Recommendations for the digitalization of enforcement proceedings

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AmCham
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Introduction

At the end of 2020 the Republic of Croatia saw some alterations and amendments to the Enforcement Act, and on the 23rd of April 2021 the Ordinance on the forms in the enforcement procedure, the methods of communication by electronic means between the participants of the procedure and the allocation of cases to the notary public was published in the Official Gazette of the Republic of Croatia (OG 43/2021). The Ordinance introduces obligatory communication by electronic means in enforcement procedures between notaries, courts, creditors and debtors, who are obligated to use electronic communication utilizing the state network system.

The goals of the aforementioned amendments are to simplify and accelerate the enforcement procedures, reduce the cost of the procedure itself for the debtor and the bailiff and harmonization with the European Union legislation. The most important of the announced amendments, i.e. amendments intended to enable achieving the set goals, are the digitalization of the enforcement procedure, reducing the cost of the procedure and introducing courts into the enforcement system.

Taking this into consideration, the opinion of the American Chamber of Commerce in Croatia (AmCham) contains an array of additional proposals intended to facilitate successful and practical implementation of the enforcement procedure digitalization, and for it to result in a sustainable and effective system in the long term.

State of play in Croatia

The Enforcement Act currently in force in Croatia is effective and functions very well in practice when it comes to enforcements of financial assets. Namely, by conducting enforcements through notaries, 40% of enforcement decisions become final and enforceable within a month after commencement of the proceedings and as many as 95% of decisions become final within 3 months. Such speed of implementation of enforcement proceedings greatly helps creditors and debtors because it shortens the period in which statutory penalty interest is accrued. Enforcement is performed through the Financial Agency (FINA) promptly and transparently and it is automated and quick with good results also achieved in practice in enforcement of income implemented through employers.

It is possible to additionally upgrade and improve the existing system through systematic digitalization and automation of all segments of the system (if possible by taking cue from Slovenia) in order to network the entire system ranging from courts to notaries and the public administration system and minimizing the possibility of
manipulation or error (which was so far often critiqued by the public), as well as accelerating the procedure even more.

**The digitalization and the automation of the Enforcement Act implementation**

Optimal functioning of the enforcement system is possible to achieve through digitalization and automation of all parts of the procedure and by linking all of the participating subjects (enforcement authorities, bailiffs and debtors).

The Enforcement Act, or rather the **Ordinance on the forms in the enforcement procedure**, the methods of communication by electronic means between the participants of the procedures and the allocation of cases to the notary public (hereinafter: The Ordinance) should prescribe in detail the method of **starting mass enforcements** with the purpose of enabling fast and simple filing of a greater number of enforcement proposals. It happens in practice that a great number of bailiffs send mass enforcement proposals, up to a few thousands in one day, so it is not optimal to complete an individual form for every subject matter. This would disable filing a greater number of enforcement proposals at once, which is contrary to the European practice. This is a big problem for large creditors – banks, telecommunications companies, debt collection agencies, insurance companies, communal services companies etc., which are an important part of the economy. Every large creditor starts between 1000 and 5000 new enforcement procedures daily and monthly. Therefore, if the procedure remains based on the principle of a single entry, the expenses of administrative processing of cases with all participants involved will increase and the need for additional staff will appear. The duration of the procedure will have negative impact on the economic cycle dynamics and, consequently, on the assessment on the state of the entire economy (“Doing business”).

Additionally, this single entry principle is not beneficial for the debtor either, because if every subject matter is processed individually, the process is longer, and during that time statutory interest grows, increasing the total amount of their debt.

The current Ordinance, however, provides for flat-rate and only partial digital conduct of certain actions in the enforcement procedures based on an authentic instrument, where the latter would be sent and received according to the Ordinance on Electronic Communication (Official Gazette, No. 5/20), which is currently applied in civil procedures, for example. However, this current electronic communication system is relatively slow and complicated, and uploading and digitally signing, as well as downloading a single document, lasts as long as a couple of minutes. It also
experiences common technical problems. The aforementioned is somewhat applicable in civil procedures when a user uploads and downloads a few documents a day, as well as when drafting sporadic enforcement proposals. However, a great number of bailiffs, i.e. attorneys, draft numerous enforcement proposals, i.e. they draft them in batches of a few thousand enforcement proposals at once. For example, creating 3000 enforcement proposals in writing, together with signing, now lasts a maximum of 2-3 days. According to this new proposal, and taking into consideration the time needed to upload and sign using the current version of the e-system, the time needed to process approximately 3000 enforcement proposals would amount to 25 days, much longer than it is now, which is not the end goal of digitalization. The Slovenian enforcement system, for example, is adjusted precisely to the needs of starting mass enforcements.

Examples of good practice from the EU

Republic of Slovenia

In the Republic of Slovenia collection of receivables is regulated by the Enforcement Act and additional secondary regulations. The Slovene system is based on systematic digitalization whose introduction was in preparation for 5 years in cooperation with and in accordance with recommendations of German legal and economic experts. Good preparation resulted in impeccable technical and operational functioning of the system from day one. The basic characteristic of the system is that it allows creditors to perform collection through an advanced and nearly fully automated enforcement system. The creditors are allowed to enter, using a special platform, predefined data in proposed enforcement templates individually or in batches and the system consisting of linked platforms associated with courts, the Tax Administration, the Ministry of the Interior, the Pension Insurance Institute, the Land Registry and similar institutions automatically verifies the entered data and predefined costs of proceedings depending on amount of the debt. This prevents any accidental or intentional manipulation of data or data accuracy and therefore no additional verification or correction by the enforcement procedure authority is needed. Because of this, the entire Slovene enforcement system rests on a single court (Orajno sodišče v Ljubljani), specifically a single department of the court – COVL (Centralni odelek za verodostojno listino), employing 5 judges, about 40 court assistants and about 20 recording clerks. Therefore the system rapidly produces and dispatches enforcement decisions which become final within no more than 2 months. The system is inexpensive for both creditors and debtors because it is fast, efficient and simple to use. While researching the Slovenian methods of practice, it was determined that the Slovenian system unfortunately has one major deficiency: after the enforcement decision becomes final, the central court refers the
implementation of the enforcement to local courts, and this is where it reaches a more significant halt. In this segment the Croatian system of the out-of-court implementation of enforcement of financial assets should be given advantage over the Slovenian system.

**Recommendations for the digitalization of enforcement proceedings**

**Mass enforcements – large creditors and automation**

In order to substantially simplify and accelerate the procedure, we believe it is necessary to enable one of the following two options;

1. **Mass uploading (and mass automatic signatures)** in the electronic enforcement system) of a large number of enforcement proposals at once with automatically adding an authentic instrument and connecting it to a concrete enforcement proposal by a link, or **creating this document as an integral part of the enforcement proposal form** (this second option would additionally increase the speed of the procedure).

2. **Mass uploading data from the creditors’ system into the digital enforcement system**, where enforcement proposals would be created immediately and automatically. Those proposals are then returned to the bailiff to sign as one batch of documents, and they are signed digitally as a batch – all of them at once. Mass uploading of a large number of enforcement proposals at once and automatically adding an authentic instrument, or creating the instrument as an integral part of the enforcement proposal form (this second option would additionally increase the speed of the procedure). We also propose that **uploading documents with a larger number of pages** should also be enabled (in pdf), i.e. increasing the proposed maximum storage space.

The aforementioned methods are applied in the Slovenian system as well, so they are legal and technically possible to achieve. In Slovenia the authentic instrument is initially not even provided, unless as evidence in case the debtor files a complaint. Also, certified systems for mass digital signatures can already be found on the Croatian market, so the digital enforcement system could utilize the principle of such technical solutions.
When it comes to integration, one complete system integrating more systems and connected to the state administration system (the Ministry of the Interior, the Tax Administration) should be developed. The system in connection with the state administration would automatically report possible errors in the data (fields) which are needed to complete the enforcement proposal, it would send back correct data in the same format the initial data was input (for example excel – it is advised to implement one default (standard) format for data input), and then the bailiff would complete the enforcement form again by inputting the correct data. The system should be adjusted in order to not allow for the implementation of enforcement proposals still containing incorrect data, for example certain problems with PIN (which happens in practice with people who have moved abroad, deceased people etc.). The bailiff should further investigate the cause of the problem and then, depending of the outcome, such enforcement proposals would not be further processed. Authentic instruments would also be provided electronically, and the link between the enforcement procedure and the authentic instrument would be a unique case identification, where the system would pair these two documents by itself, or the authentic instrument would be an integral part of the enforcement proposal. In addition, since there must be strictly defined rules on the co-dependence between the amount of the debt and the costs of the enforcement procedures, the system should be able to automatically generate the amount of costs itself according to pre-defined rules, as soon as the data on the amount receivable is input into the system. This helps avoid unnecessary steps and transfers of documents between courts, notaries and bailiffs, and saves courts’ and notaries’ resources, because they wouldn’t need to inspect the cases manually if the system would do it by itself. This also helps to avoid the possibility of human error, be it intentional or incidental, as well as different types of abuse.

Furthermore, it is necessary to develop a user-friendly interface, where all users could automatically find the data related to the cases they participate in, statistics and all related documents. For example, all enforcement numbers, dates of finalization, names of notaries, phases of the case etc.; the bailiff would also be able to download generated enforcement orders on the interface with one click. The deadlines for delivery should be controlled by the bailiffs as well – since the entire procedure is conducted in the same application system. The bailiffs should be given technical means to communicate with the notaries, track delivery dates and the course of the proceedings, encourage notaries to work faster (more timely), get statistical data from the system etc. using the application.
**Advantages of an integrated system**

- Accelerating and simplifying finalization of the enforcement order – the notaries and courts are not burdened by the need to inspect the integrity of an enforcement proposal manually, since the system has already confirmed its integrity and eligibility;
- Avoiding human-made errors (intentional and incidental);
- Enforcement proposals could be generated and finalized in one day, as well as delivered to the creditor (and received by them);
- The technically achievable solutions in questions already exist in practice (for example, the Slovenian system already actively functions in the same way, and for their effective solution they have received the Crystal Scales of Justice prize of the European Commission and the European Council).

It is definitely necessary to strive towards a complete, technically achievable solution, i.e. a quality system that is sustainable in the long term and in coherence with the EU practice. Only well-done digitalization can at least partially overcome the deficiencies of the system where enforcements are once again conducted by courts (and this responsibility was previously taken from them precisely in order to accelerate the enforcement procedure, address backlog and relieve the courts).

**Additional suggestions**

As one more possible alternative, it is possible to introduce only one court responsible for dealing with enforcement procedures instead of including all courts, or one department which would deal with enforcements only on the entire state level (the Slovenian principle). This would indubitably facilitate accelerating and improving the efficiency of enforcement procedures even more, and overcoming all the problems caused by possible introduction of all courts into the enforcement system.

In addition, since it represents a great novelty for the enforcement system, it would surely be necessary, in order to avoid halts in implementation and additional confusion, to foresee a transitional period from the creation of the final system until the beginning of implementation of at least 6 months, so that system users, and especially large users, have a chance to adjust to their work systems in the digital enforcement system, and to hold user educations.

**Suggestions for the optimization of the enforcement procedure forms**

In order to avoid possible obstacles during implementation, the Ordinance should be clear, detailed and achievable in practice. Therefore we propose the following:
• **Enabling the input of all receivable segments** for which enforcement order is requested, with different due dates. For example, when it comes to debts to telecommunications companies, automatic input of a greater number of telecommunications invoices with different amounts should be enabled; with bank claims, addressing the claims to payment of principal, legal statutory interest, fees etc. should be enabled (since those segments can also have different due dates, some are still subject to legal statutory interest and some are not etc.). This proposal is important to facilitate the progress of the enforcement procedure, but also to protect the debtors. The contrary makes it practically impossible to create an enforcement proposal by the technical means available. The only alternative is that the creditor creates an individual enforcement proposal for each of the aforementioned segments (5 invoices = 5 enforcement proposals, instead of 5 invoices = 1 enforcement proposal, or principal, agreed interest, statutory interest, fee = 4 enforcement proposals, instead of principal, agreed interest, statutory interest, fee = 1 enforcement proposal). Every enforcement proposal creates additional procedure costs for both the debtor and the bailiff.

• The form must be **clear and unambiguous** regarding meaning and the obligatory content of each field. The current form proposal is quite unclear and in practice every unclear item required additional explanation.

• Including a **glossary** within the Ordinance – otherwise many enforcement procedures will be dismissed or returned to be corrected (if this option is adopted), with no fault on the bailiff’s part, which only creates unnecessary costs.

• **Including representatives of the business community** into technical development of the application.

**Conclusion**

The Ordinance described in detail in this text and the announced amendments to the Enforcement Act foresee the possible and necessary system, which is sustainable in the long term. Such system can only be the one which is organized systemically and in detail in its entirety, or at least partially with the focus on the parts requiring change and improvement the most, and which is carefully planned and developed. The greatest potential certainly lies in the segment lacking the most in the current enforcement system, and that is the digitalization and the automation of the procedure. Therefore the aim of this document is to showcase an array of constructive and practical recommendations and examples we consider to be beneficial to the development of an effective digital system. By following the aforementioned recommendations, we believe that the enforcement procedure will become more
effective, faster and cheaper for both the interested parties and the enforcement authorities, and that this procedure will become an example of healthy functioning of the entire economy, at the same time respecting the dignity of the debtor and increasing their rights.

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