

# **IMPLEMENTATION OF THE EVIDENCE REGULATION IN CROATIA**

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# EVIDENCE REGULATION

Council Regulation (EC) No 1206/2001 of 28 May 2001  
on cooperation between the courts of the Member States  
in the taking of evidence in civil or commercial matters

**A regulation is a binding legislative act, law.**

**It must be applied directly in its entirety across the EU.**

**National governments do not have to take any action themselves to implement it.**

**However, it is desirable, that national law has provisions  
which alleviate, facilitate the application of a regulation.**



A regulation may take into account national law and have

- \*provisions with alternatives, options
- \*provisions with “if it is compatible with the law of the Member State”
- \*provisions with “in accordance with the law of Member State”



**Evidence Regulation does not harmonize evidence law of Member States.  
It only simplifies and accelerates cooperation between their courts.**

# LEGAL SOURCE FOR IMPLEMENTATION OF THE EVIDENCE REGULATION IN CROATIA

## **Arts 507.d-507.h of the Croatian Civil Procedure Act (CPA)**

Deviation from the common rules on international legal/judicial assistance:  
Arts 181-184 CPA

The Evidence Regulation shall apply in civil or commercial matters (Art. 1(1) ER):  
\*in comparison to Brussel I Regulation there is no limitations  
in the scope of the application

- all contentious civil proceedings**
- bankruptcy, insolvency proceedings,**
- enforcement proceedings;**
- other non-contentious civil proceedings**
- also in case of a civil claim for damages within criminal proceedings**

### **(-arbitration proceedings)**

The arbitral tribunal, or a party with the approval of the arbitral tribunal,  
may request legal assistance from a competent court  
(Commercial Court in Zagreb, County Court in Zagreb)  
in taking evidence that the arbitral tribunal itself could not take.

Art. 45(1) Croatian Law on Arbitration

\*state court shall request legal assistance from the foreign state court

# Art. 507.d CPA – ACTIVE AND PASSIVE JUDICIAL ASSISTANCE

*not a party or its representative*

***active judicial assistance***

Where taking of evidence should be conducted pursuant to Regulation 1206/2001,  
the court

\*may request competent court of another Member State directly to take evidence,

or

\*pursuant to requirements referred to in Article 17 of Regulation No 1206/2001 may request to take evidence directly in another Member State.

***passive judicial assistance***

In accordance with Art. 1(1)(a,b) ER

## Art. 507.e(1). CPA

### THE IMPROVED CLASSICAL ACTIVE JUDICIAL ASSISTANCE

§ 291.a Austrian ZPO?

*General principle relating to costs (Art. 10(1) CPA:  
The court is obliged to conduct the proceedings without  
causing any delays, with the minimum of costs*

Not any member  
of the judicial personal  
(# Art. 12(2) ER!)



Proposal of the party  
is not needed.



↑  
Costs?



**A single judge or an authorised member of the panel of a Croatian court** requesting taking of evidence may, in cases where Regulation No 1206/2001 applies and pursuant to that Regulation, **be present and participate** in the performance of taking of evidence by the requested foreign court.

**Parties, their representatives and expert witnesses** may participate to the extent that they might participate in taking of evidence before a Croatian Court.

*The first sentence is necessary because of Art. 12 ER:*

*Performance with the presence and participation of representatives of the requesting court is possible, if it is compatible with the law of the Member state of the requesting court.*

*The second sentence is necessary because of Art. 11 ER:*

*Performance with the presence and participation of the parties is possible, only if it is provided for by the law of the Member State of the requesting court.*

## Art. 507.e(2) CPA

### DIRECT TAKING OF EVIDENCE BY THE REQUESTING COURT

Not any member  
of the judicial personnel



**A single judge or an authorised member of a panel of a Croatian court and expert witnesses authorised by a Croatian court** may directly take evidence abroad pursuant to Article 17 Paragraph 2 of Regulation No 1206/2001.

*The provision is necessary.*

*According to Art. 17(3) ER the taking of evidence shall be performed by a member of the judicial personnel or by any other person such as an expert, who will be designated, in accordance with the law of the Member State of the requesting court.*

A party may propose to the proceeding Croatian court:

- \*the classical international active judicial assistance,
- \*the improved classical international active judicial assistance (participation in the performance of the taking of evidence)

\*the international passive judicial assistance (direct taking of evidence by the requesting court)



**The court is not bound by the proposal of the party.**

Art. 507.f CPA  
COMPETENT COURTS FOR THE PERFORMANCE  
OF THE TAKING OF EVIDENCE

**The municipal court** within whose district a procedural action is to be taken shall be competent for the performance of taking of evidence as the requested court within the meaning of Art. 2(1) of Regulation No 1206/2001.

**The president of the Supreme Court of the Republic of Croatia** may, for the performance of taking of evidence within the meaning of Paragraph 1 of this Article, authorise only one or several municipal courts from the territory of one or several county courts.

In accordance with Art. 2(2) ER we communicated to the Commission the list of the competent courts.



See information provided by Croatia in both Croatian and English on EU legislation in the field of judicial cooperation in civil matters:

[https://e-justice.europa.eu/content\\_croatia\\_cooperation\\_in\\_civil\\_matters-276-en.do](https://e-justice.europa.eu/content_croatia_cooperation_in_civil_matters-276-en.do)

## Art. 507.g CPA - LANGUAGE

Requests to take evidence and notifications pursuant to Regulation 1206/2001 have to be drawn up in **Croatian** or a translation into Croatian has to be attached.

According to Art. 5, sent. 2. ER each Member State shall indicate the official language or language of the institutions of the EU **other than its own** which is or are acceptable to it for completion of **the forms**

### +English

- \*Austria
- \*Hungary
- \*the Netherlands
- \*Slovenia

### +French

United Kingdom

### +English, German, Slovak

- \*Czech Republic

### Only the own language

- \*Germany
- \*France
- \*Italy
- \*Slovakia
- \*Croatia

**Language as a big barrier in the cross-border taking of evidence**  
**\*costs, time**



# MEANS OF OF TRANSMISSION OF REQUESTS AND OTHER COMMUNICATIONS

Art. 6. ER:

They should be transmitted by the swiftest possible means,  
which the requested Member State has indicated it can accept.

The transmission may be carried out by any appropriate means,  
provided that the document received accurately reflects the content of the document  
forwarded and that all information in it is legible.

No special provision in the Croatian CPA.

Information provided by Croatia on EU legislation  
in the field of judicial cooperation in civil matters:

[https://e-justice.europa.eu/content\\_croatia\\_cooperation\\_in\\_civil\\_matters-276-en.do](https://e-justice.europa.eu/content_croatia_cooperation_in_civil_matters-276-en.do)

\*the address, telephon, fax and website of the competent courts:  
-It is possible to conclude, that the means of receipt of documents are:

**\*post and fax**

\*e-mail?

## Art. 507.h – CENTRAL BODY

The central body within the meaning of Art, 3 of Regulation No 1206/2001 shall be the ministry in charge of justice.

↓  
**Ministarstvo pravosuđa Republike Hrvatske**

Ulica grada Vukovara 49

tel: +385 1 371 40 00

fax: +385 1 371 45 07

web: [www.mprh.hr](http://www.mprh.hr)

It is responsible for:

\*supplyng information to the courts  
\*seeking solutions to any difficulties which may arise in respect of a request  
\*forwarding, in exceptional cases, at the request of a requesting court, a request to the competent court  
(active judicial assistance)

taking decisions on request pursuant to Art. 17 ER  
(passive judicial assistance)

# VIDEOCONFERENCES AND TELECONFERENCES

Art. 17(4)sent.3 ER:

The central body or the competent authority shall encourage the use of communications technology, such as videoconferences and teleconferences.

Croatian CPA has no provisions on possibility of videoconferences and teleconferences.  
(see e.g. § 128.a German CPC; and § 277 Austrian CPC)

**Croatian courts have no equipment for this technology for the time being.**

Videoconferences are ideal for the principle of directness and for saving of costs.

Videoconferences should be the first choice in the cross-border taking of evidence.

# AGREEMENTS, ARRANGEMENTS BETWEEN MEMBER STATES

Art. 21 ER:

This Regulation shall, **in relation to matters to which it applies, prevail** over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States and in particular the Hague Convention of 1 March 1954 on Civil Procedure and The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, in relations between the Member States party thereto.

This Regulation shall not preclude Member States from maintaining or concluding agreements or arrangements between two or more of them **to further facilitate the taking of evidence**, provided that they are **compatible with this Regulation**.

Croatia sent to the Commission the list of the maintained agreements

[https://e-justice.europa.eu/content\\_croatia\\_cooperation\\_in\\_civil\\_matters-276-en.do](https://e-justice.europa.eu/content_croatia_cooperation_in_civil_matters-276-en.do)

- Agreement on Mutual Legal Exchange between the Federal People's Republic of Yugoslavia and the Republic of Austria from December 16, 1954,
- Agreement on Legal Cooperation in Civil and Commercial Matters between the Socialist Federal Republic of Yugoslavia and the Kingdom of Belgium from September 24, 1971,
- Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Bulgaria on Mutual Legal Cooperation from March 23, 1956,
- Agreement between the Socialist Federal Republic of Yugoslavia and the Czech Socialist Republic on Regulation of Legal Relationship in Civil, Family, and Criminal Matters from January 20, 1964
- Agreement on Facilitation of Application of the Hague Convention on Civil Proceedings from March 1, 1954 between the Socialist Federal Republic of Yugoslavia and the Republic of France from October 29, 1969,
- Convention on Mutual Legal Relations between the Federal People's Republic of Yugoslavia and the Kingdom of Greece from June 18, 1959,
- Convention between the Federal People's Republic Yugoslavia and Italy on Mutual Legal Aid in Criminal and Administrative Matters from December 3, 1960,
- Agreement between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary on Mutual Legal Exchange from March 7, 1968,
- Agreement on Changes and Amendments to the Agreement between the Socialist Federal Republic Yugoslavia and the People's Republic of Hungary on Mutual Legal Exchange from March 7, 1986,
- Agreement on the Amendments on the Agreement between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary on Mutual Legal Exchange from April 25, 1968,
- Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on Legal Exchange in Civil and Criminal Matters from February 6, 1960,
- Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Romania on Legal Aid from October 18, 1960,
- Agreement between the Republic of Croatia and the Republic of Slovenia on Legal Assistance in Civil and Criminal Matters from February 7, 1994,
- Convention between the Kingdom of Yugoslavia and Great Britain on the Establishment of Mutual Aid in Conducting Proceedings in Civil and Commercial Matters That Are Pending, or May Be Pending, Before Judicial Authorities from February 27, 1936.

# RELATIONSHIP BETWEEN BRUSSELS I REGULATION AND EVIDENCE REGULATION

Securing, preservation of evidence

Domestic law grants a party  
a right to apply for a protective  
or provisional measure

↓  
\*Belgium  
\*Denmark  
\*France  
\*Greece  
\*Ireland  
\*Italy  
\*Luxemburg  
\*Sweden

Specific (independent)  
evidentiary proceedings

↓  
\*Austria  
\*Croatia  
\*Finland  
\*The Netherlands  
\*Portugal  
\*Scotland  
\*Slovenia  
\*Spain

**Application of Art. 31 Brussel I Regulation or/and Art. 1(2) of Evidence Regulation?**

St. Paul Dairy Industries NV v. Unibel Exser BVBA,  
ECJ, 28. 4. 2005, C-104/03, 2005 ECR I-3481

Could the provision in Art. 186 *et seq.* of the Netherlands Code of Civil Procedure concerning the “preliminary hearing of witnesses prior to the bringing of proceedings” be characterized as a provisional or protective measure within the meaning of Art. 24 of the Brussels Convention (now Art. 31 of the Brussels I Regulation)?

**Evidence Regulation should take precedence over the provisional or protective measures available under Art. 31 of the Brussels I Regulation.**



A lot of critique.

Opinion of **Advocate General Juliane Kokott** in Case C-175/06 of 18 July 2007  
(Tedesco./Tomasoni Fittings and RWO)  
No decision of the ECJ.

**Provisional measures which are meant to secure the primary claim based on substantive law are only available under Art. 31 of the Brussels I Regulation, whereas purely procedural measures whose function is limited to securing or to preserving evidence are subject to the Evidence Regulation.**

**Addition:**

**If the domestic measure for securing evidence can be recognised and enforced in another MS Art. 31 Brussels I Regulation may be applied.**



**THANK YOU FOR YOUR ATTENTION.**