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Monographs

# European Account Preservation Order

A multi-jurisdictional guide  
with commentary

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(eds)

# **CROATIA**

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## **SUMMARY**

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## I. LEGISLATION INCORPORATING THE EAPO REGULATION IN CROATIA

In 2017 the Enforcement Act (hereinafter: EA) (1) was amended, (2) introducing a new Chapter XXXV with provisions that incorporate the EAPO Regulation into Croatian legal order. The amendments came into power on 3 August 2017. They contain rules pertaining to competent entities, operations of the Financial Agency (the designated authority accountable for information provisioning and account preservation), and stipulations related to court fees. While they establish the entities empowered to act as competent bodies, they primarily defer to the standard enforcement procedures of Croatian law. (3)

## II. CONDITIONS FOR OBTAINING AN EAPO AND RELEVANT CASE LAW

The conditions governing the issuance of a European Account Preservation Order (EAPO) are outlined in Article 7 of the EAPO Regulation. These conditions have not undergone further elaboration in Croatian implementing acts. Nonetheless, they can be juxtaposed with the prerequisites for granting preliminary and protective measures designed to secure monetary claims within the framework of Croatian law. (4) The main condition requires supplying evidence that will satisfy the court regarding the existence of a real risk that, without the protective order, the subsequent enforcement against the debtor will be impeded or made substantially more difficult. (5) Croatian law specifically refers to risks related to transferring, hiding, or otherwise disposing of the debtor's property. (6)

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(1) *Ovršni zakon*, *Off. Gaz.*, 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22.

(2) See *Off. Gaz.*, 73/17, amendments to EO introducing new Art. 364.a to 364.d EO.

(3) On general implementation strategy in regard to EU law rules and regulations dealing with civil procedure see A. UZELAC, M. BRATKOVIĆ and J. BROZOVIĆ, *Collection of Croatian Implementing Rules for EFFORTS project*, <https://efforts.unimi.it/wp-content/uploads/sites/8/2021/06/Collection-of-Croatian-implementing-rules.pdf>.

(4) See chapters on protective measures (*prethodne mjere*), Art. 331-339.a EA and preliminary measures (*privremene mjere*), Art. 340-345 EA.

(5) Compare Art. 7, para. 1, of the EAPO Regulation and Art. 344, para. 1, EA.

(6) A similar set of risks is referred to in the Preamble of the EAPO Regulation, as 'dissipating, concealing or destroying [debtor's] assets'.

The second condition involves proving the probability of the creditor's claim. This can be demonstrated by a non-final decision of the court or another competent body, (7) or by other means indicating the likelihood of success of the creditor's claims. (8) Essentially, these conditions seem to be identical to the requirements of Article 7(2) of the EAPO Regulation.

Regarding the provision of security under Article 12 of the EAPO Regulation, it is noteworthy that Croatian law is less stringent in its domestic procedures. This is because it does not mandate the creditor to furnish security for protective measures when the creditor has acquired a judicial or administrative decision that has not yet attained enforceability. In instances where an imperfect enforceable title does not exist, the provision of security becomes discretionary. At the debtor's request, the court has the option (but not the obligation) to instruct the creditor to provide security, particularly in cases where the prerequisites for issuance have not been entirely fulfilled. (9)

The existing case law concerning EAPO requests is relatively limited. Up to now, documented cases predominantly pertain to unfavourable outcomes – that is, court rulings wherein the creditor has not presented sufficient evidence to persuade the court about the immediate necessity of a preservation order. (10) As an illustration, the High Commercial Court rendered a judgment stating that “the mere fact that the debtor hasn't settled the debt with the creditor within a year of the final judgment is insufficient by itself to determine whether the prerequisites for issuing a preservation order have been satisfied.” (11)

### III. PROCEEDINGS IN WHICH AN EAPO CAN BE FILED

Under Article 5(a) EAPO Regulation, the EAPO should be available before initiation of the proceedings, or at any stage during the proceedings on the substance of the matter, up until the conclusion

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(7) This is the primary requirement for issuing protective measures (*prethodne mjere*).

(8) This is the characteristic of preliminary measures (*privremene mjere*).

(9) See Art. 349 EA.

(10) High Commercial Court, 5 May 2020, Pž-1847/2020-2; Municipal Civil Court in Zagreb, 24 June 2020, R1-eu-25/2020-2; Municipal Civil Court in Zagreb, 25 June 2020, R1-eu-46/2019-9; Municipal Civil Court in Zagreb, 25 June 2020, R1-eu-47/2019-9.

(11) High Commercial Court, 5 February 2021, Pž-157/2021-2.

of the proceedings on the merits. Within Croatian law, the meaning of the “proceedings on the merits” includes regular litigation (*parnica*), as well as special proceedings such as payment order proceedings.

It also encompasses enforcement proceedings based on “authentic” documents (*ovrha na temelju vjerodostojne isprave*) which is a special form of summary payment orders issued by public notaries. (12) The latter form of proceedings provoked several preliminary references to the CJEU. In the *Pulaparking* and *Zulfikarpašić* cases (13) the European Court rendered judgments wherein it determined that public notaries do not fall under the category of a court as defined within the context of the Brussels Regulation and the European Enforcement Order Regulation. Nonetheless, it is widely acknowledged that an application for the issuance of a notarial payment order would undoubtedly be classified as the commencement of substantive proceedings. This is because such proceedings, if contested, evolve into conventional litigation.

#### IV. COMPETENT COURTS

The courts designated as competent to issue an EAPO, as referred to in Article 6(4) of the Regulation, are the Croatian courts which are competent to rule on the merits of a case.

Depending on the nature of the dispute, this could pertain to either one of the municipal courts (for civil disputes) or the commercial courts (for commercial disputes). (14) The rules which distinguish jurisdiction of civil and commercial courts are provided in the Code of Civil Procedure. (15)

In case law, there existed a misconception for a period that only the Municipal Civil Court in Zagreb held territorial competence for issuing EAPOs. (16) This matter was subsequently resolved through several rulings from the highest Croatian courts, which affirmed the

(12) See Art. 278-289 EA.

(13) CJEU, 9 March 2017, Cases C-551/15 and 484/15.

(14) The list of all courts is available at the official courts' webpage: <https://sudovi.hr/en/node/4>.

(15) See Art. 33 and 34.b of the Code of Civil Procedure (*Zakon o parničnom postupku*, hereinafter: ‘CCP’).

(16) The basis of the confusion was the exclusive jurisdiction of that court for the issuance of the European payment orders (prior to 2019), and its mentioning in Art. 346.b(4) EA.

applicability of standard national rules on jurisdiction, i.e. that the territorial competence is determined according to debtor's residence or registered seat. (17)

The right to appeal against the rejection or partial rejection of the creditors' request for issuance of an EAPO is granted under Article 21 of the EAPO Regulation. National implementing rules specify that the creditor may file an appeal against such rejections before the higher court which would have been competent for appeals against decisions rejecting requests for protective and preliminary measures. (18) These courts can be either:

1. a county court (*županijski sud*), if the decision was issued by a municipal court; or
2. the High Commercial Court of the Republic of Croatia (*Visoki trgovački sud Republike Hrvatske*), if the decision was issued by a commercial court. (19)

Regarding the remedies available to the debtor under Article 33(1) of the EAPO Regulation, it is stipulated that the same court that issued the preservation order will have jurisdiction over applications for revocation or modification of the preservation order. (20) Decisions from this court can further be appealed (21) before the higher courts mentioned above. (22)

The remedies available to the debtor in the process of enforcement of the preservation order (Article 34(1) EAPO Regulation – limitation or termination of enforcement) mainly concern the operations of the Financial Agency. However, as the Agency possesses only technical competences, requests for the limitation or termination of enforcement must be directed to the Civil Municipal Court in Zagreb. (23)

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(17) See Supreme Court, 7 May 2019, Gr1 194/2019-2; High Commercial Court, 5 May 2020, Pž-1231/2019-2; High Commercial Court, 7 October 2020, Pž-4056/2020-2.

(18) Art. 346.b(2) EA.

(19) See Art. 34a and 34c CCP, in connection with Art. 21(1) EA.

(20) Art. 346.b(3) EA.

(21) See Art. 37 EAPO Regulation.

(22) See also Art. 346.b(5) EA.

(23) Art. 346.b(4) EA.

## V. METHODS FOR OBTENTION OF ACCOUNT INFORMATION OUTSIDE AND WITHIN THE CONTEXT OF THE EAPO

The competent authority responsible for acquiring information regarding a debtor's account or accounts is the Financial Agency (FINA). (24) All bank accounts and financial assets maintained within Croatian banks are registered in the Unified Accounts' Register (UAR). Information related to these accounts and their holders, available within the electronic database maintained by FINA, can be disclosed to purported creditors for debt collection purposes. This data can also be shared by FINA with creditors aiming to obtain an EAPO. (25) For consultation and provision of data from the UAR in electronic form or on paper FINA charges respective fees.

Given that FINA possesses comprehensive and accurate information concerning financial assets held in Croatian financial institutions and considering its dual role as the national enforcement authority for funds in banks and other financial service providers, this method emerges as the most efficient and effective among those enumerated in Article 14(5) of the EAPO Regulation.

## VI. ENFORCEMENT OF EAPOS IN CROATIA

Under Article 346.b(8) EA, the authority competent to enforce the Preservation Order is Financial Agency (FINA). FINA is at the same time competent for the enforcement on the monetary funds under national enforcement rules and regulations. Such enforcement is conducted on all current and savings accounts held by enforcement debtors in any credit institution in the Republic of Croatia.

The enforcement debtor is identified by personal identification number. Enforcement is generally executed by preservation and subsequent transfer of the funds found in the accounts. Typically, it deals with all funds and all debtor's accounts according to a pre-set algorithm. The exceptions from freezing and enforcement are, however,

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(24) See Law on Financial Agency (*Off. Gaz.* 117/2001, 60/2004, 42/2005). Financial Agency is a fully-owned governmental company which provides various IT services to State Treasury and various other segments of government, but also keeps various registers and provides its services in enforcement and bankruptcy proceedings.

(25) Art. 346.b(7) EA.

defined by national law. (26) A specific portion of income essential for the debtor's subsistence is safeguarded and legally immune from seizure. To maintain the freedom to utilise these funds, the debtor is required to establish a dedicated protected account.

In Croatian law, FINA's enforcement activities are regulated by the Enforcement on Monetary Assets Act. (27) This law also regulates the order of priority regarding different banks and different forms of bank accounts. (28) Generally, temporal priority serves as the primary criterion. Since this principle is integrated into corresponding computer algorithms (a highly automated process), it raises doubts about the extent to which rules from the EAPO Regulation can be executed if they are at odds with national regulations. (29)

Domestically, enforcement on bank accounts operates with a high level of efficiency, some might even argue, excessively so. Following the financial crisis of 2008, over 350,000 individual consumers and more than 23,000 companies experienced frozen (or "preserved") bank accounts under the purview of FINA. Given that this figure accounts for roughly a quarter of the workforce in Croatia, it is understandable that this issue raised considerable concerns, bearing significant social and political implications.

Currently, the number of blocked bank accounts has decreased, although it remains substantial. Approximately 220,000 consumers and about 14,000 companies still struggle with frozen bank accounts (data accurate as of July 2023). (30)

## VII. OTHER RELEVANT MATTERS THAT HAVE RISEN RELEVANT TO THE APPLICATION OF THE EAPO

The primary challenge concerning the implementation of the EAPO lies in its limited practical application. To date, there have been only a minimal number of requests for EAPO issuance, and as far as our information indicates, no EAPOs have been issued yet. This situation is rather unexpected, especially given the efficiency of the domestic

(26) The amounts exempt from enforcement, as referred to in Art. 31 of the Regulation, are set out in Art. 172 EA (Exemption from enforcement) and Art. 173 EA (Limitation of enforcement).

(27) *Zakon o provedbi ovrhe na novčanim sredstvima* (ZPONS), *Off. Gaz.*, 133/20.

(28) See Art. 9 ZPONS.

(29) See, e.g. the provisions on priority from Art. 24(7) EAPO Regulation.

(30) <https://www.fina.hr/-/podaci-o-broju-ovrha-na-novcanim-sredstvima-poslovnih-subjekata-i-potrosaca-na-dan-31.-srpnja-2023.-godine>.



system in furnishing bank account information and executing fund enforcement within financial institutions. The notable underutilisation of the EAPO prompts further exploration of underlying reasons for such limited use

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