



UNIVERSITÀ DEGLI STUDI DI MILANO  
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GIURIDICI E STORICO-POLITICI



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## **EFFORTS Practice Guide for the application of the Regulation on the European Small Claims Procedure**

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## I. Introduction

*The paragraphs below address the concrete implementation of Regulation No 861/2007 (as amended by Regulation No 2015/2421) establishing a European Small Claims Procedure (hereinafter indicated as “ESCP” and “ESCP Reg.”) into the national law of Croatia. In doing so, it integrates and supplements the European “Practice Guide for the Application of the European Small Claims Procedure” published by the Commission on the [e-Justice Portal](#)<sup>(31)</sup>.*

*Following the structure of the European Practice Guide, the present section will address, in turn: questions related to the scope of application of the ESCP (II), the commencement of the procedure (III), the procedure to be followed after the court receives the claim (IV), the rules applicable to the establishing of the facts (0), the ESCP judgment (VI), the review and appeal mechanisms (VII), and the recognition and enforcement of ESCP judgments (VIII).*

## II. The ESCP: Scope of application

When Croatia is the Member State of origin

**2. Material scope of the ESCP Reg.** Pursuant to Art. 2 ESCP Reg., the Regulation applies to “civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 5 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements”. Regarding the financial limit, Art. 2(1) ESCP Reg. sets out how the value of the claim is to be determined (EC PG 2.1.1.). Unlike the procedure for the European Order for Payment which is limited to monetary claims, non-monetary claims can be the subject of a claim under the ESCP (EC PG 2.1.2.). If the claim is non-monetary, it must be given a value which falls within the financial limit of the ESCP (EC PG *ibid.*).

According to Art. 40 of the Croatian Civil Procedure Act (hereinafter: CPA), when the subject matter of the case is a non-monetary claim, the claimant sets its own value and the court is generally bound by such evaluation. However, in the cases where such evaluation is obviously wrong and when certain procedural consequences (jurisdiction, competence, type of proceedings etc.) depend on it, the court is entitled to make its own assessment, both on its own motion and upon the request of the opposing party. This means the court could make the ESCPR (non)applicable, based on its own assessment. It should do so latest on the first (preliminary) hearing. On the other hand, if the Claimant fails to set the value in the statement of claim, the court must do it on its own motion. If it does not do so

<sup>31</sup> The European Practice Guide prepared by the Commission is available at: ‘European E-Justice Portal – Small Claims’ <[https://e-justice.europa.eu/42/EN/small\\_claims](https://e-justice.europa.eu/42/EN/small_claims)> accessed 21 April 2022.



by the end of the first (preliminary) hearing, it will be presumed the value is 50.000 HRK, which means the ESCPR could not apply.

**3. Geographical scope of the ESCP Reg. (cross-border cases).** The ESCP only applies to cases defined as 'cross-border', that is cases in which at least one of the parties is domiciled or habitually resident in a Member State other than that of the court or tribunal seised with the claim (EC PG 2.2.2.). In Article 3(3) it is provided that the relevant moment for determining whether a case is a cross-border case is the date on which the Claim Form is received by the competent court or tribunal (EC PG *ibid.*). Furthermore, Art. 3(2) ESCP Reg. provides that the domicile should be determined according to Art. 62 and 63 BI bis Reg. According to these provisions, the domicile of physical persons should be determined in accordance with national law.

According to Art. 2 of the Croatian Residence Act (hereinafter: RA), the place of the domicile is the place (town or municipality) and address in the Republic of Croatia where a person has permanently settled in order to exercise his rights and obligations related to their family, professional, economic, social, cultural and other interests. It must be a permanent place of residence, not just a temporary one. It must be registered in the public registries of the Ministry of Interior within 15 days of the date of settling (Art. 4. RA). The police is authorized to control whether the person indeed lives on the registered address (Art. 14 RA).

### III. Commencing the Procedure

When Croatia is the Member State of origin

**1. Access to the form.** In accordance with Art. 4 ESCP Reg., the claimant shall commence the procedure by filling in Claim Form A (Annex 1) (EC PG 3.1). The Claim Form should be available at all courts and accessible through relevant national websites (Article 4(5)) (*ibid.*).

There are no special websites dedicated to the ESCP. The forms can be found on e-justice portal webpage: [https://e-justice.europa.eu/177/HR/small\\_claims\\_forms](https://e-justice.europa.eu/177/HR/small_claims_forms).



**2. Practical assistance.** Since through Art. 11 ESCP Reg. the Member States are under the duty to ensure that the parties can receive practical assistance in filling in the forms, such assistance should be available in all the Member States as regards completion of the Claim Form as well as all the other forms (EC PG 3.1). In accordance with Article 25(1)(c) information on the organisation of the practical assistance has to be provided to the European Commission. This information is made available on the e-Justice Portal (*ibid.*) (on practical assistance, cf. also EC PG 9.2.2.).

There are no special websites dedicated to the ESCP. The forms can be found on e-justice portal webpage: [https://e-justice.europa.eu/177/HR/small\\_claims\\_forms](https://e-justice.europa.eu/177/HR/small_claims_forms).

**3. Legal aid.** The ordinary provisions on legal aid apply in the Member States (EC PG 3.1).

According to the Croatian Legal Aid Act (hereinafter: LAA), which implemented the Directive 2003/8/EZ of 27 January 2003, the granting of legal aid in cross-border cases is dependent on the type of proceedings on one hand and overall income and overall movable and immovable assets on the other hand (Art. 27 LAA). Legal aid can thus be granted in case of civil and commercial matters, mediation, out-of-court settlements and enforcement of judgments. It covers both legal advice and representation (Art. 26 LAA). Civil and commercial matters cover labor and family disputes, enforcement, mediation and other ADR proceedings, and all other court or administrative proceedings in which a need to obtain legal aid arises from the specific living circumstances of the applicant and their household members (Art. 13 LAA). Generally, the threshold which is set for Croatian citizens is relevant for foreign residents as well. This means the legal aid will be granted if the total income of the applicant, per household member, does not exceed 3.326,00 HRK (ca. 440 EUR) and the total value of their movable and immovable property does not exceed the value of 199.560,00 HRK (ca. 26.500,00 EUR). Some types of income and assets are excluded during the assessment of overall income either due to the reasons of social justice (e.g. social benefit, real estate where applicant and their household members live etc.) or due to the fact that there are objective reasons which prevent applicant from disposing off that property (e.g. income is spent on medical treatments) (see Arts. 14-15 LAA). Exceptionally, the foreign residents can be granted legal aid if they prove that they cannot afford the court costs due to the difference between the living costs of the country of their residence and the living costs in Croatia (Art. 27 LAA). In either case, the applicant pays no administrative fee for filing their request. It is filed to the Ministry of Justice directly by using the standard forms and Croatian language (Art. 28).



**4. Competent court or tribunal.** National rules of the Member State seized determine the local court having competence (EC PG 3.2.2.). For the purposes of the ESCP, a court or tribunal should include at least one person qualified to serve as a judge under the law of the Member State of the court where the claim is proceeding (See Recital (27) ESCP Reg.) (EC PG 5.6.2.).

Depending on the type of dispute, the competent court 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>.

Municipal courts are 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, 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).

If the claim has been filed with the incompetent court, the further course of proceedings will depend on the type of incompetence. In case of material incompetence or territorial incompetence (due to exclusive jurisdiction of other court), the court will on its own motion declare its incompetence and transfer the case to the competent court. In other cases, it will do so solely upon the defendant's objection timely filed before discussing the case on the merits. If the objection is indeed filed, then the court will also declare its incompetence and transfer the case to the competent court (Arts. 17 and 20 CPA).

**5. Description of the claim.** The factual basis of the claim to be given in box 8 of the Claim Form needs to be supported by as much written material as is necessary to enable the court which receives the claim to determine the value of the claim, the basis of the claim and the evidence which supports the claim. If this is not done, there is a risk that the court may reject the claim as unfounded or, at the very least, require further information from the claimant which will cost time and delay the procedure (EC PG 3.3.1.1.).

**6. Interest.** Although the claim is assessed without taking interest claimed into account, the interest figure or rate still has to be stated, as does the basis on which interest has accrued or is accruing to the principal claim (EC PG 3.3.2.).

The default interests are regulated 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](https://e-justice.europa.eu/404/EN/interest_rates?CROATIA&member=1).

**7. The cost of lodging a claim.** In accordance with Art. 15a ESCP Reg., court fees need to be proportionate and not be higher than those charged for comparable national procedures. Distance means of payment should be available by way of either (a) bank transfer; (b) credit or debit card payment; or (c) direct payment from the claimant's bank account (EC PG 3.4.).

According to the Court Fees Act (hereinafter: CFA) and Regulation on the Court Fees Tariff, there are no special tariffs envisaged for ESCP, so the regular nation rules should be applied. 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 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).

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](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>.

**Sending the claim to the court.** The form should be lodged by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced (EC PG 3.1 and EC PG 3.6). Because the ESCP is



intended to be essentially a written procedure, it is necessary to send with the Claim Form all necessary supporting material in the shape of documentary evidence (EC PG 3.5.). Even if a court could accept the Claim in electronic form it may not be possible to send the supporting material electronically and so it would make sense to send the Claim Form with the documentary material by some other means acceptable to the court (EC PG 3.6).

The claim forms can be submitted to the competent court in written form, by fax or by using special e-filing system (*eKomunikacija*) (Art. 507o CPA). If the party is a legal person, or if any type of party hires a lawyer, they will be obliged to use the e-filing system. Even if the person does not hire a lawyer, they can register in the system and file the claim form electronically (Arts. 106a 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](mailto:ekomunikacija@mpu.hr). More information is accessible here (Croatian only): <https://usluge.pravosudje.hr/komunikacija-sa-sudom/>.

The rest of the information on the e-Justice portal is up-to-date: [https://e-justice.europa.eu/42/EN/small\\_claims?CROATIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?CROATIA&member=1).

**8. Language.** Under Art. 6(1) ESCP Reg., the Claim Form must be submitted in a language of the court or tribunal, and this also applies to the description of the supporting documents in Part 8.2 of the Claim Form (EC PG 3.7).

All communication with Croatian courts is to be done in Croatian language. There are no special rules in regards to the ESCP.

**9. Court settlements.** In accordance with Art. 12(3) ESCP Reg. the court is placed under a duty to seek a settlement between the parties (EC PG 3.8.). This duty is, however, not confined to the oral hearing but extends throughout the proceedings on claims and counterclaims (*ibid.*). Are there any relevant rules or practices in your jurisdiction concerning the court's duty to seek a settlement between the parties in the course of the ESCP?



At the first (preliminary) hearing, the court is required to ask questions and give advice with the aim of clearing and submitting the relevant facts and evidence proposal. The aim of those questions and advice is not only to manage the issue of the case to conduct main hearing more effectively, but also to facilitate peaceful dispute settlement. The court also has a general duty to inform the parties on the possibility to settle the case before the court and to explain the advantages of such decision (Art. 288a CPA). Generally, the court is entitled to inquire whether parties are willing to engage in settlement discussion and allow them to answer in written form (Art. 299a CPA). In the case where the court so deems appropriate, it can even order the informative mediation meeting. If the party does not appear on such meeting, it cannot recover the costs of the (subsequent) proceedings (Art. 186d CPA).

#### IV. Procedure after the Court receives the claim

When Croatia is the Member State of origin

**1. Claim falling outside of the scope of the ESCP Reg.** If the court concludes that the claim is outside the scope of the Regulation, say if it deals with subject matter which cannot be the basis of a claim under the ESCP or if the value of the claim is above the financial limit of the ESCP, under Art. 4(3) ESCP Reg. it must notify the claimant of this. The claimant can then decide to withdraw the claim or, if she or he does not do so, the court is required to proceed with it under an appropriate national procedure (EC PG 4.1.2.).

When the claim form is submitted to the court, the clerk office assigns a registry number, calculates the amount of fees within the ICMS system (*eSpis*) and transfers the case to the individual judge. Upon preliminary review of the claim (Art. 282 CPA), the court decides whether such a claim falls under the scope of the ECSPR. If not, it will proceed in accordance with the rules of national procedure, which means the claim form will either have to be amended and/or supplemented if it does not contain everything a statement of claim should contain (Arts. 106 and 186 CPA), or it will be sent to the defendant for a written response (Art. 284 CPA). The notification to the claimant is thus implied, not explicit. After the defendant files their written response, the preliminary hearing is scheduled where the court discusses with parties on the possibility of peaceful dispute settlement, clears out the facts and evidence proposals and plans further conduct of the proceedings (Arts. 285 – 293 CPA).



**2. Request to the claimant to complete or rectify the claim form.** Unless the court takes the view from the outset that the claim is unfounded or completely inadmissible, in which case it can dismiss the claim, the court can request the claimant to complete or rectify the Claim Form or to supply supplementary information or documents (EC PG 4.1.1.). Such a request is to be made using Form B prescribed by the Regulation (EC PG 4.1.3.). In the form, the court sets out the time by which the claimant must provide the information requested or return the rectified form. Art. 14(2) ESCP Reg. provides that this time limit may be extended by the court in exceptional circumstances (EC PG 4.1.3.).

In case where the claim is not dismissed, the statement of claim (or Form A in case of ESCP) can still miss some of the essential information or be unclear. In that case, the court is entitled to grant 8 days period to rectify those faults. If they are not rectified within the set period, it will be assumed that the claim has been withdrawn (Art. 109 CPA). The period of 8 days, although prescribed by law, can be extended if there are valid reasons (e.g. sickness or other type of inability to respond within the deadline), but the request for such extension must be filed before the deadline has passed (Art. 111 CPA).

**3. Dismissal of the initial claim.** Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed. The court or tribunal shall inform the claimant of such dismissal and whether an appeal is available against such dismissal (Art. 4(5) ESCP Reg.). The effect of dismissal on [the ground that the claimant did not provide the information requested or return the rectified form in due time, or the fact that the form is still filled in incorrectly or in the wrong language] is not to decide the substance of the claim which could be re-made as a European small claim or under the appropriate national procedure (EC PG 4.1.3.).

There is no difference in how the court proceeds in each (contentious) case. The judge who is in charge of the case does the preliminary review of the statement of claim. The judge will first check whether there are reasons for their removal (Art. 71 CPA). If the court is incompetent, the judge will declare it and transfer the casefile to the competent court (Arts. 17 and 20 CPA). If it completely lacks jurisdiction, if the statutory deadlines to file a claim were not met or if the procedures laid down in the law which should precede the filing of the claim were not initiated (Art. 282 CPA). Such proceedings are envisaged e.g. in case of labor, family and media disputes, as well as the disputes involving the Republic of Croatia. In the former case, however, the person residing outside Croatia does not have



to initiate such pre-action proceedings before the competent State Attorney's Office (Art. 186a CPA).

The parties can lodge an appeal within 15 days of the receipt of such a decision (Art. 348) and it has a suspensory effect (Art. 379 CPA). It is filed to the same court that rendered the decision who will, after conducting a formal review, transfer that appeal, along with the casefile, to the second instance court (County Court in case of municipal court decisions and High Commercial Court in case of commercial court decisions). The appeal can challenge the decision on the grounds of procedural errors, misapplication of substantive law or wrongful/incomplete determination of relevant facts (Art. 353 CPA).

**4. Communication of the claim to the defendant.** The court sends to the defendant a copy of the Claim Form and the supporting documents along with Answer Form C of which the court has to complete the first part (EC PG 4.2.1.). According to Art. 13(1) ESCP Reg., the court has to send Form C with the copy of the Claim Form and supporting documents in one of the following ways: (a) by postal service, or (b) by electronic means (EC PG 4.2.3.)<sup>32</sup> (provided that the requirements set out in Art. 13(1) ESCP Reg. are fulfilled).

The statement of claim (including the FORM A under the ESCPR) is usually sent to defendant via post (Art. 133 CPA). Only if the defendant has willingly decided to use the e-filing system and is currently registered as a user, the notification of process will occur electronically (Art. 133d CPA).

**5. Electronic communications.** In accordance with Art. 13(2) ESCP Reg., other written communications between the court and the parties or other persons involved in the proceedings shall be carried out by electronic means attested by an acknowledgment of receipt, where such means are technically available and admissible in the Member State where the procedure is conducted, provided that the party or person has accepted in advance such means of communication or is, in accordance with the procedural rules of the Member State in which that party or person is domiciled or habitually resident, under a legal obligation to accept such means of communication (EC PG 4.2.3.2.). If

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<sup>32</sup> Please note that the Service Regulation applies to cross-border notifications.



service by post or electronically, within the meaning of Art. 13(1) ESCP Reg., is not possible, Art. 13(4) prescribes the rules of Art. 13 or 14 EOP Reg (EC PG 4.2.3.3.).

The CPA contains special rules on how the service by post is supposed to be carried out. In the first attempt of service by post, the forms 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 Form A 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 defendant who rejects to accept service. This will result in all future documents being served in the same manner (Art. 143a CPA).

The Croatian courts use a special e-filing system (*eKomunikacija*). If the party is a legal person, registered entrepreneur (*obrtnik*) or if any type of party hires a lawyer, they will be obliged to use the e-filing system. Even if the person does not hire a lawyer, they can register in the system and file the claim form electronically (Arts. 106a 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 an 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](mailto:ekomunikacija@mpu.hr). More information is accessible here (Croatian only): <https://usluge.pravosudje.hr/komunikacija-sa-sudom/>. The further notices will be served via that special e-filing system, at least until the party states he or she is no longer willing to receive court documents in such a way (Art. 133d CPA).

**6. Defendant's response.** The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form (Art. 5(3) ESCP Reg.).

The same rules which apply to the claimant also apply to the defendant. The Form C must be submitted in Croatian language, which is also applicable to any supporting documents



(Art. 6 CPA). The defendant must provide a copy both for the court and for each opposing party (Art. 107 CPA).

**7. Counterclaim.** If the defendant states a counterclaim then, as provided by Art. 5(7) ESCP Reg., all the provisions of the Regulation, specifically Art. 4, and 5(3) to 5(5) as well as Art. 2, will apply to the counterclaim as to the principal claim (EC PG 4.5.).

Counterclaims can be lodged latest until the closure of the first (preliminary) hearing. They can be lodged only if the counterclaim is connected to the subject matter in the main proceedings, if the claims can be set off or if the counterclaim aims on the solving of preliminary issue (Art. 189 CPA). Although, according to the cited rule, generally counterclaim must be filed before the closure of the first (preliminary) hearing, in the context of ESCPR it must be filed by using the Form A, at the same time of the submitting the Form C, so the time limit for its filing is even stricter.

**8. Enforcement of court settlements.** Article 12(3) provides that the court or tribunal shall make efforts to reach a settlement between the parties in the course of the proceedings. In accordance with Article 23a ESCP Regulation a settlement that is either approved by or concluded before a court or tribunal in the course of the ESCP and that is enforceable in the Member State where the procedure was conducted shall be recognised and enforced in other Member States on the same basis as a judgment in the ESCP.

At any time during the proceedings before the first-instance court handling the litigation, the parties may reach a settlement about the subject matter (a court settlement). The settlement may refer to the whole claim or a part thereof. The settlement shall be recorded in the minutes. The settlement is final and binding when the parties sign the minutes after such minutes have been read to them. A certified copy of the minutes in which the settlement has been recorded shall be issued to the parties upon their request (Arts. 321 - 322 CPA).



## V. Establishing the facts

When Croatia is the Member State of origin

**1. Evidence.** Art. 9 ESCP Reg. provides that the court is to specify the means of taking evidence, that it shall use the simplest and least burdensome method of taking evidence, and will hear oral evidence and evidence from expert witnesses only if it is necessary to do so in order to be able to give a judgment (EC PG 5.1.2.). Expert evidence or oral testimony may only be taken if it is not possible to give the judgment on the basis of other evidence, in accordance with Article 9(4) (EC PG 5.4.).

There are no special evidentiary rules for the ESCP. The Croatian courts conduct all available evidence proposed by the parties. Generally, the parties can use public (and) private documents, witnesses, expert witnesses, and, when appropriate, judicial inspection. The parties can also be heard as witnesses (Arts. 227 – 271 CPA). The Croatian courts prefer rendering judgment in the ESCP without a hearing, so documents will represent a basis of the decision in most cases. That is different from domestic small claims proceedings where usually oral testimonies are preferred. The CPA also lays down special rules allowing the judge to determine some of the facts by way of their own discretion in cases where conducting evidence in usual way (e.g. by using expert testimonies) would be unproportionate to the value of the claim (Art. 464 a CPA). However, those powers are not widely used.

**2. Additional information.** Art. 7(1)(a) ESCP Reg. also enables the court to request further details concerning the claim once a response has been received regarding the claim or counterclaim after service. The court sets a time limit within which the information has to be provided and, as provided by Art. 14(2) ESCP Reg., that time limit can also be extended in exceptional circumstances. Under Art. 7(3) ESCP Reg., as read with Art. 14(1), the court has to inform the party to whom the request is made about what the consequences will be if the time limit is not complied with (EC PG 5.2.)<sup>(33)</sup>.

If the court receives such claim, it must warn the claimant about such irregularity and ask him or her to amend the claim in accordance with domestic procedural rules, within 8 days. If the claimant does not act accordingly, the court will deem his or her claim to be withdrawn (Art. 109 CPA in connection with Art. 507.o CPA). According to the recent case

<sup>33</sup> On time limits, cf also Art. 14(2) ESCP Reg., which provides that certain time limits can be extended but only in exceptional circumstances and that also applies to the 30-day periods set out in Art. 7 ESCP Reg (EC PG 5.7.; see also 6.2.).





law of the Supreme Court, such a deadline can be extended, provided that prolongation is sought prior to its expiration (Art. 111 CPA).

**3. Hearing.** It is for the court to decide whether to have a hearing to determine the facts. This follows the principle set out in Article 5(1) that the ESCP shall be a written procedure (EC PG 5.3.1.). If the court refuses a request for an oral hearing, it must give its reasons in writing (EC PG 5.3.2.).

Generally, the hearings are scheduled by the court exclusively and they are held within the court building. Exceptionally, they can be held outside the court building (e.g. in case of judicial inspection) or remotely by using video conferencing (Arts. 114 - 115). The new powers have almost never been exercised so far. In case of ESCP, there are no special rules, but the courts in Croatian case law generally preferred written proceedings and basing the judgment solely on documentary evidence.

**4. Use of ICT technologies in hearing and taking of evidence.** As the actual use depends on the technology available in the court seised, the use of ICT during the procedure is not compulsory (EC PG 5.5).

After 2019, the CPA entitled the courts to use video conferencing (Art. 115 CPA), but the very few courts used them (mostly by using commercial platforms such as Webex, Teams or ZOOM). After the recent amendment, the Ministry of Justice is expected to develop its own platform, but the implementation of the new rules is expected in 2024.

**5. Conduct of the procedure and information of the parties.** The court has generally to manage the procedure in accordance with the principles of adversarial process and the right to a fair trial of the case (EC PG 5.6.1.). The duty of the court to control and determine the procedure in the ESCP is reinforced by Art. 12(2) ESCP Reg. whereby the court also has the duty to support the parties as regards procedural matters by informing them about procedural questions, and it follows from Recital (9) that the court in so doing must be even-handed as between the parties in order to ensure the fairness of the procedure. The duty to inform the parties about procedural questions can be carried out in various ways depending on national procedures (EC PG 5.6.2.).



The right to be heard is one of the cornerstones of Croatian civil procedure. Each party is entitled to submit claims, factual allegations, and to propose evidence, but also to object to the claims, allegations, and proposals made by the opposing party. The court is not authorized to base his decision on the facts which party had no reasonable opportunity to respond to (Arts. 5 and 7 CPA).

The court should remain neutral. The partial judges can be challenged (Art. 71 CPA). Nonetheless, the judges are required by law to assist lay parties and inform them on the procedural steps they can take (Art. 9 CPA). It should warn each party (represented or not) that their factual allegations and evidentiary proposals are incomplete or insufficient thus preserving their right to be heard and giving them opportunity to consider settlement (Art. 219 and 288.a CPA).

## VI. The judgment

**1. Default judgment.** If the defendant does not answer the claim within the period of 30 days from service of the Claim Form and the Answer Form, Form C, the court shall issue the judgment (EC PG 6.1.1.). Where the default concerns a counterclaim, it is to be presumed that the claimant will wish to pursue the principal claim (see EC PG 6.1.2.).

The courts can enter a default judgment against the defaulting defendant only when the service of process was conducted according to the statutory rules (or there are no notorious circumstances proving that the defendant was prevented from submitting their answer) and that the claim is not clearly unfounded. The relief sought must not be prohibited by law. In cross-border cases, the court is entitled to fix a time limit, no longer than six months, to make inquiries if the defendant was duly notified (Art. 332 CPA).

**2. Form and language of the judgment.** It is implicit from the fact that the judgment in a European Small Claim has to be served on the parties that it should be in written form. Otherwise there is no particular form and content of the judgment specified in the Regulation and, following Art. 19 ESCP Reg., these will therefore be determined by the law of the Member State in which the court hearing the claim is situated (EC PG 6.3.1.). The Regulation does not specify that the judgment should be written in a language other than the language of the court which issues it given that the judgment is to be served on the parties, however, it will be necessary for the appropriate language version to be available for service in order to meet the terms of the relevant EU law on the subject (EC



PG 6.3.2.). Which are the relevant rules or practices regarding the form and content and the language of the judgment in your jurisdiction?

As any other activities in civil proceedings, the judgments are rendered in Croatian language exclusively. Each judgment contains formal introduction, decision on the relief, and reasoning (Art. 338 CPA). There are no special rules in regard the form and content of the judgment rendered in the ESCP.

**3. Service of the judgment.** Once the judgment has been issued, Art. 7(2) ESCP Reg. provides that it must be served on the parties using one of the methods of service specified in the Regulation (EC PG 6.3.3.).

Although generally the judgments are announced publicly during a special announcement hearing (Art. 335 CPA), these rules do not apply in the ESCP. The announcement is replaced by the service of judgment (Art. 507.s CPA). In that regard, the same rules apply as in case of claim forms.

**4. Costs.** The judgment will contain an order for payment of costs (EC PG 6.4.). Art. 16 ESCP Reg. provides that costs should not be awarded if they are unnecessarily incurred or are disproportionate to the claim (*ibid.*). Subject to that principle, the rule to be applied following Art. 16 of the Regulation is that the unsuccessful party should be ordered in the judgment to meet the costs of the proceedings and these are to be determined under the relevant national law (*ibid.*).

According to the national procedural rules, loser-pays principle applies. There are new rules for calculation of costs in case of partial success. From 2019, the court first determines the percentage of success of more successful party, which it then reduces by the percentage of success of less successful party (e.g. 70 % - 30 % = 40 %). The court then determines the costs of such party and orders the payment of those costs in the determined percentage (Art. 154 CPA). The court will not order payment of costs which are direct result of the fault of the winning party or his or her representative (Art. 156 CPA). Additionally, the court is only allowed to order the payment of costs considered necessary, taking into consideration all circumstances, especially rules on the preparation and concentration of main hearing (Art. 155 CPA).



## VII. Review and appeal

1. **Review under the ESCP.** Art. 18 ESCP Reg. sets out the minimum standards for review of the judgment. [The defendant who did not enter an appearance shall be entitled to apply for a review of the judgment – using the available procedure under national law \(EC PG 7.1.1.\).](#)

The same municipal or commercial court that has rendered the decision is entitled to decide on such an extraordinary review. If the defendant proves, on the level of probability, that the prerequisites under Art. 18 are met, the court will determine the nullity of that judgment and return the procedure to the state it was in before the judgment was passed (Art. 507š CPA). This means the proceedings would start over.

2. **Appeal.** Under Art. 17 ESCP Reg., [the question of whether or not an appeal against the judgment is available in the Member State where the judgment is issued is a matter regulated under the national law of the Member States \(EC PG 7.2.\).](#) The information on whether an appeal is available and if so which court is competent is available on the e-Justice Portal (*ibid.*). The question of whether legal representation remains optional at the appeal stage is not explicitly settled by the ESCP Reg. However, the provisions of Art. 16 ESCP Reg. on costs also apply to appeals of an ESCP judgment (see EC PG 7.3.).

The appeal is available against the judgments rendered in the ESCP under the conditions laid down for domestic small claims cases (Art. 507s CPA). The appeal does not have suspensory effect, unless the municipal court, which is competent for enforcement, decides on its stay, in accordance with domestic enforcement rules (Art. 507.š CPA). The appeal can be lodged because of manifest procedural errors (unless the court wrongly decided it is competent, despite defendant's timely objection) or wrongful application of substantive law (Art. 467 CPA) within 15 days of receipt of the judgment. The appeal is lodged with the same municipal or commercial court that has rendered the judgment, but it will in the end dealt with by competent County court (*Županijski sud*) or High Commercial Court (*Visoki trgovački sud*), as appellate courts (Art. 348 CPA).



## VIII. Recognition and enforcement

**1. Request and issuance of the certificate of enforceability.** Art. 20(2) ESCP Reg. provides that at the request of one of the parties, the court or tribunal shall issue a judgment certificate using the standard Form D (Annex IV) at no extra cost (EC PG 8.1.1). This certificate has to be issued by the court which gave the judgment under the ESCP at the request of one of the parties. Such a request can be made at the outset of the procedure, for which there is space provided in paragraph 9 of the Claim Form, Form A and, although this is not specified expressly in the Regulation, at any stage after the judgment has been issued (EC PG 8.3.1.).

There are no special rules at which point the request needs to be made, so it can be done even after the judgment has already been passed. The certificate is issued by the court that has rendered the judgment, but only after hearing both parties (Art. 507.u CPA). No court fees have to be paid in that case.

**2. Language.** Upon request, the court or tribunal shall provide that party with the certificate in any other official language of the institutions of the Union by making use of the multilingual dynamic standard form available on the European e-Justice Portal. The court is not obliged to provide a translation and/or transliteration of the text entered in the free-text fields of that certificate (EC PG 8.1.1).

All communication with Croatian courts is to be done in Croatian language. There are no special rules in regards to the ESCP.

**3. Enforcement procedure.** By virtue of Art. 21 ESCP Reg., the procedure for enforcement is governed by the law of the Member State of enforcement, subject to the provisions of the Regulation on enforcement (EC PG 8.1.2).

**a. Required documents:** the person seeking enforcement shall provide an authentic copy of the judgment, and the judgment certificate (EC PG 8.2.). In order to secure execution of the judgment, it is necessary to instruct the authorities or agencies in the Member State of enforcement which are competent to take measures of execution (EC PG 8.5.2., see *Addendum*).

**b. Translations:** Member States have to provide information as to which languages other than the official language(s) are acceptable (Art. 21a(1) ESCP)



Reg.). The translation of the information on the substance of a judgment in the certificate of Art. 20(2) ESCP Reg. shall be done by a qualified translator (Art. 21a(2)). Information on which languages are accepted for the purpose of the enforcement is available on the European e-Justice Portal)(*ibid.*).

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).

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). If documents are in foreign language, they must be translated to Croatian by the translator authorized in the European Union (Art. 507z CPA).

The same rules which were applied for starting the ESCP in regard to the court fees, also apply to the enforcement proceedings. 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](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>.

**4. Procedure to challenge enforcement.** The Regulation does not provide a procedure for an application to the court to challenge the enforcement of the judgment on the grounds of irreconcilability, and this is a matter to be regulated under the procedural law of the Member State concerned. Similarly it is normally also possible for the court in that Member State under the national law to refuse or stop enforcement if and to the extent that the sums awarded in the ESCP judgment have been paid or the judgment has otherwise been satisfied (EC PG 8.4.2.).

The enforcement order on the basis of the upcoming judgment rendered in the ESCP can be objected to within 8 days from the receipt of the order (Art. 11 EA). The ground for appeal considers either the enforceable title (e.g. it still has not become enforceable or it has been altered or annulled), the assets on which the enforcement is supposed to be carried out, the consequent agreement of parties (e.g. *pactum de non equequendo*), the entitlement to seek enforcement (in the name of creditor or against the debtor), the payment or altering of the obligation after the judgement has been rendered, or the statute of limitations (Art. 50 EA). The last two grounds can be also pointed out after the expiry of 8 days in so-called extraordinary appeal (Art. 53). If the enforcement is carried out on monetary assets, there is a special remedy that should be lodged within 60 days. It can be lodged on the same grounds as extraordinary appeal and may be connected to the proposal to stay enforcement (Art. 210 EA).

**5. Stay or limitation of enforcement.** These matters are regulated by Art. 23 ESCP Reg. (see EC PG 8.4.3.).

The enforcement is conducted by way of applying domestic enforcement rules, including the provision on the stay of enforcement (Art. 507ž 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 himself deposits the amount as a security for the damages that might occur to the debtor, the court will automatically deny debtor's request for stay.

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

Third party, who requested the enforcement on a specific object to be declared inadmissible, may also request stay with respect to such object if the person proves, on the level of probability, the existence of their right and that they are also facing irreparable or nearly irreparable damages, provided that they have initiated litigation as instructed by court after filing 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.