and III.4.1.1).

In principle, all forms of service of the judgment, at a national level, comply with the rules laid down in Arts. 13 and 14 EEOR. However, after several failed attempts, they all may end up in fictional service by posting on the court's electronic notice board, which is not in accordance with minimal standards of the EEOR. The debtor in principle receives the information due according to Art. 18(1)(b) EEOR. General means of challenge is an appeal. The relevant time limit for a "full review" (Art. 18(1)(b)) is 15 days from the service of the appealed judgement of the court of first instance. Against a payment order and against an enforcement order based on a trustworthy document the defendant can lodge an objection in 8 days from the service of the document.

- iv. **Review in exceptional cases.** The Member State of the court which has given the judgment must offer the debtor the right to apply for a review of the judgment where the conditions under Art. 19 EEO Reg. are met (EC PG II.4.5.2.3 and III.3.5.2.3)

It is not completely clear which are the possibilities for review under Art. 19 according to Croatian law, as there is no specific implementation rule in that regard. Probably the debtor is entitled to apply for procedural restoration of the *status quo ante*. The debtor may apply for procedural restoration of the *status quo ante* if the failure to act before the expiration of the statutory period cannot be attributed to his fault. The application must be filed at the court which was competent for the original procedure within a time period of eight days, which starts as soon as the debtor is capable, i.e. is no longer hindered, to take the appropriate procedural action. However, the application can be filed no later than two months after the statutory period has passed. Maybe there is also a possibility of a reopening of the procedure.

### 3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the



judgement in another Member State under the Brussels regime (Reg. (EU) No 1215/2012) (EC PG II.5.1.2 and 4.1.2).

If the court dismisses the request for issuance of a certificate, the applicant has the right to appeal in accordance with the rules governing the appeal against the decision dismissing the motion for enforcement (Art. 358/3 EA).

- b. If the European Enforcement Order contains an error.** If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant or the debtor may apply to the court having delivered the certificate requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG II.5.2.1.1, II.5.1.3, III.4.1.3 and III.4.2.1.1).

Under Croatian law, provisions of the CPA (Art. 342) governing the rectification of judgement apply *mutatis mutandis* on rectification of the certificate, i.e. the court may decide on it *ex parte*, without hearing the parties. Errors in names and numbers, and other obvious errors in writing and calculation shall be corrected by a judge at any time. Correction shall be done by a special decision and a copy of it is to be served to the parties.

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having delivered the certificate requesting that the European Enforcement Order certificate may be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG II.5.2.1.2 and III.4.2.1.2).

The request for withdrawal of the certificate shall be decided with the appropriate application of the provisions of the EA governing the revocation of the certificate of enforceability (Art. 359/3 EA). The certificate of enforceability issued despite the conditions laid down by the law have not been met shall be revoked by a decision of the same court, upon proposal or *ex officio* (Art. 36/3 EA).

- d. If the judgment has ceased to be enforceable or its enforceability has been suspended or limited.** If the judgment has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State



where the judgment was delivered, the debtor may apply to the court of origin for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG II.5.2.1.3 and III.4.2.1.3).

Municipal courts are exclusively competent for stay or limitation of enforcement. The procedure for stay or limitation of enforcement of the EEO is the same as of the national enforcement titles. "Enforcement shall be suspended or limited according to the provisions of the EA on suspension of enforcement (Article 72), ie on limitation of enforcement (Article 5) as well as on the basis of sending a certificate of non-enforceability or restriction of enforcement according to Article 23 of the Regulation." (Article 363 EA). In our opinion, due to the misunderstanding of the Article 23 of the Regulation, Article 363 EA erroneously points to the Art. 72 EA regulating "suspension" (*obustava*) instead of to the provisions regulating "stay" (postponement) (*odgoda*).

According to domestic enforcement rules, the debtor can request stay 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 must 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 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 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 his or her payment of security deposit.

In our opinion, Article 363 EA erroneously points to the Art. 5 EA regarding the limitation of enforcement. The amounts exempt from enforcement are set out in Article 172 EA (Exemption from enforcement) and Article 173 EA (Limitation of enforcement). Exempt from enforcement are, for instance, funds amounting to 3/4 of the enforcement debtor's salary, but no more 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.

- e. Appeal against the judgment.** The debtor may challenge the judgment certified as EEO on the merits in accordance with the national procedural law of the Member State where the judgment was issued. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG II.5.2.1.4 and III.4.2.1.4).

Under Croatian law, there is no specific rule on application for a replacement certificate. The competent authority is the court, seemingly the same court that initially issued the certificate. It is provided for that the certificate shall be issued without prior hearing of the debtor and that they served to the debtor *ex officio*.

The rules on an appeal after the expiry of the time limit (Art. 53 EA) and subsequent action (Art. 55 EA) (e.g. the title is not an enforceable document or has been revoked, annulled, modified or has no effect; the period within which enforcement may be requested by law has expired; the enforcement is determined on an object that is exempted from enforcement; new facts that arose at the time when the debtor could no longer point it out in the proceedings from which the decision originates; the statute of limitations for the claim has expired), shall also apply to enforcement on the basis of a EEO.

- f. Review in exceptional cases.** The debtor may lodge a special review against the judgment before the competent court of the Member State where the judgment was issued under the circumstances set forth in Art. 19 EEO Reg. In applying for this special review, the debtor must act promptly (EC PG II.5.2.1.5 and III.4.1.2.5).

See §2(g)(iv) above.



## B. EEO for authentic instruments

**1. How and when to ask for the European Enforcement Order.** The European Enforcement order certificate must be requested from the competent authorities in the Member State where the instrument was drawn up. In some Member States, the competent authority to deliver the certificate is the notary who has drawn up the act or a representative organization. In other Member States, the competent authority is a court (EC PG IV.2.1).

The European Enforcement Order may be asked at the time when the authentic instrument is being drafted or any time thereafter (EC PG IV.2.2).

Even though the rule stating that, besides courts, the authorities competent for issuing EEO are “administrative bodies, notaries or legal and natural persons with public authorities who are authorized to issue a writ of execution of a domestic European (?) enforcement document on uncontested claims” is not clear, it seems to that only notaries are besides court competent to issue EEO. Certificates shall be issued without prior hearing of the debtor and served to the debtor *ex officio*. There is no clear rule on applicable notarial fees nor the limits for the creditor to make his/her request in a timely manner.

**2. The decision of certification.** In order to issue a European Enforcement Order, the competent authority shall fill in the standard form included in Annex III to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG IV.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

- a. Authentic instrument relating to a pecuniary claim.** An authentic instrument is defined under Art. 4(3) EEO Reg. (EC PG IV.1.3). The claim which is the subject of the authentic instrument must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the authentic instrument (EC PG IV.1.1 and IV.3.1.2).
- b. (follows):** (i) payment of an *unspecified* sum of money or (ii) payment of a sum of money that has not fallen due (*Creditors should be advised that such claims may not be certified as EEOs*).
- c. The authentic instrument is enforceable.** The authentic instrument to be certified as a European Enforcement Order must be enforceable (EC PG IV.3.2).
- d. Costs of the procedure.** The European Enforcement Order certificate may cover also the amount of costs related to the drafting of the instrument which are included in the instrument (EC PG IV.3.1.2).





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. In our opinion (not shared by everyone), EEO cannot be issued based on such an instrument as 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.

### 3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the authentic instrument under the Brussels regime (EC PG IV.4.1.1).

If the notary public finds that the conditions for issuing the certificate are not met, he or she shall forward the request for issuing a certificate with a file to the municipal court in whose territory his seat is located. The notary public is obliged to explain why he considers that the preconditions for accepting the party's request have not been met.

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the authentic instrument and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the competent authority in the Member State of origin requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG IV.4.1.2 and IV.4.2.1.1)

A request for rectification of the certificate shall be submitted to the notary that issued the certificate, who shall forward the request with the file to the municipal court in the area where their seat is located. The court will decide on rectification *ex parte*, without hearing the parties. Correction shall be done by a special decision and a copy of it is to be served to the parties.





- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the competent authority in the Member State of origin requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG IV.4.2.1.2).

A request for withdrawal of the certificate shall be submitted to the notary that issued the certificate, who shall forward the request with the file to the municipal court in the area where their seat is located. The request for withdrawal of the certificate shall be decided with the appropriate application of the provisions of the EA governing the revocation of the certificate of enforceability (Art. 359/3 EA).

- d. If the authentic instrument has ceased to be enforceable or its enforceability had been suspended or limited.** If the authentic instrument has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the instrument was drafted, the debtor may apply to the competent authority indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG IV.4.2.1.3).

An application shall be submitted to the notary that issued the certificate, who shall forward the application with the file to the municipal court in the area where their seat is located. See II. A.3.d. above.

- e. Challenge of authentic instruments.** Under Art. 23 EEO Reg., one of the conditions for stay or limitation of enforcement of an authentic instrument in the Member State addressed is that the debtor challenged an authentic instrument certified as a European Enforcement Order, including an application for review under Art. 19, or applied for rectification or withdrawal (EC PG IV.4.2.2.1).

In Croatia, there is a possibility to challenge an enforcement order based on the notarial authentic instrument. An appeal is to be decided by the court of second instance. The rules on an appeal after the expiry of the time limit (Art. 53 EA) and subsequent action (Art. 55 EA) apply as well.



### C. EEO for court settlements

**1. How and when to ask for the European Enforcement Order.** A request for a European Enforcement Order must be addressed to the court which approved the court settlement or before which it was concluded (EC PG V.2.1 and V.2.2).

The European Enforcement Order may be asked at any time during the court proceedings or after the approval or conclusion of the court settlement (EC PG V.2.3).

Under Croatian law, there is no specific rules regarding EEO for court settlements. The same rules provided for the judgements apply *mutatis mutandis*.

**2. The decision of certification.** In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex II to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG V.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

- a. Court settlement for a pecuniary claim.** A European Enforcement Order may be requested with respect to court settlements, i.e. a settlement which has been approved by a court or concluded before a court in the course of proceedings (Art. 3(1) and Art. 24 EEO Reg) (EC PG V.1.3). The claim which is the subject of the settlement must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the settlement (EC PG V.1.1 and V.3.1.2).
- b. (follows):** (i) payment of an *unspecified* sum of money or (ii) payment of a sum of money that *has not fallen due* (*Creditors should be advised that such settlements may not be certified as EEOs, unless they fall under one of the other two categories of the Reg. (EC) No 805/2004 "judgment" or "authentic instrument"*)
- c. The court settlement is enforceable.** The court settlement to be certified as a European Enforcement Order must be enforceable (EC PG V.3.2).
- d. Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the court settlement (EC PG V.3.1.2).

A court settlement is concluded as soon as the parties sign the protocol drawn up and read by the court.



### 3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the court settlements under the Brussels regime (EC PG V.4.1.1).

See answers regarding judgements above.

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the court settlement and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the court having approved the settlement or before which the settlement was concluded requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG V.4.1.2 and V.4.2.1.1).

See answers regarding judgements above.

- c. **If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having approved the settlement or before which the settlement was concluded requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG V.4.2.1.2).

See answers regarding judgements above.

- d. **If the court settlement has ceased to be enforceable or its enforceability had been suspended or limited.** If the settlement has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where it was approved or concluded, the debtor may apply to the court having approved the settlement or before which the settlement was concluded for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG V.4.2.1.3).



See answers regarding judgements above.

- e. Appeal against the court settlement.** The debtor may challenge the court settlement on the merits in accordance with the national procedural laws of the Member States. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG V.4.2.1.4).

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.



## II. Incoming

When CROATIA is the Member State of enforcement

*According to Art. 20(1) EEO Reg., “[a] judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement” (see also Art. 24(3) and Art. 25(3) EEO Reg. for court settlements and authentic instruments). Thus, the procedure for the enforcement of the EEO mirrors the procedure for the enforcement of any other national title. Additionally, Reg. (EC) No 805/2004 establishes specific remedies or defences for the parties.*

### A. Enforcement of the EEO for the creditor

Once the claimant has obtained a judgment, authentic instrument or court settlement certified as a European Enforcement Order, s/he may apply for enforcement in the Member State of enforcement. The judgment, court settlement or authentic instrument certified as a European Enforcement Order is treated as if it was given in the Member State of enforcement and it shall be enforced in the same way as a national judgment, court settlement or authentic instrument.

**1. Competent court or authority.** The claimant must apply for enforcement with the court or authority competent for the enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order in the Member State of enforcement (EC PG VI.1).

In principle, municipal courts are competent for issuing the enforcement orders. Their territorial competence depends upon the object of enforcement. Specific rules are provided for in the EA.  
Financial Agency carries out the enforcement on debtors' bank accounts (Article 5, para. 7 of the Act on Enforcement of Funds). No intervention of the court is needed.

**2. Documents to be produced by the claimant.** In order to request in a Member State enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order the claimant shall produce the documents listed in Art. 20 EEO Reg. (EC PG VI.2).

The court issues an enforcement order based on the proposal of the creditor. The creditor is required to attach a Croatian translation of the EEO issued in other



language. Translations must be certified by a qualified translator in one of the EU Member States (Art. 361 EA).

It is to be pointed up that, in accordance with the special rules of the Act on Enforcement of Funds (*Zakon o provedbi ovrhe na novčanim sredstvima*), in addition to the EEO, which orders the fulfilment of a monetary claim, the creditor shall enclose a request on the prescribed form. The EEO and request are to be filed with Financial Agency.

**3. Enforcement authorities.** The enforcement authorities must check whether the claimant produces the necessary documents for enforcement. If the necessary documents are produced, the judgment, authentic instrument or court settlement certified as a European Enforcement Order shall be enforced under the same conditions as a judgment, authentic instrument or court settlement handed down in the Member State of enforcement (EC PG VI.3).

The competent authority (court of Financial agency) check the documents necessary for the enforcement before the first act of the enforcement.

#### ***B. Possible remedies/defences for the debtor***

**1. Refusal of enforcement of a judgment.** The debtor has the possibility to apply for a refusal of enforcement of a judgment (Art. 21 EEO Reg.) if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country (EC PG II.5.2.2.1 and III.4.2.2.1).

**2. Limitations on enforcement.** The competent enforcement authorities may refuse, limit or stay enforcement according to the provisions of Chapter IV of the EEO Reg. Without prejudice to the above, the grounds for refusal or suspension of enforcement under national law continue to apply (EC PG VI.4).

An application shall be submitted to the court that issued the enforcement order. For limitations on enforcement see II. A.3.d. above.

**3. Refusal of enforcement of a court settlement or an authentic instrument.** Art. 24(3) and Art. 25(3) explicitly exclude the applicability of Art. 21(1) EEO Reg. to



authentic instruments and court settlements; only Art. 21(2) (prohibition of a review of the title on its merits) is applicable (EC PG IV.4.2.2 and V.4.2.2). This does not automatically exclude the applicability of national grounds for the refusal of enforcement of an authentic instrument or a court settlement (arg. ex Art. 20(1) EEO Reg.).

The rules on an appeal after the expiry of the time limit (Art. 53 EA) and subsequent action (Art. 55 EA) (e.g. the title is not an enforceable document or has been revoked, annulled, modified or has no effect; the period within which enforcement may be requested by law has expired; the enforcement is determined on an object that is exempted from enforcement; new facts that arose at the time when the debtor could no longer point it out in the proceedings from which the decision originates; the statute of limitations for the claim has expired), shall also apply to enforcement on the basis of a EEO.

**4. Stay or limitation of enforcement of a judgment, court settlement or authentic instrument.** The debtor may apply for a stay or limitation of enforcement of a judgement, authentic instrument or court settlement under Art. 23 EEO Reg. (EC PG II.5.2.2.2, III.4.2.2.2, IV.4.2.2.1 and V.4.2.2.1).

For limitations on enforcement see II. A.3.d. above.