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GIURIDICI E STORICO-POLITICI



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EFFORTS Practice Guide for the application of the Regulation on the European Order for Payment

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List of abbreviations

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



I. Introduction

The paragraphs below address the implementation of Regulation No 1896/2006 (as amended by Regulation No 2015/2421) creating a European order for payment (hereinafter indicated as “EOP” and “EOP Reg.”) into the national law of Croatia. In doing so, it integrates and supplements the European Practice Guide published by the Commission on the [e-Justice Portal](#)⁽¹⁵⁾, which expressly recognizes that questions that are not regulated by the Regulation itself should be governed by national procedural law⁽¹⁶⁾.

Following the structure of the European Practice Guide, the present section will address in turn the questions related to the scope of application of the EOP procedure (II), the issues arising in connection with the procedure itself (III), and finally the procedural rules related to the recognition and enforcement in Croatia of EOPs rendered in another Member State (0).

II. Scope of application of the EOP procedure

1. Cross-border case. The EOP Regulation applies only in cross-border cases. Art. 3 EOP Reg. defines such a case as one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized (EC PG II.2.2.). In this respect, Art. 3(2) EOP Reg. provides that the domicile should be determined according to Art. 59 and 60 Brussels I Regulation (today Art. 62 and 63 BI bis). According to these provisions, the domicile of physical persons should be determined in accordance with internal law.

According to Private International Law Act, a physical person is domiciled in a place where it is inhabited with the intention to live there permanently (Art. 4 PILA). On the other hand, habitual residence is the place where a physical person lives most of the time, especially considering personal and business circumstances which point to the close connection to that place or person's intention to make that kind of connection and regardless of whether such residing is registered or even permitted by law (Art. 5 PILA). Legal persons are domiciled in a place where they have their statutory seat, or in the absence of it, the place of their central administration (Art. 5 PILA).

¹⁵ The European Practice Guide prepared by the Commission is available at: ‘European E-Justice Portal – European Payment Order’ <https://e-justice.europa.eu/41/EN/european_payment_order> accessed 13 April 2022.

¹⁶ As explained by the Practice Guide of the Commission (EC PG I): “National law is applicable, on a subsidiary basis, to questions which are not regulated in the EOP Regulation”.



III. The EOP procedure

When Croatia is the Member State of origin

A. Application for an EOP

1. **Amount claimed.** Pursuant to Article 7 EOP Reg., an application for a EOP shall be made using the annexed standard form A and should state the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs.

a. **Principal.** The EOP procedure is available for the collection of pecuniary claims for a specific amount that have fallen due. Nevertheless, procedural rules of the Member State of origin may regulate certain aspects regarding the amount of money to be claimed.

b. **Calculation of interest.** The EOP Regulation provides that details of the interest rate and the period of time for which interest is demanded should be provided in section 7 of Form A (EC PG III.1.1.), unless statutory interest is automatically added to the principal under the law of the Member State of origin (Art. 7(2)(c) EOP Reg.). Regarding the relevant time period for the calculation of interest, the guidelines for the completion of Form A state that if interest is demanded up to the date of the decision of the court the last date box should be left blank, while the Regulation is silent about whether interest can be claimed after that date (EC PG III.1.1.).

c. **Costs.** The details of any costs due are included in section 9 of Form A. While the main costs envisaged here are court fees, the guidelines for the completion of Form A state that other costs could include the fees of a claimant's representative or pre-litigation costs. In accordance with Art. 25 court fees can include fees and charges paid to the court, the amount of which is fixed in accordance with national law. The guidelines also clarify that if the court fees are not known by the claimant the amount box can be left blank to be completed by the court (EC PG III.1.1.).

According to the current regulatory rules, all amounts requested must be set in Croatian Kunas (HRK), but this is going to change when Croatia enters the European Monetary Union (from 1 January 2023). The claimant chooses freely whether to ask for the total amount or only one of its parts, including the ancillary claims such as default interest. The only consequence of such decision can be the inability to retrieve some of the costs in future proceedings, as the courts on several occasions considered them unreasonable.



According to the substantive rules, the default interest is usually calculated from the date when the obligation became due, although in some cases the law lays down different rules (e.g. in case of non-material damages where the default interest is calculated from the date when the claim was filed). Its amount is laid down in the Civil Obligations Act (hereinafter: COA). The default interest rate is determined on a semi-annual basis and it depends on the average interest rate on one-year-plus loans to non-financial companies calculated for the reference period preceding the current six-month period. Such interest rate is increased by five percent in case of commercial contracts and contracts between a trader and public entities and by three points in the case of other contracts (and type of obligations). This default interest is due from the moment of default (Art. 29 COA). The rate is published by Croatian National Bank in the Official Journal (<https://narodne-novine.nn.hr/>).

Generally, no further default interest can be requested for the late payment of the default interest. However, the claimant sometimes requests the extra default interest which are due from the moment of the filing of the claim until the day of payment and they are as well calculated as a percentage of the total claim (main claim and statutory default interest) (Art. 31 COA). Even if the claimant does not make the already due default interest part of the main claim, they can request the default interest on the total amount of (main and ancillary) claim from the moment of the announcement of judgment. Further information is up-to-date and fully accessible at the e-Justice portal: https://e-justice.europa.eu/404/EN/interest_rates?CROATIA&member=1.

Regarding the issue of costs, the value of the payable court fee depends on the value of the subject matter (Tariff no. 1.1):

Value of the claim (in HRK, whereas 1 EUR is about 7.5 HRK)		Fee (in HRK, whereas 1 EUR is about 7.5 HRK)
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

When the value of the subject matter is above 15,000.00 HRK, a fee in the amount of 500.00 HRK and another 1% on the difference above HRK 15,000.00 is paid, but exceeding the amount of 5,000.00 HRK. Since the maximum value of the subject matter in EOP is 5.000 EUR, the maximum court fee cannot exceed 725.00 HRK or slightly above 95 EUR (provided 1 EUR makes 7.5 HRK). In case of EOP, half of the Tariff applies (Tariff no. 1.2), meaning the total amount cannot exceed 2,500.00 HRK. However, the court fee is due not only for filing of the claim seeking the issuance of the EOP (Tariff no. 1), but for the decision on the issuance as well (Tariff no. 2).

Court fees can be paid by cashless payment, in cash, in revenue stamps issued by the Republic of Croatia or electronically. In case of using the e-filing system (eKomunikacija), the court fees can be paid on the following link: <https://njd.fina.hr/>. More detailed information is contained in the e-Justice



portal where the rest of the information is up-to-date: https://e-justice.europa.eu/306/EN/court_fees_concerning_small_claims_procedure?CROATIA&member=1. The example of using different payment methods is accessible here (Croatian only): <https://sudovi.hr/hr/oscr/o-sudovima/placanje-sudskih-pristojbi>.

Lawyer costs can be retrieved if the court considers them reasonable (Art. 155 CPA), which it most often does. The lawyer costs are prescribed in the official tariff, and they also depend on the value of the claim (Tariff no. 7.1).

Value of the claim (in HRK, whereas 1 EUR is about 7.5 HRK)		Fee (in HRK, whereas 1 EUR is about 7.5 HRK)
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	1000
100.000,01	250.000,00	2500
250.000,01	500.000,00	5000

Since the maximum value of the subject matter in EOP is 5.000 EUR, the maximum lawyer fee cannot exceed 1000.00 HRK or around 130 EUR (provided 1 EUR makes 7.5 HRK).

2. Cause of action and description of evidence. The EOP Regulation requires the claimant to state the cause of the action – including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded – and to provide the court with a description of evidence supporting the claim (Art. 7(2)(d)(e) EOP Reg.). *The Regulation does not specify the level of detail that an applicant should provide, nor does it prescribe the way that a court should carry out the examination of a claim (EC PG III.1.2.).*

- a. General rule.** There is no requirement to attach supporting documentation, but applicants are free to do so if they wish. Section 11 allows the applicants to provide additional statements and further information, if necessary (*ibid.*).
- b. Consumer contracts.** The European Court of Justice has clarified that in cases involving consumer contracts, the competent authority is allowed to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms ⁽¹⁷⁾.

¹⁷ CJEU, 19 December 2019, in cases C-453/18 and C-494/18, *Bondora AS v. Carlos V.C. and Bondora AS v. XY*.



There are no special rules on the application to issue and EOP, which means the general rules apply. The claim should contain sufficient particulars for it not to be considered clearly unfounded. Although no evidence is needed, Croatian courts expect, and the parties usually do mention and attach available evidence (e.g. documents). Although Consumers Act lays down rules obliging the courts to *ex officio* review the contractual terms (Art. 55 CA), it is supposed to be done at the moment of rendering of the decision. The general procedural rules would require the court to discuss that matter with parties, most likely on a special hearing (Arts. 5 and 288a CPA).

3. Competent courts. The competent courts for the EOP are those that have been designated by the Member States and officially notified to the Commission (EC PG III.1.3). Should the application be sent to a court that is not competent, it is a matter for national law what action that court should take (*ibid.*). Hence, the EOP Regulation does not directly designate the national court competent to deal with applications under the EOP procedure. Indeed, Art. 5 EOP Reg. defines the term “court” as “any authority in a Member State. Similarly, Art. 6 EOP Reg. provides that the jurisdiction for claims made under the EOP procedure is to be established in accordance with the Brussels I Regulation¹⁸), but does not lay out any rules of territorial competence allocating cases among the competent national authorities.

Since 2019, depending on the type of dispute, EPOs are issued either by one of the municipal courts (in case of civil disputes) or commercial courts (in case of commercial disputes) (Art. 507i CPA). All courts are listed on the official webpage: <https://sudovi.hr/en/node/4>.

Municipal courts are, inter alia, always competent to adjudicate in the disputes concerning maintenance, leasing, renting, and housing relations, correction of information and payment of damages arising from media, labour relations and payment of general supply services (gas, electricity, water etc.). Municipal courts are always competent to solve those disputes, regardless of the type of party involved (Art. 33 CPA). In any other dispute, however, involving two legal persons as parties makes commercial courts competent for solving those disputes. Commercial courts also adjudicate in disputes between entrepreneurs, in naval and transport disputes, disputes concerning the membership,

¹⁸ Which has today been replaced by the BI bis Regulation (Regulation No 1215/2012). This rule is however subject to one exception. When the case concerns a consumer contract and the consumer is the defendant, the jurisdiction has to be that of the Member State where the defendant is domiciled (EC PG II.4).



liability and similar relations in companies, regarding intellectual property and in competition disputes (Art. 34.b CPA).

The court on whose territory the respondent has permanent residence is a court of general jurisdiction. If the respondent does not have permanent residence in Croatia, his or her temporary residence may play a role (Art. 47 CPA). For adjudication in disputes against legal persons the court in whose territory their registered seat is located shall have general territorial jurisdiction (Art. 48 CPA). In many cases, the law lays down special rules on local jurisdiction. In the disputes which can be subject to the scope of ESCPR, instead of the court of general jurisdiction, the relevant court can also be

- in case of damages claims, the court on whose territory the harmful action was performed or the court on whose territory the harmful consequence occurred; alternatively, claimant's place of residence if damages result from death personal injury (Art. 52 CPA)
- in case of warranty disputes, the court where the seller has its residence or registered seat (Art. 53 CPA)
- in case of disputes regarding the promissory notes, the court where the payment should take place (Art. 64 CPA) etc.

Sometimes, the territorial jurisdiction is exclusive, such as in case of naval, aerial and transport disputes, when exclusively the court where the vessel or aircraft was registered has jurisdiction (Art. 57 CPA); or in disputes arising from relations with military units, when the court on whose territory the headquarters of the military unit are located has exclusive jurisdiction (Art. 61 CPA).

4. How to submit an application for an EOP. Art. 7(5) EOP Reg. provides that: "The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin". Furthermore, Art. 7(6) EOP Reg. provides that the application shall be signed by the claimant or, where applicable, by his representative, and that where the application is submitted in electronic form in accordance with par. 5, it shall be signed in accordance with Art. 2(2) of Directive 1999/93/EC. However, the last requirement does not apply if the Member State of origin has set up an electronic communications system which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner.



An application for issuing a European order for payment and an objection to that order must be submitted only in machine-readable form, if the court orders so (Art. 507j CPA). The minister in charge of judicial affairs laid down special rules on the form of communication with regards to the application of EPOR. Very short and general Regulation on the form of submissions of request for issuing European payment order and opposition against that order (Official Gazette, no. 124/2013) prescribes only that such requests and oppositions are submitted to the court in written form directly or by using post office. General rules opt for registered post as a service method (Art. 113 CPA).

Since 2019, there is a possibility to use a special e-filing system (*e-Komunikacija*) which is mandatory for legal persons, entrepreneurs, and represented parties, but may be used by other parties too (Arts. 106.a, 133 and 133d CPA). To log in to this service and use it, the party needs to acquire an e-Citizens account (accessible to EU/EEA residents too), apply for a electronic credential of a significant (2) or higher level of security and have the appropriate signature certificate (both accessible in Financial Agency), as well as to be formally registered with the Ministry of Justice and Administration by sending an email to ekomunikacija@mpu.hr. More information is accessible here (Croatian only): <https://usluge.pravosudje.hr/komunikacija-sa-sudom/>.

All communication with Croatian courts, both in electronic and paper form, is to be done in Croatian language. There are no special rules regarding the EOP.

5. Appendix to the application. Pursuant to Art. 7(4) EOP Reg., the claimant may indicate to the court whether s/he opposes a transfer to civil proceedings within the meaning of point (a) or point (b) of Art. 17(1) EOP Reg. in the event of opposition by the defendant. Alternatively, the claimant may also indicate which, if any, of the procedures listed in points (a) and (b) of Art. 17(1) EOP Reg. s/he requests to be applied to his claim in the subsequent civil proceedings in the event that the defendant lodges a statement of opposition against the European order for payment. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.

There are no special time limits or procedural duties the claimant must abide by. Depending on the choice made, the case will continue either as ESCP or as domestic payment order proceedings (Art. 507i CPA). Those proceedings are comparable to general civil proceedings, with basically only one major difference: the subject matter is solely the decision whether to uphold the payment order or not. If the proceedings continue, there is nothing either of parties must do to transfer the case and continue in new proceedings. Those activities are done *ex officio* by the judge in charge of the case.



The claimant can also amend the claim solely by asking a higher amount (Art. 451 CPA). There are no rules regarding the situation when the claimant decides to terminate the proceedings in case of the opposition, so the courts usually consider the claim to be withdrawn.

The creditor is required to attach a Croatian translation of the EPO issued in other language. Translations must be certified by a qualified translator in one of the EU Member States (Art. 507m CPA).

B. Conduct of the procedure before the court

1. Examination of the application. Pursuant to Art. 8 EOP Reg., The court seized on an application for an EOP shall examine, as soon as possible and on the basis of the application form, whether the claim falls within the scope of the EOP procedure, whether the application complies with the requirements set out in Art. 7 EOP Reg., and whether the claim appears to be founded. Furthermore, the Regulation makes clear that the examination of an application for an EOP need not be carried out by a judge and, under Art. 8 EOP, may take the form of an automated procedure (EC PG III.1.2).

Upon receiving the EOP application form, the judge will, within 60 days, do the initial review to check if the prerequisites for its issuance are met (Art. 282 CPA). The procedure is not automated.

2. Completion and rectification. If the application for an EOP does not meet the requirements of Art. 7 EOP Reg., i.e., it is incomplete or contains an error, the court which has jurisdiction shall give the claimant the opportunity to complete or rectify the application (see Art. 9 (1) EOP Reg.) using the standard form B as set out in Annex II (EC PG III.5.1.1.). Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may, at its discretion, extend that time limit (EC PG III.2.1.)⁽¹⁹⁾.

¹⁹ See also EC PG III.5.1.1.



If the court receives such an application, it must warn the claimant about such irregularity and ask them to amend the claim in accordance with domestic procedural rules, within 8 days. If the claimant does not act accordingly, the court will consider their claim to be withdrawn (Art. 109 CPA). According to the recent case law of the Supreme Court, such a deadline can be extended, provided that prolongation is sought prior to its expiration (Art. 111 CPA).

3. Modification of the application. If the requirements are met for only part of the claim, the court shall inform the claimant to that effect. The claimant shall be invited to accept or refuse a proposal for an EOP for the amount specified by the court and shall be informed of the consequences of his decision, by using form C.

a. Acceptance of the proposal. If the claimant accepts the court's proposal, the court shall issue an EOP for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law (EC PG III.2.1.)⁽²⁰⁾. In such cases does national law prevent the claimant from filing a new claim/action with respect to the remaining part of the initial claim?

b. Time limits. The claimant shall reply within the time specified by the court (see Art. 9(2) EOP Reg.) using standard form C. If the claimant fails to send his reply within the time limit specified by the court, the court shall reject the application in its entirety. See above §2 "Completion and rectification".

There are no special rules on how the court should proceed in case of need for modification. In cases where one part of the application is rejected, the claimant is entitled to file a claim to collect the rest of the amount with the competent court.

4. Rejection of the application. The court shall reject the application, using form D, if: (i) the requirements set out in Art. 2, 3, 4, 6 and 7 EOP Reg. are not met; or (ii) the claim is clearly unfounded; or (iii) the claimant fails to send his reply (in response to the court's proposal to modify the application) within the time limit specified by the court; or (iv) the claimant fails to send his reply within the time limit specified by the court or

²⁰ See Art. 10 EOP Reg.



refuses the court's proposal, in accordance with Art. 10 EOP Reg. The claimant shall be informed of the grounds for the rejection (EC PG III.2.2.).

The decision on the dismissal is delivered to claimant personally (Art. 142 CPA). If the court dismisses the application, the claimant can lodge an appeal (Art. 378 CPA) within 15 days of the receipt of that decision (Art. 345 CPA).

C. Issuing & serving the EOP

1. Completion of Form E. Once the application (Form A) has been lodged and, if necessary, duly modified or rectified at the court's request, the court issues the EOP using form E as set out in Annex V when, if applicable, the relevant court fees have been paid (EC PG III.3.1.).

The same judge that does the initial review is the one who will issue a payment order. No additional court fee is payable after the payment order has been issued, because the claimant pays for both court fees at the time of the filing of the claim (see *supra* III.A.1.).

2. Service of the EOP on the defendant. The EOP has to be served on the defendant in accordance with the national law of the Member State of origin. However, such a method has to meet the requirements set as minimum procedural standards in the Regulation (Art. 13 to 15 EOP Reg.). In general, two types of service are possible: either service with proof of receipt by the debtor (Art. 13 EOP Reg.) or service without proof of receipt by the debtor (Art. 14 EOP Reg.); each of them can be used in relation to the defendant's representative (EC PG III.3.3.). Additionally, Form E reminds the defendant of his rights and options (EC PG III.3.1.).

The national implementation rules mention only the type of service used when delivering the EOP to the defendant. The service of the incoming EOP is done by applying domestic rules, whereas outgoing EOPs are delivered in accordance with the Regulation no. 2020/1783 (Art. 507k CPA).

Under domestic rules, the service is usually done by post office or, exceptionally, by special court officials if the claimant makes the necessary down payment. Since this is the



first time the debtor will receive any court document relating to his or her debt, there are special rules on how the service is supposed to be carried out.

In the first attempt, the EPO should be delivered to the defendant personally. Other household members or neighbours cannot receive the document at this point. They can only receive the notification on the time and place of next attempt of service. In the second attempt, which takes place after one month, both household members (who are required) and neighbours (who may consent to it) are entitled to receive court document. If the service fails again, it will be attempted twice more, after expiration of 15 days, once on the address mentioned in the EPO or on the address from the official registries, and finally, for the last time, by way of fictitious service, by publishing on court's bulletin board (Arts. 142-143 CPA). It should be emphasized that fictitious service may be used as a sanction towards the debtor who rejects to accept service. This will result in all future documents being served in same manner (Art. 143a CPA).

The service can be much simpler in cases where debtors are legal persons, since they are obliged to use electronic service system. It is a secured system which can be accessed solely by a qualified electronic signature. The document is deemed to have been served on the days of download or 15 days after its upload on the system if it has not been downloaded.

However, CPA introduces alternative methods of service to natural persons, such as delivery at workplace (as alternative to the home/business address) and delivery by way of notary public office or court officer (only if the creditor makes the down-payment for such delivery).

D. Opposition (defendants' rights/options)

1. Opposition to the EOP. A defendant can lodge a statement of opposition to the EOP by making use of Form F in accordance with Art. 16 EOP Reg. It is not necessary for the defendant to give reasons for his/her opposition. The statement of opposition should be sent within 30 days of service of the order on the defendant. The period is calculated in accordance with Council Regulation (EC) No 1182/71 determining the rules applicable to periods, dates and time limits (OJ. EC 1971 L 124/1) (EC PG III.4.1.)⁽²¹⁾. The statement of opposition should be submitted in either paper form or by any other means of communication, including electronic, accepted in the Member State of origin and available to the court of origin. The statement of opposition can also be made by a representative of the defendant (*ibid.*).

²¹ See also EC PG III.5.2.1.



All communication with Croatian courts, both in electronic and paper form, is to be done in Croatian language. There are no special rules in regard to the EOP.

Regarding the form, the same rules that apply to the claim also apply to the opposition. Since the domestic rules on payment order summary proceedings are applied by way of analogy (Art. 507I CPA), the opposition should contain minimum requirements: the payment order opposed and signature of the defendant (Art. 451 CPA). It can either be filed in paper directly with the court, sent by registered post or electronically (if the defendant has or has to have access to e-filing system).

2. Effect of the lodging of a statement of opposition. In accordance with Art. 17(1) EOP Reg. if a defendant submits an admissible statement of opposition the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Under Art. 7(4) EOP Reg. the claimant can make such a request at any time until the EOP is issued (see *supra*, pt. 5). In accordance with Art. 17(2) EOP Reg. the transfer to ordinary civil proceedings is governed by the law of the Member State of origin. Nothing under national law shall prejudice the claimant's position in any subsequent ordinary civil proceedings (EC PG III.4.1.).

Depending on the choice that Claimant has made, the case will continue either as ESCP or as domestic payment order proceedings (Art. 507I CPA). Those proceedings are comparable to general civil proceedings, with basically only one major difference: the subject matter is solely the decision whether to uphold the payment order or not. If the proceedings continue, there is nothing either of parties must do to transfer the case and continue in new proceedings. Those activities are done *ex officio* by the judge in charge of the case.

3. Enforceability. If no statement of opposition is lodged within the 30-day period the EOP is declared enforceable, subject to the court allowing sufficient time for the statement of opposition to arrive. (EC PG III.4.1.). The court will use Form G to declare that the EOP is enforceable and will send this to the claimant (*ibid.*). In accordance with Art. 18(2) EOP Reg., the formal requirements for enforceability are governed by the law of the Member State of origin (*ibid.*).



There are no special rules or relevant practices on the “sufficient time”, as it depends on the availability of the judge and their caseload. Since the opposition can be lodged by registered post, in which case the date when it was registered in the post (a not the day on which the opposition was received at the court) is relevant for the assessment of timeliness of the opposition, it is customary to wait at least 15 days after the expiry of relevant time limit. That period is also usually the time available to the defendant for the performance, after whose expiration a final decision become enforceable (Art. 328 CPA). In case of domestic payment order rules, which are applicable in case of the EOP by way of analogy (Art. 507I CPA), the part of the payment order which was not challenged in the opposition becomes final (Art. 450 CPA).

The certificate of enforceability on Form G is issued by the judge in charge of the case and sent to the claimant in same manner as the EOP.

E. Possible remedies/defences for the parties

1. **Remedies available to the claimant.** See *supra*, pts. (B) 2-4.
2. **Lodging of a statement of opposition.** See *supra*, pts. (D) 1-2.
3. **Review in exceptional cases in the Member State of origin (Art. 20(1) EOP Reg.).** Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin in the following cases:
 - a. The order was served by one of the methods provided for in Art. 14 EOP Reg., i.e. without proof of receipt by the defendant, and service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his or her part.
 - b. The defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly (EC PG III.5.2.2.).
4. **Review in the Member State of origin where the European Order for Payment was wrongly issued (Art. 20.2 EOP Reg.).** Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin where the order was clearly wrongly issued, having regard to the requirements laid down in the Regulation, or due to other exceptional circumstances (EC PG III.5.2.3.).



The court decides on the request for review of a EOP by a court order, which is not subject to an appeal. The national rules merely require the defendant to prove the facts on which they rely their proposal on the level of probability, but they do not regulate the time limits, contents, or possible grounds of such a request.

If the court finds that the European order for payment is null and void, it shall suspend the proceedings under the EOPR, and proceed as the regular claim has been lodged, continuing with the adversarial proceedings (Art. 507lj CPA). There are no special rules regarding the proceedings in which the judge renders such a decision, so the judge may hold a hearing, ask the opposing party to answer to the defendant's request or hear the parties *ex parte* (Art. 7 EA and Art. 114 CPA).

5. Remedy in case of lack of service of the initial EOP. In cases C-119/13 and C-120/13, the European Court of Justice held that the procedures laid down in Art. 16 to 20 EOP Reg. are not applicable where it appears that a EOP has not been served in a manner consistent with the minimum standards laid down in Art. 13 to 15 EOP Reg.⁽²²⁾.

Request to restore the proceedings (*restitutio in integrum*) according to the provisions of this Act (Articles 117 to 122a) due to missing the deadline for lodging an opposition is not allowed. On the other hand, if the decision was not properly delivered, the final and binding EOP can be challenged by an extraordinary legal remedy – a motion for a reopening of the proceedings (*ponavljanje postupka*). Since the party's right to be heard was infringed by such an action, as one of the cornerstones of the proceedings, the motion can be filed even after 5 years have expired, but not later than 30 days after the EOP was delivered to the defendant (Art. 423 CPA).

This legal remedy is filed to the same court that issued the EOP in the first place, it must contain the statements on grounds for reopening and the evidence that the motion is timely and well-founded (Art. 424 CPA). That is the same court which will decide on the motion, after giving the opportunity to the opposing party to file an answer to the motion (within 15 days) and after holding a special hearing (Art. 425 CPA). If the court accepts the debtor's proposal, it will set aside the EOP and reopen the proceedings. Such decision can be challenged only in the appeal against the final judgment (Art. 437 CPA).

²² CJEU, 4 September 2014, in cases C-119/13 and C-120/13, *eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy*, and *Raiffeisenbank St. Georgen reg. Gen. mbH v Tetyana Bonchuk*.



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The court fee for filing this legal remedy is the same as for filing a filing of the claim seeking the issuance of the EOP - Tariff no. 1 (see *supra* III.A).



IV. Recognition and enforcement of EOP in other Member States

When Croatia is the Member State of enforcement

1. Competent authorities and applicable law. The authorities in the Member State of enforcement cannot review the circumstances or procedures that led to the issuing of the order except in the situations provided for by Arts. 22 and 23 (*see below*). No review as to the substance is allowed in the Member State of enforcement (EC PG IV.1.). The procedure for enforcement is governed by the law of the Member State of enforcement, without prejudice to the provisions of the Regulation (*ibid.*). The claimant must apply for enforcement to the court or authority competent for enforcement in the Member State where enforcement is required (EC PG IV.2.).

The request for enforcement 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 value of the court fee depends on the value of the subject matter (Tariff no. 1.1):

Value of the claim (in HRK, whereas 1 EUR is about 7.5 HRK)		Fee (in HRK, whereas 1 EUR is about 7.5 HRK)
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

When the value of the subject matter is above 15,000.00 HRK, a fee in the amount of 500.00 HRK and another 1% on the difference above HRK 15,000.00 is paid, but exceeding the amount of 5,000.00 HRK. Since the maximum value of the subject matter in ESCP is 5.000 EUR, the maximum court fee cannot exceed 725.00 HRK or slightly above 95 EUR (provided 1 EUR makes 7.5 HRK).

In enforcement proceedings on monetary assets, the special administrative fees are paid to the Financial agency (*FINA*) which carries out such an enforcement.



Court fees can be paid by cashless payment, in cash, in revenue stamps issued by the Republic of Croatia or electronically. In case of using the e-filing system (eKomunikacija), the court fees can be paid on the following link: <https://njd.fina.hr/>. More detailed information is contained in the e-Justice portal where the rest of the information is up-to-date: https://e-justice.europa.eu/306/EN/court_fees_concerning_small_claims_procedure?CROATIA&member=1. The example of using different payment methods is accessible here (Croatian only): <https://sudovi.hr/hr/oscr/o-sudovima/placanje-sudskih-pristojbi>.

2. Documents for enforcement. The claimant should provide the competent court or authority with a copy of the order, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity, and a declaration of enforceability (form G) (EC PG IV.2.).

In general, a copy of documents, attached to the request, is sufficient (Art. 108 CPA), but enforcement on monetary assets requires an original or certified copy (Art. 209 CPA). The certified copies are provided by notaries public.

Since the form E does not contain information on the interest, the Financial agency, in charge of enforcement on monetary assets, requires creditors to submit a form A as well.

3. Languages and translations. The claimant may be required to provide a copy of the EOP in a different language from that used by the court of origin. As a general rule the EOP should be provided in the official language, or one of the official languages, of the Member State of enforcement unless that Member State has indicated that it will accept orders in another official language or languages of the European Union. Details of which languages are accepted by each Member State are available on the European Judicial Atlas. When checking the details a claimant should also bear in mind that in Member States where there is more than one official language it may be necessary to provide a translation into the language specified for a particular part or region of that Member State. Any translation shall be certified by a person qualified to do so in one of the Member States (EC PG V.3.).

All communication with Croatian courts, both in electronic and paper form, is to be done in Croatian language. There are no special rules in regard to the EOP.



4. Application for refusal of enforcement under Art. 22 EOP Reg. The defendant has the possibility to apply for a refusal of enforcement if one of the grounds for refusal set out in Art. 22 EOP Reg. apply (see EC PG IV.4.1.).

An application for refusal of enforcements is supposed to be filed with the municipal court, in the place where enforcement is expected to take place. If the court decides to refuse the enforcement upon application of the debtor, it will apply the domestic rules on the termination of enforcement (Art. 507nj CPA). No other special rules are envisaged, so the general rules on enforcement apply. The court renders its decision without a hearing, but it may decide to hold it or to hear parties *ex parte* if needed (Art. 7 EA).

5. Stay or limitation of enforcement Art. 23 EOP Reg. The defendant may apply for a stay or limitation of enforcement of the EOP (see Art. 23 EOP Reg.) where the defendant has applied for a review within the meaning of Art. 20 EOP Reg. In such cases, the competent court in the Member State of enforcement may: (i) limit the enforcement proceedings to protective measures; or (ii) make enforcement conditional on the provision of such security as it shall determine; or (iii) under exceptional circumstances, stay the enforcement proceedings (see EC PG IV.4.2.). Considering the cases in which the creditor has pursued the enforcement in Croatia and at the same time the debtor has filed for a review under Art. 20 EOP Reg. in the Member State of origin, how does the debtor apply for stay or limitation of enforcement under Art. 23 EOP Reg. in Croatia?

The enforcement is conducted by way of applying domestic enforcement rules, including the provision on the stay of enforcement (Art. 507nj CPA). According to domestic enforcement rules (Arts. 65 – 71 EA), the enforcement can be stayed upon reasoned request of the debtor, the creditor, the third person or by mutual agreement of the parties.

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 them 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 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 their 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.