

## **Legal aspects of electronic filing of forms in the European order for payment procedure – expert report**

Keywords: electronic filing, e-forms, civil procedure, European order for payment

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### **General**

For several years, we can observe activities of the state in the field of e-government. In recent times it is much discussion about e-commerce in the judiciary. This does not mean only the electronic management of individual procedures, but broader computerization and therefore also of justice administration, etc....

With the expansion of electronic commerce and the general economic crisis, it is becoming increasingly essential to the effective management of claims and their recovery.

Therefore the European Union has taken the initiative to simplify and speed up the recovery of uncontested monetary claims in cross-border cases by creating a harmonized European order for payment procedure.<sup>1</sup>

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<sup>1</sup> Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

The procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims. The regulation permits the free circulation of European orders for payment throughout European Union (EU) countries by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the EU country of enforcement prior to recognition and enforcement (article 1 of the Regulation).

The regulation includes a form, standard form A set out in Annex I, to be used to apply for a European order for payment. A pecuniary claim must be for a specific amount that has fallen due at the time when the application for a European order for payment is submitted.

Several EU Member States already allow the electronic filing of cases, especially for key customers of justice, which produce the main case load for courts in civil proceedings, e.g. lawyers, banks, insurance companies and social security institutions.

Examples of such national filing systems are e.g.:

Germany, using the national filing system "EGVP - Elektronisches Gerichts- und Verwaltungspostfach"

Austria, using the national filing system "ERV – Elektronischer Rechtsverkehr" (Electronic Legal Communication).

### **Situation and legal basis in Slovenia**

It should be noted that in principle, e-commerce can be applied in any judicial proceedings. However, since e-commerce is already present in all segments of life (e. g. e-government, e-commerce, etc.) will be for parties (both natural and legal persons) in the future, a very welcome opportunity to resolve the dispute between them in the same way .

The legal basis for the introduction of e-commerce in litigation represents article 1 of the Law on Electronic Commerce and Electronic Signature Act (LECESA, Official Gazette of RS, no. 57/2000), which states that LECESA governing electronic commerce, which includes operations in electronic form at a distance using information and communication technologies and the use of electronic signatures in legal transactions, including e-commerce in the judicial, administrative and other similar procedures.

The Civil Procedure Act (CPA, Official Gazette of RS, no. 26/99 and changes) and the novels A-CPA had no provisions on e-commerce. Only amendment CPA-A in 2002 contained a number of provisions that may serve as a legal basis for e-commerce.

Significant shift towards electronic civil procedure represents a novel CPA-C (Official Gazette of RS, no. 52/2007) which came into force on 13.6.2007. The ultimate objective of the CPA-C was the computerization of the civil proceedings in the broadest sense, with the introduction of electronic commerce, which includes electronic applications, electronic decision, electronic service, as well as the possibility of electronic access to the state role in civil proceedings, which will be presented below. An important novelty act was the creation of a legal basis for sound or visual recording of a hearing in civil proceedings (such as videoconference).

### ***Electronic communication with the court (e-filing)***

By submitting the pleadings (e. g., action)<sup>2</sup> establishes the relationship between the client (for example the plaintiff) and the Courts. Applications must be comprehensive and include everything needed to be considered.

Pleadings shall be intelligible and shall contain all matter necessary for proceeding therewith. In particular they shall contain: the name of the court, the name and permanent or temporary residence or seat of the parties, the name of their statutory representatives and/or attorneys, the matter in dispute, the contents of statement, and the signature of the person who has filed the pleading. A pleading received by means of telecommunications technology and a pleading received in compliance with

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<sup>2</sup> The action, defense plea, means of ordinary judicial review, and other statements, motions and notices which are to be made out of court, shall be filed in writing (pleadings) – par. 1 Article 105 CPA.

the conditions determined by the law for the application of information technology shall be deemed to be signed by the person stated as the signatory.

If a statement contains any motion to the court, the party shall also state the facts upon which the motion is based and, if necessary, adduce evidence supporting such facts (article 105 CPA).

Court Rules (Official Gazette of RS, no. 17/95, etc.) allows Courts conducting business by telephone, telegraph, fax, and on the basis of an express provision of Article 100 the Court may also conduct business by using other modern means of telecommunication and information technology.

The new regulation of the Article 105.b CPA states that motions shall be submitted in writing. A motion in writing shall be a motion which has been written, or printed, and signed in person (motion in physical form), or a motion submitted in electronic form and signed by a secure electronic signature certified by a qualified certificate. A motion in writing shall be submitted by mail, by electronic means, by use of means of communication technology, delivered directly to the authority, or by a person, who is engaged in serving motions as his/her activity (business supplier). A motion in electronic form shall be submitted by electronic means to the information system. Receipt of the motion shall be confirmed automatically by the information system.

A motion can also be made on a prescribed or otherwise prepared, form. Irrespective of any provisions of other regulations, forms in electronic form shall have the same contents as the forms prescribed in physical form only. A uniform information system shall be set up for courts by the competent authority.

The Minister of Justice prescribed the conditions and the manner for submission of motions in electronic form, or by electronic means, the form of the motion in electronic form, and the organization and performance of the information system.

Irrespective of provisions of the first and second paragraphs of the Article 105.b, the Minister of Justice shall specify the motions that can also be made by phone, or by electronic means without a secure electronic signature certified by a qualified certificate, and the means of identification of the parties in any such case.

The certifying bodies issuing qualified certificates related to officially awarded identification marks may ask the national body awarding such marks to verify the correctness of any such mark by providing information on the holder of the certificate, or any third party, or the identification mark, that the information in the certificate relates to, and to give them a reply confirming that the submitted information corresponds to the information in the official files.

As an additional condition for e-applications the provision of the Civil Procedure Act, under which the application must be accompanied by documents (attachments), which may be the original or the copy must be taken into account (Article 107). Pursuant to provisions of the law governing the security of documentary materials, a transcript of a document shall be: a microfilm, or electronic (scanned), copy made and stored, any reproduction, or a certified transcript, thereof but also an ordinary transcript, or a microfilm, or electronic (scanned) copy, photocopy, or any reproduction thereof.

Motions and attachments submitted by electronic means which are to be sent to the opposing party shall be sent in a single copy. The court shall make as many electronic copies, or photocopies, as are required for the opposing party (Article 106 CPA).

The CPA also contains a solution for a case where the Court at the preliminary examination of the application determines that the application is incomprehensible and is not suitable for further treatment. If the application is incomprehensible or does not contain everything that is necessary in order to be considered, the court requires the applicant to be corrected or completed application (Article 108 CPA). If the application is submitted electronically, it is not suitable for processing at the Court, the court shall notify the applicant in his application the prescribed format of application in electronic form.

We must stress out also the issue of service of judicial documents. According paragraph 1 Article 132 CPA process shall be served by postal channels, by secure electronic means, by court officials, in the court, or in other manner provided by the statute. The court may order, upon a motion by the opposing party that the process be served by agency of a legal or natural person which is engaged in serving of process as a part of their registered activity.

A party may inform the court that it wants the documents to be served by electronic means into a secure post box, the address of which the party shall indicate in the motion. The aforesaid address of a secure post box shall be considered to be equal to the address of the party's residence, or registered office. »If a party submits a document by secure electronic means, it shall be considered that the party wants documents to be served by secure electronic means until the party informs the court to the contrary.

If that the court has found service of process into a secure post box to be impossible, the document shall be served in physical form, and the reasons for such service given.

The Minister of Justice prescribed which means are secure electronic means and which motions shall be sent and served by secure electronic means.

Irrespective of the above provisions, service to state authorities, lawyers, notaries, executors, court experts, court assessors, court interpreters, official receivers, and other persons, or bodies, for which a higher reliability can be assumed due to the nature of their work, service of process shall always be effected by electronic means into a secure post box.

The list of the persons and bodies from the preceding paragraph shall be set up by the Supreme Court of the Republic of Slovenia and published on its website. The persons and bodies specified in the aforesaid list shall open a secure post box and shall inform the Supreme Court of the Republic of Slovenia of the address of the secure post box, and any change thereof. The official address of a secure post box specified in the preceding paragraph shall be the address published in the aforesaid list.

Novelty which allows e-commerce is the removal of a time limit, as was the case until the amended CPA-C for service. Normally service of process shall be made between 6.00 a.m. to 8.00 p.m. but by electronic means service shall be made 24 hours a day (1st par. Article 139 CPA).

Documents in electronic form can be served in physical form, or by secure electronic means.

Certified documents in physical form shall be served in conformity with provisions of the CPA governing service of process in physical form.

Documents shall be served by secure electronic means via the information system and by agency of an organization specialized in service of process by electronic means.

The process shall automatically be served to the addressee's secure post box by the information system and taken receipt of by the addressee at 15 days in order to avoid the consequences laid down in the seventh paragraph of Article 141.a CPA.

At the same time as being served the process from the preceding paragraph, the addressee who has informed the court of its e-mail address shall automatically be sent a message by the information system informing the addressee of a document in the information system which the addressee shall take receipt of at 15 days from the day it was served into the addressee's secure post box. The message shall explicitly inform the addressee of the legal consequences laid down in the seventh paragraph hereof.

The addressee shall take receipt of the process from the information system specified in the first paragraph hereof by proving his/her/their identity by using a qualified certificate for a secure electronic signature, taking insight into the secure post box and signing the service form with his/her/their electronic signature.

The service specified in the third paragraph hereof shall be considered to have been effected on the day the addressee takes receipt of the process. If the document has not been taken receipt of at 15 days, the service shall be regarded to have been effected on the day it was automatically delivered into the addressee's secure post box by the information system. After expiry of the 15-day term, the document shall automatically be deleted and an e-mail message that the document has been deleted from the information system and that the addressee can take receipt of it at the court having ordered the service sent to the addressee and the court.

The court having ordered the service shall be informed of the service process by a service form in electronic form.

Service by secure electronic means may also be used for the documents, the originals of which are in physical form, provided the electronic (scanned) transcript made on the basis of the original in physical form is signed by the court's secure electronic signature certified by a qualified certificate.

Particular attention should also be paid to cases where personal service is necessary. An action, a court's decision subject to appeal, extraordinary judicial review, and the dun letter to pay the court fee due to the action shall be served on a party by personal service (Article 142 CPA). For personal service is also considered service in accordance with Article 141 of the Civil Procedure Act, ie described above e-service.

To make the whole process run automated courts must also set an electronic file. According to Article 150 CPA the parties have the right to inspect and copy the files on litigation of which they partake. The parties have the right to inspect and copy a file in electronic form in the information system as well in which the party shall prove their identity by their qualified certificate of the electronic signature. The parties shall also have the right to monitor the proceedings in the information system.

CPA also provides the possibility of a decision in an electronic format. The original of the judgment issued in physical form shall be signed by the presiding judge in person. The sentence issued in electronic form shall be signed by the presiding judge by his/her secure electronic signature and a secure electronic signature of the court certified by a qualified certificate. If the secure electronic signature of the presiding judge is certified by a qualified certificate comprising an indication of the court, a secure electronic signature of the court shall not be required. The judgments processed automatically in the information system may have a facsimile instead of the signature and stamp. Any judgment issued in physical, or electronic, form may be delivered to the parties in a certified transcript, or an electronic (scanned) transcript, or in electronic form.

## **European order for payment**

The peculiarities of this process are standardized forms, which are particularly suitable for automatic processing. An example of good practice in the Republic of



Slovenia is automated process of execution on the basis of an authentic document (e.g. COVL).

According to Regulation an application for a European order for payment shall be made using standard form A as set out in Annex I. 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 (par. 5 Article 7 of the Regulation).

The application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. The signature shall be recognized in the Member State of origin and may not be made subject to additional requirements.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. Member States shall inform the Commission of such communications systems.

The European order for payment may be served on the defendant in accordance with the national law of the State, in which the service is to be affected, by one of the following methods:

- (a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;
- (b) personal service attested by a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;
- (c) postal service attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;

(d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant (Article 13).

The European order for payment may also be served on the defendant in accordance with the national law of the State in which service is to be effected, by electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.

The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment. The statement of opposition 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.

The statement of opposition shall be signed by the defendant or, where applicable, by his representative. Where the statement of opposition is submitted in electronic form in accordance with paragraph 4, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC. The signature shall be recognized in the Member State of origin and may not be made subject to additional requirements.

## **Conclusion**

If we compare the Slovenian legislation with the scheme of the Regulation, we can conclude that there are no legal impediments to the introduction of an automated procedure for the submission of proposals for a European order for payment.

But there is still a long way to go towards fully automated civil proceedings in Slovenia. We have to remove several organizational barriers (e.g. e-service, proper training of the judges and other court staff) that such proceedings could become a reality.

Using standardized forms regarding appropriate technical equipment of the courts and parties, Slovenia can provide a fully automated procedure for the issuing a

European order for payment. Since the procedure for issuing the European order for payment is one of the several civil proceedings by our opinion this proceeding could be easily included in automated court proceeding by the actual implementation of electronic court proceedings in our legal system.

In our opinion, the challenge of the e-Justice is the possibility for faster and more rationally guided judicial procedures, which ultimately can lead to the elimination of the backlog. In this way also allows citizens exercise the constitutionally guaranteed right to a trial within a reasonable time.