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Regulation (EC) 1896/2006 on the European order for payment – in theory and practice

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EOP Regulation – basic information

- European order for payment – one of the EU instruments of cross-border collection of pecuniary claims in civil and commercial matters – for claims up to 5000 EUR it's rival is european small claims procedure (Regulation (EC) 861/2007 amended by Regulation (EU) 2015/2421) although EOP is significantly more used in practice than ESCP, because it is faster and more efficient
- applicable from 12 December 2008 in all EU member states except Denmark
- amended by the Regulation (EU) 2015/2421
- It's application entails mainly the usage of standard forms A, B, C, D, E, F and G, that are set out in the Regulation's Annexes and in a smaller extent, when it comes to situations which are not regulated by the Regulation, adopting procedural decisions pursuant Croatian Civil Procedure Act (Art. 445.a, 451. – 456. and 507.l – 507.nj of CPA)
- it is recommended that the standard forms set out in the EOP Regulation are filled out online – interactive forms can be found on website https://e-justice.europa.eu/156/DE/european_payment_order_forms?init=true



- Term “civil and commercial matter” – interpreted pursuant to relevant EU law
- Matters that fall outside of the scope of EOP Regulation:
 - revenue, customs or administrative matters or the liability of the state for acts and omissions in the exercise of state authority (“*acta iure imperii*”),
 - rights in property arising out of a matrimonial relationship, wills and succession,
 - bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,
 - social security,
 - **claims arising from non-contractual obligations, unless a) they have been the subject of an agreement between the parties or there has been an admission of debt or b) they relate to liquidated debts arising from joint ownership of property**



- **national court jurisdiction** is determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001 (hereinafter: Regulation Bruxelles I) i.e. nowadays Regulation 1215/2012 (hereinafter: Regulation Bruxelles Ia), except when it comes to claimes arising from consumer contracts and the defendant is a consumer, then only the courts in the member state in which the consumer is domiciled shall have jurisdiction (Art. 6 of EOP Regulation)
- **domicile** is determined in accordance with the Art. 59 and 60 of the Regulation Bruxelles I i.e. Art. 62 and 63 of the Regulation Bruxelles Ia (whether a person is domiciled in a particular state is determined pursuant to the laws of that exact state)
- **in Croatia** – until 1 September 2019 Commercial Court of Zagreb was the only court that had jurisdiction to issue and review EOP-s, but since then all first instance municipal and commercial courts have jurisdiction - depending on the subject-matter (in general, commercial courts have subject-matter jurisdiction in all of the disputes that have arisen between legal persons and legal persons and tradesmen)
- Croatian first instance courts will examine their territorial jurisdiction pursuant to the provisions of the Regulation Bruxelles Ia, because the national provision that regulates territorial jurisdiction (Art. 507.i of CPA) is not in accordance with Regulation Bruxelles Ia and because the said Regulation determines not only national jurisdiction, but territorial jurisdiction as well – for example in matters relating to a contract there is a special jurisdiction of the courts for the place of the performance of the obligation in question



Plaintiff's legal actions

- EOP application is made by using a **standard form A**
- mandatory content of form A (Art. 7(2) of EOP Regulation): a) names and addresses of the parties and of their representatives and of the court to which the application is made; b) the grounds for jurisdiction; c) cross-border nature of the case (is at least one of the parties domiciled in a member state other than the member state of the court seized); d) the amount of the claim (the principal and the interest, contractual penalties and costs); e) the interest rate (exactly specified or determinable); f) the cause of the action (what is the contract in question and other circumstances); g) a description of evidence supporting the claim (just a description, not their delivery) + signature of the plaintiff or his/her's representative (*manu propria* or electronically, if electronic communication is used in the relevant member state)
- optional content – additional statements explaining the claim and/or interest, Appendix 1 (information regarding the payment of court fees) and Appendix 2 (plaintiff's will regarding the procedure which will take place in the event that the defendant submits a complaint against the EOP – cessation of the procedure or continuing pursuant to the rules for European small claims procedure or continuing pursuant to the ordinary civil procedure of the court of the state of the origin)



- application is submitted via means of communication accepted by the member state of EOP's origin
- website e-justice.europa.eu – in Croatia “Forms, other applications or statements are to be submitted in written form, by fax or email”
- pursuant to Croatian CPA all lawyers (liquidators, expert witnesses, court interpreters) and legal persons are obliged, when it's technically possible, to communicate with the courts electronically, via e-Communication information system, which entails, after the prescribed registration is done, using a special electronic mailbox, an electronic signature and the presumption that the addressee has been served if he/she didn't open the mail within 15 days of delivery
- however, with persons domiciled outside of Croatia we do not insist on electronic communication (since the information regarding obligatory use of electronic communication is not published, insisting on electronic communication would complicate and slow down cross-border collection of pecuniary claims, which would be contrary to the proclaimed purpose of EOP Regulation, besides, service of judicial documents is regulated by the provisions of EOP Regulation and Regulation 1393/2007 on service of legal documents /hereinafter: Regulation on service of documents 2007/ and those provisions do not allow us to impose electronic service attested by an automatic confirmation of delivery to persons domiciled outside Croatia –



- Regulation on service of documents 2007 contains no provisions regarding electronic service and EOP Regulation states that the service is made in accordance with the national law of the member state in which the service is being executed, bearing in mind that the defendant has to in advance explicitly agree to electronic service attested by an automatic confirmation)
- although new Regulation (EU) 2020/1784 on service of documents came to force in December 2020, it is not applicable until 1 July 2022 – this Regulation introduces a decentralised IT system as means of communication between transmitting agencies and receiving agencies (the application of the Regulation is even more delayed regarding this part), finally an assistance in address enquiries and an electronic service (main condition – prior express consent of the addressee to the use of electronic means for serving documents in the course of legal proceedings)



Court's actions

- Examination of the application - the court examines whether the requirements set out in Articles 2 (does the claim fall within the subject matter of the EOP Regulation), 3 (is there a cross-border element), 4 (is the claim monetary, does it contain a specific amount and is it due at the time of the application), 6 (has the court jurisdiction in the subject matter) and 7 (does the form A contain mandatory data) are met and whether the claim appears to be founded
- CEU C-215/11 – list of requirements set out in Art. 7 of EOP Regulation is not minimal, but exhaustive, meaning that the national court cannot ask from the plaintiff to meet some other additional requirements or to deliver some other additional information; interest does not need to be due at the time of the application, but it needs to be determinable (principal amount, interest rate and the date period during which interest will accrue)
- CEU C-453/18 and C-494/18 – although the list of mandatory requirements is exhaustive that doesn't exclude an obligation of the court to request from the creditor additional information relating to the terms of the consumer agreement supporting the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms (Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts)



- Completion and rectification - if the requirements set out in Art. 7 are not met (mandatory data) and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application within a specific time limit, using a **standard form B**
- examples in Zagreb Commercial Court's practice – the application is not filled out in Croatian language or there is a suspicion that there is no jurisdiction of Croatian courts in the subject matter or there is a jurisdiction of Croatian courts, however, there is no subject-matter jurisdiction of a commercial court and it is not clear which of the municipal courts has territorial jurisdiction or the plaintiff is represented by a lawyer without a power of attorney, the plaintiff has no legal capacity to participate as a party in a court proceeding, unclear amount of the claim, the time during which the interest is suppose to accrue is not specified etc.



- modification of the application – if the application is only partially founded (Art. 8 of EOP Regulation – the application contains all of the necessary data and the claim is *prima facie* founded), the court invites the **claimant**, using **the standard form C**, to accept or refuse the court's proposal of issuing EOP only regarding a certain amount of the claim, warning him that if he refuses the proposal, the application for the issuance of EOP shall be rejected in its entirety, if the claimant accepts the proposal of the court, EOP shall be issued only for that part of the claim accepted by the claimant and regarding the remaining part of the initial claim the court in Croatia does not formally adopt any decision, since it is considered that the claimant withdrew the application regarding that part of the initial claim and any decision confirming that withdrawal would be of only declaratory nature
- examples from Zagreb Commercial Court's practice – demanded interest rate is too high pursuant to the applicable material law or there's no court jurisdiction for all of the claims, but there is for some of them (if the claim arises from a sale – purchase agreement, the defendant is not domiciled in Croatia and the merchandise was not delivered in Croatia, but in some other state, than there is no general or special jurisdiction of Croatian courts) etc.



- rejection of the application – the court rejects the application using a **standard form D**:
 - 1) if the requirements set out in Art. 2 (the claim does not fall within the subject – matter of EOP Regulation), 3 (there's no cross-border element), 4 (there's no monetary claim of a specific amount which is due at the moment of application), 6 (there is no jurisdiction of the court) and 7 (the application does not contain prescribed obligatory data – prior to rejection the claimant will be asked to complete and rectify the application), have not been met or
 - 2) the claim is clearly unfounded or
 - 3) the claimant failed to complete and/or rectify the application in time limit specified by the court or
 - 4) the claimant failed to answer the court 's proposal for the modification of the application in the time limit specified by the court or he has refused that proposal
- there is no right of appeal against the rejection of application, however, there is, also, no *res iudicata* since the claimant can submit a new application for the issuance of EOP or use some other procedure for the collection of his pecuniary claim
- examples in Zagreb Commercial Court's practice:
 - 1) **no jurisdiction** – the defendant is not domiciled in Croatia, the delivery of goods for which the claimant is seeking payment has not been made in Croatia, which is clear from the submitted invoices or the services weren't provided in Croatia etc.
 - the claim arises from an agreement for the provision of legal services to a consumer (meaning that the subject matter of the agreement falls outside of the business activities or the profession of the person receiving the services) – Art. 6(2) of EOP Regulation – only the court of that member state in the territory of which the defendant – consumer is domiciled, is competent to issue EOP



(if the claimant wanted to collect his claim through a regular civil procedure, the lawsuit could be, under some conditions, submitted even in front of the court for the place of the provision of legal services, pursuant to Art 17(1) c) of Regulation Bruxelles Ia)

- claim arising from an obligation of real estate property co-owners (for example in an apartment building) to contribute to the costs of maintaining the communal areas of that property in proportion to their ownership share, which is in Croatia an obligation prescribed by law – our court deemed that this was a legal, non – contractual claim which falls within the scope of EOP Regulation as an exception set out in Art 2(2) d) 2, but since the defendant was domiciled in another state and there was no basis for a special jurisdiction of Croatian courts (since the defendant did not sign an agreement between the proprietors regulating administration of the apartment building and the amount of the communal costs contribution, which also contained prorogation jurisdiction clause in favor of Croatian courts, which was also the place where the real estate was situated), we rejected the application on the basis of lack of jurisdiction

- CEU C-25/18 – conclusion of a contract is not a condition for the application of rules on special jurisdiction set out on Art 7(1) a) of Regulation Bruxelles Ia (in matters relating to a contract – court of the place for the performance of contractual obligation), however, there has to be an obligation freely assumed by one party towards another; monetary obligations which are based in a relationship between an association and its members are considered “matters relating to a contract”; even if the membership of



an association of property owners is prescribed by law, the fact remains that the detailed arrangements for management of the communal areas of the building are governed by a contract and the association is joined through voluntary acquisition of an apartment together with ownership shares of the communal areas of the property, so that an obligation of the co-owners towards the association of owners must be regarded as a legal obligation freely consented to, regardless of the fact that the property owners in question were not involved in adopting that decision or have opposed it – this is a matter relating to a contract for the provision of services of real estate management and maintenance, since, by becoming and remaining the owner of a property in a building, each owner agrees to be subject to all the provisions in the act governing the association of property owners concerned and the decisions adopted by the general meeting of the owners of property in that building – there is a special jurisdiction of the court for the place of the provision of services in question

2) the claim is evidently unfounded – the claimant is a buyer who fulfilled his obligation for payment in full, but has not in return received all of the goods so he is demanding a reimbursement of payment in the proportion of the value of the undelivered goods, however, according to Croatian applicable law he needed to rescind the contract priorly and since he did not state that he has priorly rescinded the contract, he has no right to ask for a reimbursement of payment, but only for a delivery of the remaining goods

3) the application was not rectified in the time limit specified by the court (language)



4) the claim falls outside of the subject matter of EOP Regulation – the claimant already has an enforceable document which allows him to collect the claim (enforceable court decision – if it is a result of a public hearing during which the claim was disputed but in the end accepted by the court, the decision is enforced pursuant to Regulation Bruxelles Ia, however, if the decision concerns an undisputed claim – judgement by default, than the decision can also be enforced pursuant to Regulation 805/2004 on European order for enforcement of undisputed claims; enforceable notarial deed – directly enforceable pursuant to Art 2 c) and 58 – 60 of Regulation Bruxelles Ia /authentic instrument which has been formally drawn up or registered as an authentic instrument in the member state of origin and the authenticity of which relates to the signature and the content of the instrument and has been established by a public authority or other authority empowered for that purpose – enforced on the basis of a certificate issued by the competent authority/)

- the claim also falls outside of the scope of EOP Regulation if it does not concern a civil or a commercial matter – Art 2(1) of EOP Regulation - revenue, customs or administrative matters and the liability of the state for acts and omissions in the exercise of state authority (*acta iure imperii*) are not civil/commercial matters, if in doubt, the interpretation in every single case is given by CEU (C-29/76 LTU v. Eurocontrol, C-817/79 Netherlands v. Rüffer, C-172/91 Sonntag v. Waidmann, C-271/00 Geemente Steenbergem v. Luc Baten, C-2661/01 Préservatrice foncière v. Netherlands, C-265/02 Frauhil/Assitalia, C-292/05 Lechouritou)



- issue of EOP – the court issues EOP using **standard form E** if all of the requirements set out in Art. 8 of EOP Regulation have been met, generally within 30 days of the moment the application was submitted, not counting the time taken by the claimant for completion/rectification/modification of the application; together with the form E the defendant will be served with a copy of form A (the application) without Appendixes 1 and 2 (the form is inadequate regarding the description of interest)

- EOP informs the defendant that he can pay the amount indicated in the order or oppose the order by lodging with the court of origin a statement of opposition using a **standard form F**, delivered to him along with the EOP and form A, within the 30 days of service of the order, if the defendant lodges a statement of opposition than the procedure shall continue in front of the competent court of the state of the origin pursuant to Regulation on ESCP or pursuant to rules of ordinary civil procedure, unless the claimant has previously demanded for the procedure to be terminated in such a case (this information will not be known to the defendant, since it is contained in Appendix 2 of the application which is not delivered to the defendant)



- service of EOP - in accordance with the national law of the state in which the service is to be effected under the condition that it meets the requirements set out in Art 13, 14 and 15 of EOP Regulation, bearing in mind that Regulation on service of documents 2007 still applies pursuant to Art 27 of EOP Regulation, which will be replaced by the mentioned Regulation (EU) 2020/1784 on service of documents (1 July 2022)
- this means that if the delivery is to be executed in Croatia, than it will be done pursuant to relevant articles of Croatian CPA governing "official service" (Art. 507k(1) of CPA), since they meet the minimal conditions set out in Art 13 – 15 of EOP Regulation; if the Croatian court needs the service to be executed in another member state, than the Croatian court will act in accordance with the Regulation on service of documents 2007 and if we choose to execute the service via a receiving agency in the state of the execution of service than that agency is responsible that the national law it applies on the service of judicial documents meets the minimal conditions set out in Art 13 – 15 of EOP Regulation – in the past practical problems have occurred when the exact address of the defendant was unknown because there were no legal instruments the courts could use in order to find out the address of a foreign citizen in civil and commercial matters, but this is going to change with the application of the Regulation (EU) 2020/1784 on service of documents



Defendant's legal actions

- The defendant has two legal remedies at his disposal, **statement of opposition** and a right to review EOP in exceptional cases
 - **Statement of opposition** is lodged within 30 days of the service of EOP, generally using **standard form F**, which is served to the defendant along with the EOP and form A (the application)
 - Form F does not contain any reasons for disputing the claim, only an explicit statement that the claim is being contested and the signature of the defendant or his representative
 - **Legal effects of statements of opposition** – if it is lodged timely it prevents the enforceability of EOP and the procedure shall continue in front of the competent court of the state of the origin pursuant to Regulation on ESCP or pursuant to the rules of ordinary civil procedure, unless the claimant has previously demanded for the procedure to be terminated in such a case
- CEU C-144/12 – lodging a statement of opposition that does not contain any challenge to the jurisdiction of the court of the member state of origin cannot be regarded as constituting “the entering of an appearance” within the meaning of Art. 24 of Regulation Bruxelles I (implicit prorogation), and the fact that the defendant has, in the statement of opposition, put forward arguments relating to the substance of the case is irrelevant in that regard; the defendant is not obliged to contest court's jurisdiction in the statement of opposition, he can do it later, but certainly before entering of an appearance in ordinary civil procedure (in the same way the Croatian courts interpret lodging a statement of opposition against enforcement orders issued on the basis of documents such as invoices, bills of exchange etc.)



- after the prescribed time limit for lodging the statement of opposition has expired, the defendant has the right to apply for a review of EOP in front of the competent court of the state of the origin in the following cases:
 - 1) if EOP was served to the defendant by one of the methods prescribed in Art 14 of EOP Regulation (service without proof of receipt by the defendant) and service was not effected in sufficient time to enable him to arrange for his defense, without any fault on his part (for example a member of the defendant's household or his employee who received EOP on behalf of the defendant, has delivered it to the defendant after the expiration of the time limit for lodging of statement of opposition), provided that he acts promptly or
 - 2) 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 that he acts promptly or
 - 3) if EOP was clearly wrongly issued, with regard to the requirements laid down in EOP Regulation or due to other exceptional circumstances
- Paragraph 25 of the preamble of EOP Regulation - review in exceptional cases should not mean that the defendant is given a second opportunity to oppose the claim; the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant; the other exceptional circumstances could include a situation where EOP was based on false information provided in the application form A
- if the court rejects the defendant's application for review, the EOP remains in force, otherwise EOP becomes null and void – pursuant to Art 507 Ij of Croatian CPA – there is no right of appeal against the court's decision on the application for review of EOP, neither is *restitutio in integrum* allowed, since the remedy for failure to lodge a statement of opposition within prescribed time limit is the application for review of EOP



- relevant CEU practice:

- C-324/12 – the failure to lodge a statement of opposition to EOP within the prescribed time limit due to an error in calculation of that time limit, does not constitute extraordinary circumstances within the meaning of Article 20(1)(b) or Article 20(2) of EOP Regulation, since it is a result of the negligence of the defendant's representative which could have been easily avoided - allowing for the review of EOP in that circumstances would mean that the defendant is given a second opportunity to oppose the claim and that is not the purpose of this remedy
- C-119/13 and C-120/13 – EOP was served to the defendants to the address from which they have already moved away from prior to that, since they have gained knowledge of the existence of EOP for the first time during its enforcement, the defendants made an application for review of EOP – the Court pointed out that in these circumstances the service has not been executed pursuant to minimum standards laid down in Art 13 – 15 of EOP Regulation, meaning that the time limit for the lodging of statement of opposition has not even begun to run i.e. the declaration of enforceability is invalid so there is no basis for the application of review of EOP
- C-21/17 – EOP was served to the right address, however, the application form A, which was delivered in the attachment, was not translated to the language that the defendant understands and, in addition, the defendant was not informed, by using a standard form in Annex II to Regulation on service of documents 2007, that in that case he can refuse to accept the document in question, the defendant argued that due to the described irregularity he did not understand the legal act which started the EOP procedure against him and for him it was an extraordinary circumstance, in the meaning of Art 20(2) of EOP Regulation, which is the



basis for the application of review of EOP after its enforceability – the court considered that in that case the service was not duly executed (every document which is being served on the defendant, regardless if it's only an attachment to EOP, needs to be translated into language that the defendant understands and the defendant needs to be informed that if that was not the case that he can refuse to accept that documents) and that the procedure must be regularized in accordance with the provisions of Regulation on the service of documents 2007, by communicating to the addressee the standard form in Annex II to that Regulation and only after that moment can a time limit for lodging a statement of opposition start to run, therefore, the Court concluded that EOP has not become enforceable so there is no basis for the application of review of EOP

➤ C-245/14 – in the application for the review of EOP the defendant stated that the court of the state of the origin was not competent to issue EOP because the parties in question have concluded a jurisdiction agreement according to which the jurisdiction was given to the courts of the state in which he was domiciled and given the fact that the claimant did not inform the court which issued EOP on the existence of that jurisdiction agreement in the application for EOP, the defendant considered that EOP was issued on the basis of false information i.e. that EOP was clearly wrongly issued, with regard to the requirements laid down in EOP Regulation on jurisdiction – the Court considered that the defendant knew the claimant has omitted the existence of a jurisdiction agreement in the moment that he was served with EOP so he was able and obliged to lodge a statement of opposition for that same reason, since he hasn't done so, he cannot be allowed to lodge, for that same reason, an application for review of EOP, because it would mean that he was given a second opportunity to oppose the claim, which is not the purpose of this institut –



the final conclusion is that in these circumstances it is not considered that EOP was clearly wrongly issued, with regard to the requirements laid down in EOP Regulation or due to other exceptional circumstances, in the meaning of Art 20(2) of EOP Regulation

- **Zagreb Commercial Court's practice** – there have been a few applications for the review of EOP, always for the reason of not receiving EOP and becoming informed of its existence for the first time during enforcement procedure – the defendant must make the allegations probable, if they are in contradiction to the documents in the file and are not in any way sustained, then the court cannot accept the application for the review of EOP

- for example, if the service was executed via a receiving agency in the state of the defendant's domicile by the delivery to a certain male employee of the defendant and the defendant claims that he has actually not received EOP because it was probably intercepted by his ex wife, with whom he was at the time involved in a divorce litigation, which allegations were not in any way sustained i.e. the defendant didn't make his allegations probable and there are no grounds for the acceptance of his application



Enforceability

- EOP becomes enforceable if the defendant does not lodge a statement of opposition within the 30 days of service
- declaration of enforceability is issued using a **standard form G** which is sent to the claimant along with another copy of EOP
- EOP which has become enforceable in the member state of origin is recognised and enforced in the other member states without the need for a declaration of enforceability and without any possibility of opposing its recognition – enforcement is governed by the law of the member state of enforcement (the claimant needs to submit forms A, E and G and their translation to the official language of the state of enforcement)
- refusal of enforcement of EOP – if EOP is irreconcilable with an earlier decision or order previously given in any member state or in a third country, provided that the earlier decision or order involved the same cause of action between the same parties, that they fulfill the conditions necessary for their recognition in the member state of enforcement and the irreconcilability could not have been raised as an objection in the court proceedings in the member state of origin or if the defendant has payed the amount awarded in EOP to the claimant - under no circumstances may EOP be reviewed as to its substance in the member state of enforcement (Art 22 of EOP Regulation)
- stay or limitation of enforcement – if the defendant has applied for a review of EOP, the court of the state of enforcement may limit enforcement proceeding to protective measures or make enforcement conditional on the provision of a certain security or, under exceptional circumstances, stay the enforcement proceedings (Art. 23 of EOP Regulation)
- in Croatia the subject matter jurisdiction for enforcement, refusal of enforcement and stay/limitation of enforcement of EOP's is given to municipal courts



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THANK YOU FOR YOUR ATTENTION

Questions?