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FACILEX
FACILITATING MUTUAL RECOGNITION;
ANALYTICS AND CAPACITY BUILDING
INFORMATION LEGAL EXPLAINABLE TOOL
TO STRENGTHEN COOPERATION
IN THE CRIMINAL MATTER



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2 List of Acronyms

AJCCMEU	- Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union
CJEU	- Court of Justice of the European Union
CPA	- Criminal Procedure Act
Directive 2014/41	- Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
EAW	- European Arrest Warrant
ECHR	- European Court of Human Rights
EIO	- European Investigation Order
EIO Directive	- Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
EU	- European Union
FD EAW	- Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)
Regulation	- Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders

3. Executive Summary

This report provides a comprehensive analysis of the transposition of three EU mutual recognition instruments in Croatia: The European Arrest Warrant (EAW), the European Investigation Order (EIO), and Regulation 1805/2018 on mutual recognition of freezing and confiscation orders. The cornerstone of Croatia's legal framework for implementing EU



mutual recognition instruments is the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union (AJCCMEU), which was adopted before Croatia's EU accession in 2013. The AJCCMEU has been amended multiple times to align with EU standards, implementing over 20 EU mutual recognition instruments, with recent amendments ensuring compliance with evolving EU legal standards.

Croatia's EAW system is broad in scope, offering limited protections for its nationals and excluding the statute of limitations as a ground for non-recognition. The implementation closely aligns with EU requirements but has provoked national debate, particularly regarding the protection of Croatian citizens. Since joining the EU in 2013, Croatian courts have shown high trust in the criminal justice systems of other Member States and have rarely considered grounds for refusal. Recent developments in the case law of higher courts mark the end of an era of automatic recognition of foreign judicial decisions without verifying compliance with fundamental rights in Croatia and reflects Croatia's commitment to EU principles of mutual trust, human rights, and proportionality in EAW execution. Regarding the rights of the requested person, Croatian law fully aligns with the provisions of the EAW FD. Persons arrested on the basis of an EAW are afforded the same rights regularly guaranteed to persons arrested within Croatia's criminal procedure framework. Also, the procedure for executing the EAW in Croatia is fully regulated in compliance with the EAW FD provisions.

On the EIO, Croatia's case law has been less comprehensive. While the 2024 amendments harmonized certain aspects of the EAW procedure, similar changes have not been applied to the EIO, resulting in inconsistencies with EU law. Judicial remedies for challenging certain investigative actions under the EIO remain underdeveloped, with significant gaps identified following recent rulings by the Court of Justice of the European Union (CJEU).

Regulation 1805/2018 on mutual recognition of freezing and confiscation orders has been applied directly in Croatia, although case law remains limited. A pending case referred to the CJEU raises critical questions about the recognition of confiscation orders and procedural safeguards in Croatia's legal system.

In conclusion, Croatia has made significant progress in integrating EU mutual recognition instruments into its legal system, showing strong judicial cooperation and alignment with EU standards. However, gaps remain in the full implementation of the EIO

and legal remedies associated with it, as well as in the practical application of Regulation 1805/2018.

4 The implementation of criminal mutual recognition instruments in Croatia

4.1 Introduction

4.1.1 Overview of the criminal procedural system

The sources of criminal procedural law establishing the institutional and procedural legal framework of criminal proceedings in Croatia are the Constitution of the Republic of Croatia, laws on the organization of criminal justice and criminal procedural laws. Although the main source of criminal procedural law is the Criminal Procedure Act, in the last two decades, the legislation has been diversified, with the adoption of large number of special procedures that regulate particular types of criminal proceedings such as the laws on juvenile courts,¹⁰¹⁶ on the liability of legal persons for criminal acts,¹⁰¹⁷ on the Office for Suppression of Corruption and Organized Crime (USKOK),¹⁰¹⁸ on persons with mental disorders,¹⁰¹⁹ etc.

Croatian criminal procedure, for the last century and half, has been a mix of adversarial and inquisitorial characteristics.¹⁰²⁰ The **Croatian Criminal Procedure Act (CPA)** enacted in **2008**,¹⁰²¹ marked a latest profound legislative reform by replacing the traditional judicial investigation with a prosecutorial investigation, reinforced accusatorial elements at trial,

¹⁰¹⁶ Act on Juvenile Courts (*Zakon o sudovima za mladež*) Official Gazette No. 84/11., 143/12., 148/13., 56/15., 126/19.

¹⁰¹⁷ Act on the Liability of Legal Entities for Criminal Offenses (*Zakon o odgovornosti pravnih osoba za kaznena djela*) Official Gazette No. 151/03., 110/07., 45/11., 143/12., 114/22., 114/23.

¹⁰¹⁸ Law on the Office for the Suppression of Corruption and Organized Crime (*Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta*) Official Gazette No. 76/09., 116/10., 145/10., 57/11., 136/12., 148/13., 70/17.

¹⁰¹⁹ Act on the Protection of Persons with Mental Disorders (*Zakon o zaštiti osoba s duševnim smetnjama*) Official Gazette No. 84/11., 143/12., 148/13., 56/15., 126/19.

¹⁰²⁰ See Maja Munivrana Vajda and Elizabeta Ivičević Karas, *Croatia, in International Encyclopaedia of Laws: Criminal Law* (Wolters Kluwer 2016) 31.

¹⁰²¹ Criminal Procedure Act (*Zakon o kaznenom postupku*), Official Gazette No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24.

and substantially limited the rights of the defense.¹⁰²² The balance between protecting human rights and ensuring efficiency was restored by the Decision of the Constitutional Court of the Republic of Croatia on July 19, 2012.¹⁰²³ This decision established the principle of proportionality in limiting human rights, reinforced the principle of judicial supervision, restored the procedural rights of defense in the pretrial proceedings, and enhanced the important inquisitorial powers of the trial court as well as other elements essential for a fair trial in criminal proceedings.¹⁰²⁴

The courts competent in criminal cases include communal courts, county courts, the High Criminal Court and the Supreme Court of the Republic of Croatia.¹⁰²⁵ **The State Attorney's Office**¹⁰²⁶ is an autonomous and independent judicial body authorized to prosecute perpetrators of criminal (Art. 121.a Constitution of the Republic of Croatia).¹⁰²⁷ It is functionally separated from the Government and the Ministry of Justice, which do not have the authority to issue instructions in specific criminal cases.

Criminal proceedings in Croatia, in principle, consist of **five stages**: (1) inquiries (2) the investigation or the informal investigation,¹⁰²⁸ (3) the indictment and judicial control of the indictment, (4) the trial and the judgment, and (5) the proceedings on legal remedies.

There are also few types of **abbreviated proceedings**, that do not consist of all procedural stages, such as direct indictment (indictment without prior investigation if there is sufficient evidence to prosecute), judgment based on agreement of the parties, abbreviated proceedings in case of pleading guilty of criminal offence for which a fine or imprisonment up to five years is prescribed by law and the penal order. In addition, in case of prosecution of criminal offences on the basis of private charges, which is prescribed in Criminal Code for minor number of less serious criminal offences, the criminal proceedings start once the court schedules the trial so there are no pre-trial proceedings.

¹⁰²² Zlata Đurđević, *Suvremeni razvoj hrvatskoga kaznenog procesnog prava s posebnim osvrtom na novelu ZKP iz 2011.*, in Hrvatski ljetopis za kazneno pravo i praksu, (2)2011, 316 – 317.

¹⁰²³ Decision of the Constitutional Court of the Republic of Croatia No.: U-I-448/2009 of July 19, 2012.

¹⁰²⁴ Zlata Đurđević, *Odluka Ustavnog suda RH o suglasnosti Zakona o kaznenom postupku s Ustavom.* (2012) 19 Hrvatski ljetopis za kazneno pravo i praksu, 409-438.

¹⁰²⁵ Zakon o sudovima (Law on Courts, "Official Gazette" No. 28/13., 33/15., 82/15., 82/16., 67/18., 126/19., 130/20., 21/22., 60/22., 16/23., 155/23., 36/24.)

¹⁰²⁶ Act on the State Attorney's Office (*Zakon o državnom odvjetništvu*), Official Gazette No. 67/18, 21/22.

¹⁰²⁷ Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), Official Gazette No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/2001, 76/10, 85/10, 05/14.

¹⁰²⁸ The informal investigation is conducted for criminal offences for which a fine or imprisonment up to five years is prescribed by law, and investigation for criminal offences for which a punishment of more than five years is prescribed by law.

Inquiries are usually initiated with filing **the crime report** to the **state attorney** which is the “authority conducting the pre-trial proceedings” (Art. 202(35) CPA) and *dominus litis* of the whole pre-trial stage. Citizens, state authorities and particularly police, as well as legal entities have a duty to report criminal offences prosecuted *ex officio*. In order to decide on the crime report, the state attorney may conduct inquiries, or order inquiries to the police. Inquiries (Articles 206.f – 211 CPA) are regulated in detail in Act on the State Attorney’s Office¹⁰²⁹ and in the Act on Police Competences and Powers.¹⁰³⁰ Although **the police** are not subordinated to the State Attorney’s Office, as they are part of the Ministry of Interior, they are obligated to obey the state attorney’s orders in conducting inquiries. Yet, the police have a duty to conduct police inquiries *ex officio* as well as to promptly inform the state attorney about them. **Inquiries** include informative conversations, polygraph testing, inspection of persons, objects and vehicles, collecting, evaluating, storing, processing and using data etc. (Art. 13(1)(1) of the Act on Police Competences and Powers).

The state attorney is bound by the **principle of mandatory prosecution**, and may only exceptionally drop the charges applying the **principle of discretionary prosecution** if she or he determines that continuing the prosecution would not be in the public interest.¹⁰³¹ **The purpose of the investigation**, as defined by law, is to collect all the evidence and information necessary to decide whether to file the indictment or to discontinue the proceedings, as well as to collect evidence that risks spoliation, in other words, if there is a danger that it may not be possible to repeat it at the trial, or the presentation of which may involve difficulties (Art. 216(3) CPA).¹⁰³² The State Attorney as a rule interrogates witnesses *in camera*, that is to say without the presence of the defence. However, in some cases, upon request by the defence, the state attorney or the injured person, the judge of investigation may hold an evidentiary hearing and produce the evidence in the presence of both parties (Art. 236 CPA). **The judicial control** over prosecutorial and investigatory functions of the state attorney is provided by the judge of the investigation. **The judge of the investigation**

¹⁰²⁹ Act on the State Attorney’s Office (*Zakon o državnom odvjetništvu*), Official Gazette No. 67/18, 21/22.

¹⁰³⁰ Act on Police Competences and Powers (*Zakon o policijskim poslovima i ovlastima*), Official Gazette No. 76/09, 92/14, 70/19.

¹⁰³¹ Thus the State Attorney, under conditions prescribed by law, may either unconditionally or conditionally dismiss a crime report or desist from a criminal prosecution (Art. 521 and 522 CPA); attribute to a witness a role of a ‘crown witness’ in criminal proceedings for criminal offences of corruption and organized crime (Art. 212 CPA, Art. 36-47 Act on the Office for Combating Corruption and Organized Crime); and give procedural immunity to a witness in criminal proceedings for serious criminal offences (Art. 286(2) CPA).

¹⁰³² Munivrana Vajda and Ivičević Karas, *Croatia, in International Encyclopaedia of Laws: Criminal Law* (n1) 145 – 146.

decides on the application of coercive measures that intrude fundamental rights and freedoms such as pre-trial detention, bail, searches and seizures, etc., but also controls the existence of conditions required for initiating, conducting and discontinuing investigation or informal investigation.¹⁰³³ However, in Croatia, there is no judicial oversight of the state attorney's decision that conditions for criminal prosecution are not met, including the decision to dismiss a criminal report or not to file an indictment.

Once the investigation is completed, the state attorney files the indictment before the competent court (Art. 341(1) CPA). **The stage of indictment and its judicial control** is a mandatory intermediate stage whose main purpose is to provide a judicial control over the further criminal prosecution of the defendant. Based on the case file and the evidence presented at the adversarial hearing, the indictment panel confirms the indictment if it is founded (Art. 354, para 1 CPA), and then the case is referred to trial. On the other hand, the indictment panel must discontinue criminal proceedings if there is any circumstance excluding the defendant's culpability or barring prosecution, or if there is insufficient evidence for reasonable suspicion (Art. 355 CPA).

The trial stage is dominated by the accusatorial features, particularly the principle of party presentation of evidence in criminal proceedings. The Court must, as a rule, admit requests of the parties to introduce evidence, if such requests are legal and pertinent.¹⁰³⁴ However, the court kept inquisitorial powers to present evidence on its own since 'presentation of evidence extends to all facts deemed by the court and the parties to be important for a correct adjudication' (Art. 418(1) CPA).

The prohibition of the use of illegal evidence in criminal proceedings is proclaimed at the constitutional level (Art. 29(4) Constitution). Croatia has a mixed system of *ex lege* and *ex iudicio* exclusion of evidence. However, the overwhelming majority of exclusionary rules are prescribed by the CPA, and such evidence must be excluded despite their probative value. Only in a narrow range of cases, related to more serious offences and violations of the rights to defence, privacy and reputation, the judges decide on the admissibility of evidence by applying the principle of proportionality (Art. 10. CPA).

¹⁰³³ Davor Krapac, *Kazneno procesno pravo Prva knjiga: Institucije* (Narodne novine 2020) 112 – 113.

¹⁰³⁴ The court may deny a motion to introduce evidence for only four reasons (Art. 421(1) CPA) - if the evidence is: (1) impermissible (if the proposed evidence is unlawful or if it relates to a fact which may not be proven under the law), (2) irrelevant, (3) inappropriate, or (4) it delays proceedings. A ruling denying a motion for presentation of evidence must always be reasoned, and it can be appealed.

The right to appeal individual legal decisions made in first-instance proceedings by courts or other authorized bodies is a constitutional right protected by the Art. 18(1) of the Croatian Constitution. In Croatian criminal proceedings, **the appeal** is the only regular remedy (*remedium ordinarium*) from a judgment of the first instance court. It has a suspensive effect, meaning that the first instance judgment will not become final and enforceable pending the appellate decision. As the sole remedy against a trial judgment, it has a full range of rebuttal, allowing the parties to challenge both factual and legal errors or question the overall correctness and legality of the judgment.¹⁰³⁵ The appellate court (county courts and the High Criminal Court, and in the third instance, the Supreme Court) issues its decision at a public session of the appellate panel where both parties may be present. Once the judgment is final, there are **three extraordinary legal remedies** (*remedium extraordinarium*): a request for reopening of criminal proceedings, a request for the protection of legality and a request for the extraordinary review of the final judgment. The last two are decided by the Supreme Court of the Republic of Croatia.

4.1.2 Overview of the implementation roadmap

In addition to international agreements, international cooperation in criminal matters in Croatia is regulated by two distinct Acts, one for classical mutual legal assistance outside the European Union and the other for supranational cooperation with EU Member States. The 2004 *Act on mutual legal assistance in criminal matters*¹⁰³⁶ regulates cooperation with States outside the EU or with States that opted out from the Area of freedom, security and justice. The EU mutual recognition instruments are implemented in a separate *Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union* (AJCCMEU).¹⁰³⁷ Besides the AJCCMEU, implementation of some instruments required legislative amendments of other criminal justice laws, including the Criminal Procedural Act, which covers aspects such as arrest procedures, detention, the rights of individuals,

¹⁰³⁵ There are four specific grounds for appeal (Art. 467 CPA): (1) a substantial violation of the criminal procedure provisions, (2) a violation of the criminal code, (3) an erroneous or incomplete determination of facts, or (4) a wrong decision on criminal sanctions, on forfeiture of property gain, costs of criminal proceedings, claims for indemnification, or the publication of the judgment in the media.

¹⁰³⁶ Act on International Legal Assistance in Criminal Matters (*Zakon o međunarodnoj pravnoj pomoći u kaznenim stvarima*) The Official Gazette No. 178/04.

¹⁰³⁷ Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union (*Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije*) Official Gazette No. 91/10., 81/13., 124/13., 26/15., 102/17., 68/18., 70 /19., 141/20., 18/24.

evidence collection and pre-trial supervision, and the Criminal Code, which defines the criminal offenses for which EU mutual recognition decisions can be issued.

The AJCCMEU is a comprehensive law that serves as the foundation for implementing various EU mutual recognition instruments. It was adopted before Croatia's accession to the EU in 2013, when Croatia, as a candidate country, was obliged to establish the necessary legal framework for the implementation of EU framework decisions and directives on judicial cooperation in criminal matters. The AJCCMEU has been amended eight times so far and has implemented 20 framework decisions and directives, including the EAW FD, the EIO Directive and the Regulation 1805/2018.

The AJCCMEU consists of general provisions that refer to all implemented EU instruments of mutual recognition, after which, as a rule, each individual instrument is implemented in a separate chapter. The general part contains the basic terms and principles, the central authorities responsible for coordinating the implementation and execution of mutual recognition instruments, the competent national judicial authorities, the procedure for communication between Croatian authorities and their counterparts in other EU Member States, the list of criminal offenses for which verification of the double criminality is excluded, as well as provisions on Eurojust and joint investigation teams. Since all EU mutual recognition instruments in Croatia have been implemented by the AJCCMEU, the overview of the implementation roadmap follows the amendments of this Act.

4.2 The implementation of Framework decision 2002/584

The implementation of the EAW FD, which was one of the benchmarks of Croatia's accession negotiations, initially required amending the Constitution. After heated political debates, largely influenced by the uneasy experience of surrendering its own citizens to the International Criminal Court, the necessary constitutional amendments were adopted in June 2010.¹⁰³⁸ These amendments abandoned the previous constitutional guarantee of a complete ban on the extradition of Croatian nationals to other States, thereby paving the way for Croatian accession to the EU.¹⁰³⁹

¹⁰³⁸ Official Gazette No. 76/10 of 18 June 2010.

¹⁰³⁹ "A citizen of the Republic of Croatia cannot be expelled from the Republic of Croatia, nor can his citizenship be revoked, nor can he be extradited to another country, except when a decision on extradition or

In July 2010, the AJCCMEU¹⁰⁴⁰ was adopted implementing the EAW FD into Croatian legislation, and was supposed to enter into force on 1 July 2013, the date of Croatia's accession to the EU. The mandatory and optional grounds for refusal to execute an EAW, as outlined in Arts 3 and 4 of the EAW FD, have been incorporated almost *verbatim* into Arts 20 and 21 of the AJCCMEU. Although the Act was adopted correctly from the perspective of EU law, the Croatian legislator's primary objective was to fulfill a benchmark for closing Chapter 23, 'Justice, Freedom and Security,' of the *acquis communautaire*, rather than genuinely implementing the EAW in the Croatian criminal justice system.

From July 2010 until Croatia's accession in July 2013, the legislator had sufficient time to ensure practical implementation of the AJCCMEU. However, no efforts were made to provide the necessary technical, personnel and educational prerequisites. Consequently, three months before accession to the EU, the Act was found to be inapplicable and had to be quickly amended. As a result, on 28 June 2013, three days before accession, the Croatian Parliament adopted comprehensive amendments to the AJCCMEU,¹⁰⁴¹ revising almost all Articles and adding 30 new ones.¹⁰⁴²

However, while these amendments led to the genuine and practical implementation of the EAW in the Croatian institutional setting, there were two amended provisions that attracted huge domestic and European political and public attention as they allegedly violated EU law. One was the introduction of a temporal limitation on the EAW, which prevented authorities from surrendering anyone suspected of a crime committed before the 7th of August 2002. Such a clause, which represented one of the key elements of harmonization of national law in this area, could have been inserted during the negotiations, when the European Commission could decide whether it accepts such an important limitation of the most important instrument of criminal justice cooperation in the EU or not. Subsequent important legislative amendments, after the European

surrender made in accordance with an international treaty or the *acquis* of the European Union must be carried out." Art 9 of the Constitution of the Republic of Croatia.

¹⁰⁴⁰ Official Gazette No. 91-2569/10 of 23. July 2010.

¹⁰⁴¹ Act amending the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union of 28.06.2013. (*Zakon o izmjenama i dopunama Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije*), Official Gazette No. 81-1708/13.

¹⁰⁴² See Zlata Đurđević, *Lex Perković ima čak i gramatičke pogreške*, www.tportal.hr/vijesti/clanak/lex-perkovic-ima-cak-i-gramaticke-pogreske-20130628 (accessed 15 July 2024).

Commission had verified Croatia's compliance, compromised accession negotiations by enabling the institutional and procedural framework for cooperation with EU Member States in criminal matters to escape the Commission's scrutiny. Under severe criticism and the threat of financial sanctions from the European Commission, the temporal limitation was removed on 1 January 2015.¹⁰⁴³

The second critical change was related to transforming the five grounds for optional non-execution of the EAW (Art 4 (1-5) EAW FD) into grounds for mandatory non-execution. The shift of codifying the statute of limitations on prosecution as a mandatory ground for refusal unleashed the political and legal controversy that has marked Croatian political and judicial life to date.¹⁰⁴⁴

Due to the deficiencies in the transposition, as for the other countries, the European Commission decided on September 23, 2021 to initiate infringement proceedings against Croatia by issuing official warnings for failing to properly transmit the EAW FD.¹⁰⁴⁵ Although the Commission gave to Croatia only two months to take the necessary measures to ensure the correct transposition, the infringement case is still active, as Croatia only adopted the required amendment of the AJCCMEU on February 8, 2024, almost three years later.

In particular, shortcomings were identified in relation to transposition of optional grounds for non-execution.¹⁰⁴⁶ Hence, the 2024 Amendment of the AJCCMEU provided the legislative epilogue to the 2013 Amendment by restoring the provisions on the grounds for mandatory and optional non-execution of the EAW from the original 2010 text of the AJCCMEU, literally rewriting the provisions on three grounds for mandatory non-execution (Art 3 EAW FD) and seven grounds for optional non-execution of the EAW (Art 4 EAW FD). Additionally, although such solution has been already applied in practice,¹⁰⁴⁷ the 2024 Amendment expressly provided that the domestic court will proceed with the recognition and execution of the EAW when the issuing State fails to provide the necessary documentation for the execution of the foreign sanction within the deadline set by the

¹⁰⁴³ E.g., ‘Croatia surrenders on EU arrest warrant’ www.euractiv.com/section/justice-home-affairs/news/croatia-surrenders-on-eu-arrest-warrant/ (accessed 5 June 2024)

¹⁰⁴⁴ See *infra* chapter 5.2.2.1. Statute of limitation and surrender of nationals

¹⁰⁴⁵ INFR(2021)2111, 23/09/2021, Incomplete and incorrect transposition of the EAW FD by Croatia, https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions

¹⁰⁴⁶ See Letter of formal notice “European Arrest Warrant: Commission calls on CROATIA and FINLAND to address shortcomings in transposition of EU rules“, https://ec.europa.eu/commission/presscorner/detail/EN/INF_21_4681

¹⁰⁴⁷ Pavelin, Kapikul, *Izmjene Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama*, Ius-Info, 13.02.2024.



court (Art 22(4) AJCCMEU). The 2024 Amendment of the AJCCMEU also corrected other shortcomings that the European Commission warned about in the letter of official notice related to the double criminality requirement, time limits for deciding if the person does not consent (Art 32(2) AJCCMEU), temporary transfer (Art 33 and 34 AJCCMEU), and privileges and immunities (Art 25 AJCCMEU).¹⁰⁴⁸

4.2.1 Scope

The scope of the EAW in Croatia not only aligns with the general framework of the European Union's EAW system but is also very broad, covering a wide range of offenses, not providing any special protection for its own nationals. In addition, it does not introduce any additional grounds for refusal, and excludes the statute of limitation as a ground for refusal.

In line with the FD EAW, an EAW in Croatia can be issued for offenses that are punishable by at least one year of imprisonment in Croatian law, or if the person has already been convicted, the EAW can be issued for the execution of a sentence of at least four months. For 32 serious crimes, such as terrorism, human trafficking, and organized crime (as stipulated by FD EAW), the principle of double criminality does not apply. However, for less serious offenses, the EAW might be denied if the conduct in question is not criminal under Croatian law. Also, as will be explain later, the scope is subject to certain limitations such as proportionality, human rights protections, and possible grounds for refusal.

The 2024 Amendment broadened the scope of the EAW regarding the double criminality requirement in two other ways. Firstly, the verification of double criminality is excluded in the case of recognition of a financial penalty, regardless of the prescribed prison sentence for the committed criminal offense (Art 3(3) AJCCMEU). Secondly, in line with the CJEU interpretation of the double criminality requirement in *KL* judgment C-168/21,¹⁰⁴⁹ in case when EAW refers to several criminal offences some of which do not meet the conditions for issuing the EAW in relation to the length of the sentence or measure (punishable by at least

¹⁰⁴⁸ Final Draft of the Law on Amendments to the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, Government of the Republic of Croatia of 25. 5. 2023 (Konačni prijedlog zakona o izmjenama i dopunama Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije, Vlada Republike Hrvatske) 12, PZE_502.pdf (accessed 5 July 2024)

¹⁰⁴⁹ The *KL* judgment, Case C-168/21 *Procureur général près la cour d'appel d'Angers*

12 months or conviction of at least four months), an EAW can also be issued for these criminal offences (Art 17(3) AJCCMEU).¹⁰⁵⁰ The High Criminal Court, in accordance with the KL judgment, has already interpreted this provision as stating that there is no obstacle to surrender the requested person for executing a prison sentence for a single criminal offense composed of multiple acts, even if one of these acts, for which the requested person was sentenced to custodial sentence, constitutes a misdemeanor.¹⁰⁵¹

4.2.2 Grounds for non-recognition and non-execution

The 2024 Amendment of the Act on Judicial Cooperation in Criminal Matters with EU Member States reinstates the provisions on mandatory and optional non-execution of the EAW, directly incorporating the three mandatory grounds (Art. 3) and seven optional grounds (Art. 4) from the EAW Framework Decision. The executing judicial authorities have been granted discretionary power to apply the optional grounds for refusal, guided by the principles of effective cooperation, opportunity, and the right to a fair trial (Art 21(1) AJCCMEU),¹⁰⁵² though this discretion raises rule of law concerns regarding the principles of legality (equality before the law) and legal certainty.

Statute of limitation and surrender of nationals

Croatia is likely one of the few EU Member States whose courts have given clear precedence to the concept of mutual trust over the protection of its citizens and the

¹⁰⁵⁰ See Pavelin, Kapikul, *Izmjene Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama*, Ius-Info, 13.02.2024.

¹⁰⁵¹ “7.4. In this case, the requested person has been sentenced to two years and four months (of which the person still has to serve 1 year, 10 months, and 10 days) for the criminal offense of aggravated theft and a misdemeanor. There is no doubt that the offense of aggravated theft meets the requirement of dual criminality. Therefore, in accordance with (...) the CJEU's interpretation in the KL judgment, it can be concluded that there is no obstacle to surrender the requested person on the grounds that one of the acts for which the person was sentenced to deprivation of liberty is a misdemeanor. VKSRH, I Kž-eun-13/2024-5, 19 March 2024,

¹⁰⁵² See Zlata Đurđević, Iris Goldner Lang and Maja Munivrana Vajda, *Croatia - National Report*, in Julia Laffranque (ed), *The Area of Freedom, Security and Justice, including Information Society Issues - FIDE XXV National Reports* (University of Tartu Press 2012) 235-259.

prohibition of their surrender in case of time-barred offences according to national law. Croatian courts devised an interpretation that exempted the verification of the statute of limitations for prosecution for offences where the principle of double criminality does not apply. Since Perković and Mustač surrender proceedings to Germany for crimes committed 30 years earlier,¹⁰⁵³ which were time-barred for prosecution in Croatia cases, the Supreme Court of the Republic of Croatia introduced the rule that, where the verification of double criminality is excluded (Art 2(2) EAW FD), the verification of the statute of limitations is also excluded. This interpretation has become established case law and for example, resulted in the surrender of a person in 2014 for acts of theft that were committed from 1985 to 1987, i.e. almost 30 years before.¹⁰⁵⁴ The Croatian courts, to justify their interpretation, have expressly assumed the role of staunch proponents of loyal co-operation, efficiency and trust in the EU in their decisions.¹⁰⁵⁵

The judicial interpretation of the Supreme Court, according to which Croatian courts are obliged to surrender Croatian citizens to EU States for criminal offenses whose prosecution or execution of the sentence has expired in Croatia, has been widely criticized by the Croatian academic community members¹⁰⁵⁶ as well as a number of other experts.¹⁰⁵⁷ As,

¹⁰⁵³ Josip Perković and Zdravko Mustač were former members of the Yugoslav and Croatian intelligence agencies suspected of participating in the organisation of the murder of Stjepan Đureković, a Croatian emigrant in Germany, in München in 1983, for whom Germany had issued EAWs. For the chronicle of the Perković Mustač cases see www.index.hr/vijesti/clanak/od-tjeralice-do-izrucenja-i-presude-kronologija-slucaja-perkovicmustac/910395.aspx, (accessed 5 July 2024).

¹⁰⁵⁴ VSRH, Kž-eun 20/14-6, 15 April, 2014.

¹⁰⁵⁵ VSRH, Kž-eun 5/14-4 and Kž-eun 14/14-4: “To achieve the goals and to respect the principles expressed in EU law, national courts are bound to apply national law in the light of the letter and spirit of EU law. This means that national law must be interpreted in the application as much as possible in the light of the wording and the purpose of relevant framework decisions and directives, in order to achieve the result pursued by such framework decisions and directives.”

County court in Varaždin, Kv-eun 2/14: “Criminal proceedings in another State have priority over criminal proceedings conducted before a Croatian court.”

VSRH, Kž-eun 17/14-4 [2014]: “The EAW is an instrument of mutual judicial cooperation between the Member States of the EU that is based on the principles of mutual recognition between Member States and effective cooperation, and contains a legal obligation and moral responsibility of the national courts of the Member States of execution to grant the surrender of the person requested, unless there are the few and expressly prescribed grounds for refusal to surrender.”

¹⁰⁵⁶ E.g., following professors of Croatian law faculties Petar Novoselec, Igor Martinović, Ivo Josipović, Davor Derenčinović, Elizabeta Ivičević Karas, Zoran Burić, Zlata Đurđević.

¹⁰⁵⁷ E.g., Josip Čule, Danka Hržina, Miljenko Giunio, Tomislav Sokol i dr.

the courts of Germany, France, Austria, Italy, Sweden, the Netherlands, Slovenia and numerous other EU countries refuse to hand over requested persons if prosecution is statute-barred, regardless of the type of offense, Croatian citizens are better protected in Germany than in Croatia. German courts regularly refuse to execute EAW issued by Croatian courts due to the statute of limitations not only to German citizens, but also other EU citizens, including Croatians.¹⁰⁵⁸

Fundamental rights and proportionality issues

As in most Member States, in Croatia the initial implementation of the EAW FD did not include the human rights violations as grounds for refusal of an EAW. Following the CJEU judgment in the *Aranyosi* and *Caldararu* case of 2016, Croatia amended the AJCCMEU accordingly. The amendment of 2017¹⁰⁵⁹ introduced the new Art 3.a of the AJCCMEU entitled “The principle of respecting fundamental rights”. It binds the competent authorities to issue orders and decisions that are proportional to the specific needs of each individual case (Art 3.a (1)). This entails that courts must apply the principle of proportionality and balance the right to respect for private and family life with the surrender procedure and the interests of prosecution. Additionally, it clarifies that procedures under this Act are not exempt from the obligation to respect the fundamental rights and freedoms defined by the Charter of Fundamental Rights of the EU (Art 3.a (2)).

1. The principle of proportionality and respect for private and family life

Although these international human rights obligations have bound Croatia long before their inclusion in the AJCCMEU, and represent constitutional guarantees, Croatian courts in last decade, generally did not consider human rights violations as a ground for refusal of the EAW showing a very high level of trust in criminal justice systems of other Member States. Regarding the principle of proportionality, the Supreme Court has consistently held

¹⁰⁵⁸ Thus, Germany rejected the EAW issued by the Croatian court for Croatian citizens from the Rilović family for economic crimes because the statute of limitations had expired. See Derenčinović (n 31) 264.

¹⁰⁵⁹ Act amending the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union of 18.10.2017. (*Zakon o izmjenama i dopunama Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije*), Official Gazette No. 102/ 2017.

that “personal, family, or health reasons”¹⁰⁶⁰ do not influence the decision to approve a surrender request, but may serve as grounds for a temporary postponement (Art 23(4) EAW FD) of the surrender in cases of serious humanitarian reasons, such as a clear threat to the life or health according to Art 35 (3) of the AJCCMEU.¹⁰⁶¹ It was claimed that these reasons can be taken into consideration only after the decision on the surrender becomes final and therefore, e.g. “the health issues of the requested person do not constitute an obstacle for a substantive decision on the EAW but can be the subject of determination and assessment only in the process of its execution, i.e., the surrender of the requested person after the decision approving the surrender becomes final.”¹⁰⁶²

However, an exception to this approach is found in the High Criminal Court ruling of 26 May 2022 concerning the surrender to Poland of a mother of two children, one aged 15 years and one 9 months, for conducting of criminal proceedings for fraud. In this decision the Croatian court has for the first (and only) time invoked the Art 3a of the AJCCMEU as concerns the principle of the proportionality and the right for respect to family and private life of Art 8 of the ECHR.¹⁰⁶³ It said that before executing the EAW it is necessary to obtain data on the private and family circumstances of the requested person, on the capabilities of other individuals (grandmother) to care for the children, especially the child under one year of age, considered to be an infant.¹⁰⁶⁴ It should be assessed whether the surrender is proportional to the specific needs of this case, taking into account where and how long the requested person has resided in Croatia, the time of commission, severity, and circumstances of the criminal offense, the best interests of the requested person's children according to Art 3 of the Convention on the Rights of the Child, which includes the child's right to protection and care, as well as the maintenance of personal and direct contact with parents.¹⁰⁶⁵ This High Criminal Court's ruling from 2022 anticipated the GN judgment in case

¹⁰⁶⁰ VSRH, Kž-eun 44/2019-4, 28 November 2019. See also VSRH, Kž-eun 8/13-4, 22 August 2013; VSRH, 19 Kv-eun-2/14-7z, 9 January, 2014; VSRH Kž-eun 25/2019-4, 9 July, 2019.

¹⁰⁶¹ VSRH, Kž-eun 39/2018-4, 8 January 2019, VSRH, Kž-eun 44/2019-4, 28 November 2019

¹⁰⁶² VSRH, Kž-eun 6/2020-4, 19 February 2020

¹⁰⁶³ VKSRH, I Kž-eun-10/2022-6, of 26 May 2022, § 7-10.

¹⁰⁶⁴ The High Criminal Court, upheld the appeal stating that there would be no one to care for the children in the event of extradition, as their grandmother is of advanced age and in poor health. The court of first instance did not previously verify the claims of the requested person and obtain data from the competent Social Welfare Center about the private and family circumstances of the requested person." Ibid, § 5.1.

¹⁰⁶⁵ The court will apply the criteria for assessing proportionality and obstacles arising from the right to family and private life outlined in several decisions of the ECHR (Üner v. Netherlands of 18 October 2006; Boultif

C-261/22 of 21 December 2023,¹⁰⁶⁶ which set a more stringent threshold by developing a two-step approach as in the *Aranyosi* and *Caldararu* case.

2. Prohibition of torture and inhuman or degrading treatment or punishment

The standards set by the CJEU in the *Aranyosi* and *Caldararu* cases¹⁰⁶⁷ have been applied in Croatia for the first time in 2023 in the well-covered case in national and European media of the surrender proceedings of Croatian football fans (Bad Blue Boys), who were charged with numerous crimes related to sports events by the Prosecutor Office in Athens, Greece.¹⁰⁶⁸ The Croatian first-instance courts refused the execution of the EAW because, the Greek judicial authorities have not provided sufficient guarantees that the requested persons will not be subjected to inhuman and degrading treatment in a Greek prison, but only general and vague information about the observance of minimal necessary standards in Greek prisons. The High Criminal Court vacated all first-instance decisions upon the appeals by the public prosecutor and stressed that the refusal of the execution of an EAW is an exception that must be interpreted narrowly.¹⁰⁶⁹ The proof of shortcomings regarding the conditions in Greek prisons stems from the report of the CPT¹⁰⁷⁰ of 31 August 2023, which was compiled following a visit to *Korydallos* prison, where the requested persons were to be detained. The High Criminal Court specified that it is necessary to specifically and precisely examine whether, under the circumstances of the case, there are serious and

v. Switzerland of 2 August 2001) and CJEU (*Land Baden-Württemberg v. Panagiotis Tsakouridis*, No. C-145/09, of 23 November 2010), *ibid*, 10.

¹⁰⁶⁶ CJEU, C-261/22, GN, Judgment (Grand Chamber) of 21 December 2023, § 59

¹⁰⁶⁷ CJEU, C-404/15 and C-659/15 PPU – *Aranyosi und Căldăraru*, Judgment of 5 April 2016

¹⁰⁶⁸ In the summer of 2023, more than a hundred members of the Bad Blue Boys (BBB), the ultras group of the Croatian football club Dinamo Zagreb, were arrested in Greece. The arrests followed violent clashes between rival football supporters in Athens, resulting in the tragic death of a young Greek fan, Michalis Katsouris. Greek authorities also issued 11 EAW for the BBB members who fled to Croatia after the incident. The detained BBB faced serious charges, including involvement in the riots and the death of the Greek supporter. After more than four months in detention, they were released when suspicion for the murder shifted towards a Greek fan, as his DNA was found on the knife used to kill Katsouris. The arrests and subsequent developments were widely covered in the media, leading to diplomatic communications between Croatia and Greece and involving highest-level politicians. See e.g. total-croatia-news.com/news/whats-happening-with-the-bad-blue-boys-in-greece/; en.wikipedia.org/wiki/Murder_of_Michalis_Katsouris; www.index.hr/tag/1135297/bbb-grcka.aspx; www.euronews.com/2023/08/25/greece-treats-jailed-croatian-football-fans-like-prisoners-of-war-says-president; n1info.hr/english/news/greek-media-dna-on-knife-belongs-to-greek-man-but-is-not-enough-to-charge-him/;

¹⁰⁶⁹ VKSRH, I Kž-eun-2/2024-4 of 13 February 2024; VKSRH, I Kž-eun-7/2024-4 of 14 March 2024; VKSRH, I Kž-eun-10/2024-4 of 14 March 2024.

¹⁰⁷⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

established reasons to believe that the requested person, after surrender, will be exposed to a real risk of being subjected to inhuman and degrading treatment.¹⁰⁷¹ Therefore, before refusing surrender, specific data must be requested on the institution in which the requested persons will be kept and the conditions of accommodation, such as the personal space available to each detainee in a cell in that prison (especially for a person suffering from asthma), sanitary conditions, and the extent of the detainee's freedom of movement within the prison in accordance with EU standards (CJEU, *Dorobantu*)¹⁰⁷² and the ECHR (*Muršić v. Croatia*).¹⁰⁷³

3. *The fair trial rights*

Additionally, in the same case, the High Criminal Court clarified that the executing authority must verify whether the requested persons in Greece have the possibility to challenge the decision to issue the EAW, particularly its proportionality, by means of a legal remedy that fully meets the requirements of effective judicial protection.¹⁰⁷⁴ This obligation pertains to the fair trial guarantee, which, if at risk of violation, can also prevent the surrender under the EAW. Unfairness at trial in the issuing state is one of the most common grounds for appeal against a surrender decisions in Croatia, which the Supreme Court has regularly been dismissing.¹⁰⁷⁵ The Supreme Court, as a rule, refers to *Ahorugeze v. Sweden* judgment, where the ECtHR stated that extradition may be refused if the individual would risk suffering a flagrant denial of a fair trial in the issuing state,¹⁰⁷⁶ but that this is a stringent test, it goes beyond mere irregularities and has to constitute a fundamental violation of the very essence of the right guaranteed by that Art 6 ECHR.¹⁰⁷⁷ Following the same judgment, the Supreme Court also required that the appellant must adduce evidence capable of proving that there are substantial grounds for believing that she or he would be exposed to a real risk of being subjected to a flagrant denial of justice.¹⁰⁷⁸

¹⁰⁷¹ VKSRH, I Kž-eun-2/2024-4 of 13 February 2024, § 8; VKSRH, I Kž-eun-7/2024-4 of 14 March 2024; VKSRH, § 8; I Kž-eun-10/2024-4 of 14 March 2024, § 8.

¹⁰⁷² CJEU, C-128/18 Dumitru-Tudor Dorobantu, Judgment (Grand Chamber) of 15 October 2019.

¹⁰⁷³ ECtHR, *Muršić v. Croatia* [GC], no. 7334/13, Judgment of 20 October 2016, § 171.

¹⁰⁷⁴ VKSRH, I Kž-eun-2/2024-4 of 13 February 2024; VKSRH, I Kž-eun-7/2024-4 of 14 March 2024; VKSRH, I Kž-eun-10/2024-4 of 14 March 2024.

¹⁰⁷⁵ See the same Matko Pajčić, *Europski uhitbeni nalog u praksi Vrhovnog suda Republike Hrvatske* (2017) 24 Hrvatski ljetopis za kaznene znanosti i praksu, 553-581, 574.

¹⁰⁷⁶ ECtHR, *Ahorugeze v. Sweden*, Judgment 27 October 2011, § 113

¹⁰⁷⁷ Ibid. § 115. See Pajčić 575.

¹⁰⁷⁸ Ibid. § 116. See Pajčić 575; VSRH, Kž-eun 46/15-4 of 30 December 2015

However, Croatian appellate courts have, in several cases, vacated rulings on surrender due to violations of the requested person's defense rights with respect to the right to translation (Art 24(3)(6) of the AJCCMEU). The Supreme Court found a violation of the right to a fair trial because the court did not provide the requested person with a translation of the ruling approving the surrender into Dutch, a language the requested person understands.¹⁰⁷⁹ The High Criminal Court found a violation of defense rights because the court rejected the requested person's proposal to translate the issued EAW into Croatian, instead providing the EAW in Hungarian and English. According to Art 8 of the CPA, the Croatian language and Latin script are used in criminal proceedings in Croatia, and the requested person has the right to translation of documentation not in a language they understand.¹⁰⁸⁰ Therefore, besides the translation of the EAW into Croatian being a formal requirement in the procedure of deciding on surrender,¹⁰⁸¹ it is also a defense right of the requested person, the violation of which leads to a breach of the right to a fair trial.

4.2.3 Execution procedure

1. Starting the proceedings for the execution of the EAW: Arrest, custody and interrogation of the requested person

The execution procedure regularly starts with the arrest of the requested person. Pursuant to Art 23(1) AJCCMEU, the police may arrest a person against whom an EAW has been issued or an alert in the Schengen Information System (SIS) at the request of the Member State has been entered. When justified reasons exist (Art 32(2) AJCCMEU), the requested person does not have to be arrested. In the latter case, the execution procedure will start with his/her first interrogation.

The arrested person must be handed over to the custody supervisor within 24 hours of the arrest, and the competent State attorney will be informed thereof and will deliver an EAW or/and an alert from the SIS that led to the arrest. If the EAW or the alert is not translated into Croatian, the police shall request a translation from the issuing State within 48 hours of the arrest. Alternatively, the competent State attorney may request the translation directly from the competent authority of the issuing State. If the alert lacks all

¹⁰⁷⁹ VSRH, Kž-eun 39/15-5 prema Pajčić 574.

¹⁰⁸⁰ VKSRH, I Kž-eun-11/2023-4, § 6.1. to 6.3.

¹⁰⁸¹ VKSRH, I Kž-eun-6/2023-4 of 3 February 2023, § 6.

the information that the EAW needs to contain, the police shall ask the issuing State's authority to supplement the alert without delay (Art 23(1) AJCCMEU).

After the arrested person has been handed over to the custody supervisor, the competent State attorney will interrogate the person about the circumstances from the documentation provided by the police, within 16 hours of the handover (Art 23 (2) AJCCMEU). The State attorney shall inform the requested person about his/her rights according to domestic criminal procedural law (Art 24(3) AJCCMEU). The State attorney will also inform the requested person of the content and grounds for issuing an EAW, the possibility of consenting to surrender to the issuing State, and the option of waiving the application of the principle of specialty, along with the consequences of such a waiver. The State attorney will interrogate the requested person about his/her personal circumstances, citizenship and relations with the issuing State, and whether and for what reasons he/she objects the surrender (Art 24(4) AJCCMEU).

If the State attorney, on the basis of the EAW or the SIS alert, concludes that the offence in question is not a criminal offence under national law, he/she may issue a decision refusing to execute the EAW (Art 23(4) AJCCMEU). This decision needs to be delivered without delay to the judge of the investigation of the competent county court, who will confirm or revoke the State attorney's decision within 48 hours of the arrest (Art 23(5) AJCCMEU). If the judge of the investigation confirms the State attorney's decision, he/she shall immediately order the release of the arrested person (Art 23(6) AJCCMEU). If the judge of the investigation revokes the State attorney's decision, the latter may order the release of the arrested person and apply precautionary measures or bring the arrested person before the judge of the investigation, who will decide on detention (Art 23(9) AJCCMEU).

If the State attorney concludes that the offence for which the EAW or the SIS alert has been issued is a criminal offence under national law, he/she needs to decide concerning the liberty of the requested person who has been arrested. The State attorney may release the arrested person and order the application of precautionary measures (Art 23(4) AJCCMEU), However, if the State attorney considers that further deprivation of liberty is necessary, he/she need to address the competent court and request a decision on detention against the requested person. The arrested person needs to be brought before the judge of the investigation at the latest within 48 hours from the moment of the arrest.

If the State attorney has not received the EAW or the SIS alert and their translation into Croatian, he/she may order the custody of the arrested person for up to 48 hours of the

moment of the arrest (Art 23(7) AJCCMEU). If the State attorney has still not received the EAW or the SIS alert and their translation in Croatian within 48 hours of the arrest, he/she may request the judge of the investigation to prolong the custody of the arrested person for a further 36 hours (Art 23(8) AJCCMEU). Once the State attorney receives the EAW or the SIS alert and their translation into Croatian, he/she may order the release of the arrested person and apply precautionary measures or bring the arrested person before the judge of the investigation who will decide on detention (Art 23(9) AJCCMEU).

If the necessary documentation and their translations has not been delivered to the State attorney within the statutory deadlines, the arrested person needs to be released (Art 23(10) AJCCMEU). Once the documentation is delivered, the released person may be arrested again and, in that case, must be brought before the judge of the investigation within 24 hours from the moment of the arrest (Art 23(11) AJCCMEU).

2. Proceedings before the judge of the investigation

If, after interrogating the requested person, the State attorney considers that detention is necessary, he/she shall submit a proposal to the judge of the investigation. The proposal needs to be accompanied with the EAW or the SIS alert and their translation in Croatian. The judge of the investigation shall schedule a detention hearing and notify the State attorney, the requested person, and his/her attorney and if necessary, the interpreter of its time (Art 24a(1) AJCCMEU). The detention hearing can only take place if the arrested person's attorney is present. If the arrested person does not have an attorney, the court will appoint one (Art 24a(2) AJCCMEU). The judge of the investigation may also decide on the surrender of the requested person, but only if the requested person consents to surrender. In such cases the judge of the investigation shall issue a decision approving the surrender without delay, and within three days of the consent, if there are no reasons for refusing the execution of the EAW (Art 24.a(4) AJCCMEU).

3. Proceedings before the judicial panel

If the detention hearing did not take place, or if the detention hearing did take place but the requested person did not consent to his/her surrender, the panel of the competent county court decides on the surrender (Art 24b (1) AJCCMEU). After receiving the EAW or the SIS alert and their translation, the president of the panel must schedule the hearing within three days (Art 24b(2) AJCCMEU). The State attorney, the requested person, his/her defense attorney, if any, and an interpreter, if necessary, will be summoned to the hearing

(Art 24b(3) AJCCMEU). The State attorney will state the basis for issuing the EAW, the criminal offense on which the warrant is based, as well as the reasons for its issuance, and propose the recognition and execution of that warrant. The State attorney will also address the further validity of detention or precautionary measures if they have been ordered (Art 24b (5) AJCCMEU). The requested person and his/her attorney will have the opportunity to respond to the allegations from the warrant, state their reasons for opposing the surrender, and present evidence to support their allegations. The requested person may, at the session of the panel, consent to surrender to the issuing State. In that case, the panel will issue a decision on surrender (Art 24b (6) AJCCMEU).

If the requested person objects to surrender, the court will question him/her about the reasons for the opposition. The competent State attorney can and the defense attorney must always be present during this questioning (Art 29(1) AJCCMEU). The court may request additional information or documentation from the authority that issued the warrant, setting a deadline for their submission, but not longer than seven working days (Art 29(2) AJCCMEU). If necessary, the court carries out evidentiary actions in order to determine whether conditions for surrender are fulfilled (Art 29(3) AJCCMEU). After completing all the procedural actions, the panel shall render a decision either granting or refusing the surrender of the requested person (Art 29(4) AJCCMEU).

4. Content of the decision on surrender

Decision on surrender which is based on the consent of the requested person must contain the following information:

1. name, surname, date and place of birth and citizenship of the requested person,
2. the Member State to which the requested person is surrendered,
3. description of the offence for which the surrender is made,
4. statement that the requested person agreed to surrender,
5. if the requested person waived the application of the principle of specialty a statement to that effect,
6. if the requested person has not waived the application of the principle of specialty, the decision must contain a statement that, without the permission of the Republic of

Croatia, for criminal offences committed prior to the surrender, the requested person may not be:

- a) criminally prosecuted or a prison sentence executed against him/her in the issuing State,
- b) surrendered to another Member State for the purpose of criminal prosecution or execution of a prison sentence,
- c) extradited to a third country for the purpose of criminal prosecution or execution of a prison sentence (Art. 28, para 2 AJCCMEU).

Decision on surrender which is not based on the consent of the requested person must contain the following information:

1. name, surname, date and place of birth and citizenship of the requested person,
2. the Member State to which the requested person is surrendered,
3. description of the offence for which the surrender is made,
4. statement that without the permission of the Republic of Croatia, for acts committed before surrender, the requested person may not be:
 - prosecuted or a prison sentence executed against him/her in the issuing State,
 - surrendered to another Member State for the purpose of criminal prosecution or execution of a prison sentence,
 - extradited to a third country for prosecution or execution of a prison sentence (Art. 29, para 5 AJCCMEU).

Issues for the rights of the suspect, accused and other parties

1. Rights of the requested person

Immediately after the arrest of a person requested for the purpose of executing an EAW, the police will instruct that person in writing about his/her rights, which he/she exercises in accordance with the provisions of domestic criminal procedural law (Art 24(1) AJCCMEU). This means that the person arrested on the basis of an EAW in Croatia enjoys all the rights

guaranteed to arrested persons under Croatian CPA. This includes the right to legal aid; upon arrest, the police will instruct the requested person of his/her right to a defense attorney in Croatia even when defense is not mandatory, with a warning that the decision to cover the costs of such an appointed defense attorney will depend on the later determined financial status of that person. Additionally, if the EAW has been issued for the purpose of criminal prosecution, the police will inform the requested person upon arrest that he/she has the right to request a defense attorney in the issuing State. The police without delay informs the competent county court, which will appoint a defense attorney for that person, and the State attorney's office which will notify the competent authority of the issuing State about the request for a defense attorney in that State (Art 24(2) AJCCMEU).

Before the interrogation, the state attorney will instruct the requested person about his/her rights, which he/she exercises in accordance with the provisions of domestic criminal procedural law:

- the right to a defense attorney of his/her own choice, i.e., a defense attorney appointed by the court;
- the right to demand the appointment of a defense attorney even when defense is not mandatory;
- the right to have the defense attorney present at the interrogation of the requested person and the right to free, undisturbed and confidential communication with him/her;
- the right to appoint a defense attorney in the issuing State;
- the right to request that a defense attorney be appointed in the issuing State in the proceedings regarding the EAW at the expense of the issuing State when the EAW was issued for the purpose of criminal prosecution;
- the right to interpretation and translation;
- the right to remain silent;
- the right to inspect the case file before the interrogation by the state attorney;
- the right to emergency medical assistance;
- the right to have a person nominated by the requested person and the consular authority notified of the deprivation of liberty by the, with whom he/she also has

the right to communicate (Art. 29, para 3 AJCCMEU).

If the person has not been instructed about his/her rights in accordance with the law, this will generally result in the inadmissibility of the statement given by the requested person. In this regard, general rules of criminal procedure apply, which provide that the statement of the arrested person who has not been adequately informed about his/her rights prior to the interrogation, may not be used as evidence before the court (Art 108c in connection with Art 208a(8) CPA).

If the competent authority of the issuing State has requested a limitation of the right to notify a third person or the right to communicate with a defense attorney, the State attorney will act in accordance with that request, if it does not contradict the legal order of the Republic of Croatia (Art 24(6) AJCCMEU).

If the requested person wants to exercise the right to a defense attorney in the issuing State, the State attorney shall notify the competent authority of the issuing State thereof without delay. Exercising the right to a defense attorney in the issuing State does not affect the deadlines in the procedure for the execution of the EAW (Art 24(7) AJCCMEU).

If the EAW refers to the execution of a judgment rendered in absentia, which imposes a prison sentence or a measure that includes deprivation of liberty, the requested person may, before surrender to the issuing State, request the delivery of the said judgment if it was not personally served on him/her before, nor did he/she receive an official notification that criminal proceedings are being conducted against him/her. In that case, the State attorney will ask the authority that issued the warrant to deliver the judgment without delay, so that it can be delivered to the requested person. The delivery of the judgment will not be considered as official delivery for calculating the deadlines for submitting a request for renewal of the procedure or an appeal. This does not delay the process of surrender of the requested person or the deadline for rendering a decision on surrender (Art 24(8) AJCCMEU).

2. *Consent to surrender*

The requested person can consent to surrender to the issuing State and waive the application of the principle of specialty. The consent and waiver shall be entered in the minutes drawn up in a manner from which it undoubtedly follows that the requested person acted voluntarily and was fully aware of the consequences. The consent and waiver are

irrevocable. The court shall notify without delay the issuing authority of the consent of the requested person (Art 27 AJCCMEU).

3. Measures to secure the surrender of the requested person

In order to execute the EAW, measures must be applied in accordance with domestic law, which will ensure surrender of the requested person. Upon the proposal of the State attorney, the judge will order pre-trial detention for the purpose of surrender, which may last until the execution of the decision on the surrender of the requested person. Instead of pre-trial detention for the purpose of surrender, the court may order one of the milder measures, provided that the application of such a measure can achieve the same purpose as pre-trial detention (Art 26 AJCCMEU).

4.2.4 Cooperation issues between executing and issuing authorities

National provisions which regulate the procedure in relation to the EAW in several places specifically regulate the issue of direct communication of Croatian competent authorities with the competent authorities of the issuing state.

1. EAW translation

If the documentation on basis of which the requested person has been arrested is not translated into Croatian, the police will request the issuing state to deliver the translation within 48 hours of the arrest. The competent state attorney can directly request the delivery of a translation of the EAW from the competent authority of the issuing state within a reasonable time, taking into account the deadlines for the recognition and execution of an EAW. If the requested person has been arrested on the basis of an SIS alert which does not contain all the information that the EAW needs to contain, the police will ask the competent authority of the issuing state to supplement the alert without delay.

2. Appointment of a defence attorney in the issuing state

If the EAW has been issued for the purpose of criminal prosecution, the police shall inform the requested person upon arrest that he/she has the right to request a defense attorney in the issuing state. The police shall inform the state attorney without delay of such a request of the arrested person and the state attorney shall inform the competent authority of the issuing state thereof.

3. Additional information

The court which decides on the recognition and execution of a EAW can ask the issuing authority for additional information or documentation and can set an appropriate deadline, not longer than seven working days, for their delivery.

4. Decision rendered in the proceedings

If a decision refusing surrender has been rendered, the issuing authority must be informed thereof without delay. The court shall notify without delay the issuing authority of the finality of the decision granting or refusing the surrender of the requested person.

5. Deadlines for the recognition and execution of an EAW

If the court cannot decide on the surrender of the requested person within the prescribed deadlines, the court shall inform the issuing authority thereof, stating the reasons for exceeding the deadline.

4.2.5 Remedies

Decision on recognition and execution of an EAW can be rendered either by the judge of the investigation or the judicial panel (composed of three professional judges). The judge of the investigation can render a decision only on the basis of the consent of the requested person. If the requested person does not consent to the surrender, the decision can only be rendered by the panel. Both, decision granting and refusing the surrender of the requested person can be appealed by the requested person, his/her defense attorney and the State attorney. If the appealed decision has been rendered by the judge of the investigation, the appeal is decided by the panel of the same court (Art 28(3) AJCCMEU) If the appealed decision has been rendered by the panel, the appeal is decided by the panel of a higher court (Art 29(6) AJCCMEU). With these provisions, an effective remedy has been guaranteed to the requested person, in compliance with EU law.

4.3 The implementation of Directive 2014/41

4.3.1 Scope

In Croatian law, a European investigation order (EIO) may be issued when it is necessary to conduct evidentiary actions in criminal or misdemeanor proceedings, in the territory of another member state of the European Union, with exception of Denmark and Ireland. It is explicitly prescribed that the EIO cannot be issued for the purpose of establishing a joint investigative team and collecting evidence in such a team (Art. 42.a AJCCMEU). The EIO may be issued at all stages of the criminal and misdemeanor proceedings, according to the rules of domestic law, and with regard to all evidentiary actions prescribed in the Croatian Criminal Procedure Act (CPA).

4.3.2 Grounds for non-recognition and non-execution

Croatian law provides grounds for optional and mandatory non-recognition and non-execution of the EIO.

1. *Optional non-recognition and non-execution of the EIO*

As regards optional non-recognition and non-execution of the EIO, the competent judicial authority is authorized to decide whether to execute or refuse the recognition and execution of the EIO, being guided by the principles of effective cooperation, expediency and the right to a fair trial (Art. 42.j, para 1(a) AJCCMEU). Optional non-recognition and non-execution of the EIO is possible in two cases.

Firstly, the competent judicial authority can refuse the recognition and execution of the EIO in case of immunity or privilege, existing in domestic law, that prevents the execution of the EIO, or if there are rules on the determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO (Article 42.j, para 1(a) AJCCMEU). In such cases, before deciding, the competent judicial authority informs the issuing authority on the reasons for the non-recognition and non-execution of the EIO and, if necessary, requests the delivery of the necessary information from the issuing authority without delay (Art. 42.j, para 4

AJCCMEU). In addition, if the competent domestic authority is responsible for waiving the privilege or immunity, the competent judicial authority shall request it to exercise that power forthwith. On the other side, if waiving the privilege or immunity is in the competence of the authority of another state or an international organization, the issuing authority will request the authority competent to waive the privilege or immunity to exercise that power (Art. 42.j, para 5 AJCCMEU).

Secondly, the competent judicial authority can also refuse the recognition and execution of the EIO when the EIO was issued in proceedings initiated by administrative or by judicial authorities, for acts under the domestic law of the issuing state because they constitute a violation of domestic law and when the decision may lead to proceedings before a court competent for criminal matters, if the evidentiary action would not be applicable in a comparable domestic case according to domestic law (Article 42.j, para 1(b) AJCCMEU).

2. *Mandatory non-recognition and non-execution of the EIO*

Croatian legislation prescribes six cases of mandatory non-recognition and non-execution of the EIO.

First, the competent judicial authority will not recognize and execute the EIO when the execution of the EIO “would harm essential national security interests, jeopardise the source of information or involve the use of classified information relating to specific intelligence activities” (Art. 42.j, para 2(a) AJCCMEU).

Second, the competent judicial authority will not recognize and execute the EIO when the execution of the EIO would be contrary to the principle of *ne bis in idem*. Yet, there is an exception to this rule, if the issuing authority has given a guarantee that the evidence obtained by the EIO will not be used for the purpose of criminal prosecution or punishment of a person for an offense for which he/she has already been finally sentenced in the Member State (Art. 42.j, para 2(b) AJCCMEU).

Third, the competent judicial authority will not recognize and execute the EIO when the EIO relates to a criminal offense which is alleged to have been committed outside the territory of the issuing State and was partially or wholly committed on the Croatian territory, and the conduct in connection with which the EIO is issued is not a criminal offense in Croatia (Art. 42.j, para 2(c) AJCCMEU).

Fourth, the competent judicial authority will not recognize and execute the EIO when there are substantial grounds indicating that the execution of the evidentiary action specified in the EIO would be incompatible with the obligations from Article 6 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union (Art. 42.j, para 2(d) AJCCMEU).

In these four cases, before deciding, the competent judicial authority informs the issuing authority on the reasons for the non-recognition and non-execution of the EIO and, if necessary, requests the delivery of the necessary information from the issuing authority without delay (Art. 42.j, para 4 AJCCMEU).

Fifth, the competent judicial authority will not recognize and execute the EIO when the conduct for which the EIO was issued is not a punishable act under domestic law, unless it refers to a criminal offense included in the categories of criminal offenses listed in Art. 10 AJCCMEU. For fiscal offences, the execution of the EIO cannot be refused only for the reason that domestic law does not prescribe the same type of taxes or fees or that it does not contain the same provisions on taxes, fees, customs duties or currency exchange as the law of the issuing State (Art. 42.j, para 2(e) AJCCMEU).

Sixth, the competent judicial authority will not recognize and execute the EIO when the EIO is issued in relation to an evidentiary action whose application under domestic law is limited to a catalog of criminal offenses or to criminal offenses with a determinate minimum sanction, and which catalog does not include a criminal offense for which proceedings are being conducted in the issuing country (Art. 42.j, para 2(f) AJCCMEU).

3. Exceptions to mandatory non-recognition and non-execution of the EIO

However, the fifth and the sixth case of mandatory non-recognition and non-execution of the EIO, described *supra*, do not apply to the following evidentiary actions, which are listed in Art. 42, para 2 AJCCMEU (Art. 42.j, para 3 AJCCMEU):

- obtaining information or evidence that is already in the possession of the competent authorities of the Republic of Croatia, and that information or evidence could be obtained, in accordance with domestic law, within the framework of criminal proceedings or for the purposes of a EIO;

- obtaining information contained in databases maintained by the police or judicial authorities and directly accessible to the judicial enforcement authority within the framework of criminal proceedings;
- examination of witnesses, expert witnesses, injured parties and victims, suspects or defendants or third persons on the territory of the executing state;
- any evidentiary action which, according to domestic law, is carried out without a court order;
- identity data of persons who have a subscription to a specific telephone number or IP address.

In addition, for fiscal offences specifically, the legislation prescribes that the execution of the EIO cannot be refused only for the reason that domestic law does not prescribe the same kind of taxes or duties or that it does not contain the same regulations on taxes, duties, customs or currency exchange as the law of the issuing State (Art. 42.j, para 2(e) AJCCMEU).

4.3.3 Fundamental rights and proportionality issues

The Constitution of the Republic of Croatia proclaims the principle of proportionality in the common provisions on the protection of human rights and fundamental freedoms, stating that “[a]ny restriction of freedoms or rights shall be proportionate to the nature of the need to do so in each individual case” (Art. 16, para 2 Constitution). As regards the EIO procedures, AJCCMEU, among general provisions, proclaims “The principle of respect for fundamental rights”, stating that Croatian competent authorities issue “orders and decisions”, including the EIO, “in proportion to the nature of the need in each individual case” (Art. 3.a, para 1 AJCCMEU). It further proclaims that the implementation of the EIO procedures “does not affect the obligation to respect the fundamental rights and freedoms defined by the Charter of Fundamental Rights of the European Union” (Art. 3.a, para 2 AJCCMEU). The principle of proportionality is further prescribed in the basic conditions for issuing an EIO. The competent judicial authority will issue an EIO if it is necessary and proportional to the purpose of procedures initiated by the competent judicial or administrative authority, and if the evidentiary action or actions specified in the EIO may be

ordered in that procedure (Art. 42.c AJCCMEU). However, the principle of proportionality is not provided among criteria that should be taken into account when deciding to refuse the recognition and execution of an EIO. Competent executing authorities do not have prerogatives to assess whether the issuing state acted in accordance with the principle of proportionality, nor are obliged to assess whether the recognition and execution of an EIO is contrary to Art. 6 TEU and the Charter of Fundamental Rights of the EU.

4.3.4 Execution procedure

Arts 5(1)(2) and 42(h)(1) of the AJCCMEU define the County State Attorney's Office in the location where the evidentiary action is to be conducted or where the evidence is located as a competent authority for receiving EIOs. The County State Attorney's Office must undertake all the necessary actions for the execution of EIO as prescribed by domestic law. In this way, the reception of the EIO is separated from its execution, and the executing authority is, in accordance with domestic law, the State Attorney's Office or criminal or misdemeanor courts upon its proposal.¹⁰⁸²

Recourse to a different type of investigative measure, as foreseen in Art 10 of the EIO D, is also possible. The competent judicial authority will carry out an evidentiary action different from the one provided for in the EIO if this evidentiary action does not exist according to the domestic law or it could not be ordered in a comparable domestic case (Arts Art 42(i)(1)(a) and (b) AJCCMEU). However, in accordance with the Art 10(2) of the EIO D, Art 42(i)2 the evidentiary actions must be carried out if it refers to: a) obtaining information or evidence already in the possession of the competent Croatian authorities, and such information or evidence could be obtained, under domestic law, in criminal proceedings or for the purposes of an EIO; b) obtaining information already contained in databases maintained by the police or judicial authorities and directly accessible to the judicial authority in the course of criminal proceedings; c) examination of witnesses, experts, injured persons and victims, suspects or defendants or third parties in the territory of the State of execution; d) any evidentiary action which, according to domestic law, is

¹⁰⁸² Crnčec and Mišerda, 'Novela Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije' (2017) 24 Hrvatski ljetopis za kaznene znanosti i praksu, 542-543.

carried out without a court order¹⁰⁸³; or e) identity information of persons who have a telephone number subscription or IP address.

In addition to cases of non-existent or inapplicable evidentiary actions, the competent judicial authority can also carry out an evidentiary action that is by its nature less intrusive than the action provided for in the EIO if the same result would be achieved (Art 42(i)(3) AJCCMEU).

Croatian legislation allows to go along with additional formalities requested by an EIO and not foreseen in the domestic system. The competent judicial authority shall comply with the specific requirements laid down by the issuing authority, provided that these requirements are not contrary to the fundamental principles of the domestic legal order (Art. 42.h(2) AJCCMEU). In addition to that, the authorities of the issuing State can be present if this is not contrary to fundamental principles of domestic law or harms essential national security interests (Art 42(h)(4) AJCCMEU). However, their representative is bound by domestic law and does not have the authority to take evidentiary actions independently unless it is in accordance with domestic law and to the extent agreed (Art 42(h)(5) AJCCMEU).

Art. 42.k(3) sets the deadlines for the decision on enforcement and the execution of EIO. According to the Art 42.k(4) if the evidence required is already in the possession of domestic authorities, the competent judicial authority shall without delay transmit it to the authority of the issuing State. In other cases, where there are no grounds for postponement and refusal, the requested evidentiary action shall be carried out within the time limits provided for carrying out evidentiary actions under the domestic law and shall be given the same priority as in a comparable domestic case, while always respecting the time limits provided for in this Article (Art. 42.k(1) AJCCMEU). If the issuing authority requested to carry out the evidentiary action within a shorter time limit or at a specific time, the request will be respected, unless there are objective obstacles to its execution within the requested time limits (Art 42.k(2) AJCCMEU). In any case, the competent judicial authority shall decide on carrying out the requested evidentiary action without delay, and no later than 30 days from

¹⁰⁸³ In this regard, Croatia adopted a formal criterion and all measures which require court authorization are considered coercive measures. Although, as a rule, the court authorisation is required for the measures limiting human rights and freedoms, there are exceptions. Ivičević Karas and others, 'European Investigation Order in Croatia – Normative Framework and Practical Challenges' in Kai Ambos and others (eds), *The European Investigation Order: Legal Analysis and Practical Dilemmas of International Cooperation* (Duncker und Humblot, 2023) 37-38.



the receipt of the EIO. The competent judicial authority shall carry out the requested evidentiary action without delay, and no later than 90 days from issuing the decision on its execution (Art 42.k(3) AJCCMEU). If the competent authority cannot act within these time limits, it will inform the competent authority of the issuing State, stating the reasons for the delay, and consult with it on the appropriate time frame for carrying out the evidentiary action (Art 42.k(5) and (6) AJCCMEU).

After obtaining the requested evidence, the competent judicial authority shall without delay submit the relevant documents to the competent authority of the issuing State. If requested and possible under domestic law, the evidence shall be submitted immediately to the competent authorities of the issuing State present at the execution (Art 42(l)(1) AJCCMEU). There is also the possibility to request that the evidence be returned when the need for it ceases in the issuing State, or to send them provisionally, subject to the obligation of returning the submitted evidence to the Republic of Croatia, since they are being used in another domestic proceedings (Art 42(l)(3) and (4) AJCCMEU). The submission of evidence may also be suspended pending a decision regarding a legal remedy (Art 42(l)(2) AJCCMEU).

With regard to certain investigative measure, partial implementation was granted to Art 26 of the EIO D, as Art 42(af)(1) of the AJCCMEU provides that the competent County Attorney's Office may, after obtaining the decision of the investigating judge, issue an EIO for the purpose of obtaining data on banking operations to conduct domestic criminal proceedings, but it does provide that in such cases, the execution of the EIO may also be refused (in addition to the grounds referred to in Art 11 of the EIO D) if the execution of the investigative measure would not be authorised in a similar domestic case.

Issues for the rights of the suspect or accused person

The respect for fundamental rights is established as a principle of judicial cooperation. Art 3a AJCCMEU provides that the conduct of proceedings based on the Act shall not affect the obligation of respecting fundamental rights and freedoms defined by the Charter of Fundamental Rights of the European Union. The rights of the suspect or accused person in the execution are ensured by the rule that a EIO is executed in accordance with the provisions of the domestic law governing criminal procedure (42(h)(1) of the AJCCMEU), which includes a court order when it is required in Croatian law, and by right to appeal

against the decision to recognise and execute EIO (Art 14(1) AJCCMEU). However, the review is limited, since the substantive reasons for issuing a EIO may be reviewed only in proceedings initiated in the issuing State. The only exceptions to this are those cases where there are reasonable grounds indicating that the carrying out of the evidentiary action specified would be incompatible with the obligations referred to in Article 6 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union (Art 42.j(2)(d), where the recognition and execution of the EIO will be mandatory refused. The issues regarding suspect's or accused person's remedies are further elaborated in 5.3.5. below.

4.3.5 Cooperation issues between executing and issuing authorities

AJCCMEU sets rules on the transmission of EIOs and the required language. EIOs can be transmitted by any means capable of producing a written record under conditions allowing the executing state to establish authenticity, including through the safety telecommunications system of the European Judicial Network in Criminal Matters (Art. 42.e AJCCMEU). Regarding the language, the competent authority shall enforce the decisions issuing the EIO if they have been translated into Croatian with supporting documentation or, in case of urgency, the English translation shall be accepted, provided that the Member State which delivers the decision in English also agrees to receive the decisions of the Croatian competent authorities in English (Art. 9(1) AJCCMEU).

The basic principle of judicial cooperation with EU Member States is the principle of effective cooperation provided in Art 4 AJCCMEU, according to which the competent authorities of the Republic of Croatia have, within the scope of their powers and in accordance with the fundamental principles of the legal order of the Republic of Croatia, the obligation to act in such a way as to achieve, as far as possible, the purposes of judicial cooperation. In order to achieve this, in many cases the consultations between the issuing and executing State are foreseen. In this regard, a partial implementation of EIO D articles was established. Art 42(h)(6) of the AJCCMEU does not have an explicit provision on consulting the issuing authority specifically "on the importance of executing the EIO" and that "after that consultation the issuing authority may decide to withdraw the EIO", as provided in Art 6(3) of the EIO D.

The duty to inform the competent authority of the issuing State is also foreseen. According to Art 42o(1) AJCCMEU, the competent judicial authority has to, without delay and in any case within seven days of the reception, acknowledge the reception of the EIO by completing and sending the form set out in Annex 14B of the Act. It also has to inform the issuing authority, immediately and by any appropriate means: a) if it is impossible to take a decision on the recognition or execution of the EIO due to the fact that the form provided for in Annex 14A is incomplete or manifestly incorrect; b) if, in the course of the execution of the European Investigation Order, it considers without further enquiries that it may be appropriate to carry out evidentiary actions not initially foreseen, or which could not be specified when the European Investigation Order was issued, in order to enable the issuing authority to take further action in the specific case; or c) if it establishes that, in the specific case, it cannot comply with expressly indicated procedures (Art 42o(2) AJCCMEU), and d) of any actions taken within the meaning of Article 42i (application of other evidentiary measure) or of any decisions taken pursuant to Article 42j (non-recognition and non-execution) of the Act or e) of any decision to postpone the execution of the European Investigation Order, the reasons for the postponement and, if possible, the expected duration of the postponement (42o(3)(a) and (b) AJCCMEU).

4.3.6 Remedies

The AJCCMEU provides legal remedies against the decision to refuse an EIO when Croatia is the executing State. According to Art 14(1) of the AJCCMEU, parties and third persons who, in good faith, have acquired certain rights to property subject to these decisions have the right to appeal, in accordance with domestic law, against decisions on the recognition and execution of property insurance orders, EIOs or decisions on the confiscation of property or objects, in order to protect their legitimate interests. In addition to that, the State attorney has the right to appeal against the decision by which the court refuses to recognize and execute the EIO within three days (Art 42.m(1) AJCCMEU).

An appeal against a decision on the recognition of an EIO postpones its execution until the end of the appeal procedure (Art 14(2) AJCCMEU). The request to review the validity and existence of the conditions for issuing an EIO can only be submitted to the competent authority in the issuing country, in accordance with the national law of that country (Art. 14(3) AJCCMEU). In addition to that, Art 42.m(2) of the AJCCMEU prescribes that the

substantive reasons for issuing the EIO may only be challenged in proceedings initiated in the issuing State. This provision only partially transposes Art 14(2) of the EIO D, as it lacks the second part of this provision, which states that it is ‘without prejudice to the guarantees of fundamental rights in the executing State’. The position of the defence or third persons is also undermined by the failure to transpose Art 14(3) of the EIO D, which requires both the issuing and the executing authorities to take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking legal remedies when applicable and in due time, and to ensure that they can be effectively exercised without undermining the need to ensure confidentiality of an investigation. Also, Art 14(6) of the EIO D, providing that a legal challenge shall not suspend the execution of the investigative measure unless it is provided for in similar domestic cases, is also partially implemented, since Art 42.m(4) AJCCMEU does not refer to any legal challenge, but only to legal remedy filed in the issuing State (of which the competent State attorney notified the issuing state).

On the other hand, it has been observed that in Croatia there is no legal remedy provided against the decision to issue EIO, since it is not foreseen by the AJCCMEU, nor by the CPA for evidence gathering actions in general.¹⁰⁸⁴ In this situation the defence can only challenge the admissibility of the evidence gathered abroad.¹⁰⁸⁵ In these cases, it is stated that the courts have almost without exception accepted the principle of *locus regit actum*, i.e. the evidence is considered valid if it was obtained in accordance with the law of the state where the evidence was gathered.¹⁰⁸⁶

The issue of the admissibility of evidence arose in one case where the defendant’s interrogation in Romania was not recorded, as required by Art 275(2) of the CPA.¹⁰⁸⁷ The case referred to the criminal offense of Criminal association from Art. 328, par. 1 of the Criminal Code/11, and it was a decision regarding the appeal against the decision on the exclusion of illegal evidence. The appeal was prompted by the fact that the interrogation of

¹⁰⁸⁴ Ivičević Karas and others, (n 68) 47. Although there are no provisions on legal remedy, Hržina states that the appeal can be submitted to the State attorney's office which issued the EIO. Hržina, ‘Novela Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije’ (Pravosudna akademija, 2018) 20.

¹⁰⁸⁵ Ivičević Karas and others (n 68) 47.

¹⁰⁸⁶ Šime Matak, ‘Dokazi iz inozemstva iz pozicije obrane - mogućnost pribavljanja, kontrola zakonitosti i pouzdanosti’ (2020) 27 Hrvatski ljetopis za kaznene znanosti i praksu, 537.

¹⁰⁸⁷ VSRH, I Kž-Us 120/2020-4 of 17 December 2020.

the defendant in Romania was not recorded with an audio-video recording device due to the lack of the necessary technical equipment. The defense claimed that it was an illegal piece of evidence that should be excluded because the interrogation was not recorded in the manner prescribed in Art. 275, par, 2 of the Criminal Procedure Act. In contrast, the Supreme Court of the Republic of Croatia found that the defendant's interrogation was attended by his chosen defense attorney in the Republic of Romania, that he was instructed on his rights and presented his defense, while the interrogation itself was not recorded with an audio-video recording device due to the lack of the necessary technical equipment, and the accused and his defense counsel did not specifically request it. The court concluded that the conducted interrogation was not illegal, pointing out that "the evidentiary action was conducted within the framework of international legal assistance of judicial cooperation of the Member States of the European Union, the fundamental principle of which is mutual recognition between Member States. Directive 2014/41/EU of the European Parliament and the Council of April 3, 2014 on the European Investigation Order in Criminal Matters, the provisions of which are incorporated in the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union, stipulates that member states are obliged to respect the fundamental rights and principles contained in Art. 6 of the Treaty on the European Union, where the right to defense in criminal proceedings is emphasized as a fundamental right of the defendant. In the specific case, the State executing the European investigation order conducted the investigation in accordance with the request of the competent judicial body, while the guaranteed right of the defense by the assistance of the defender was fully respected. Therefore, since the absence of recording of the act of questioning the defendant does not represent a violation of the right of defense guaranteed by international law or a violation of the AJCCMEU, the way in which the evidence was obtained does not contradict the basic principles of domestic criminal law. Since the evidence was presented in accordance with the request of the prosecutor and the legality and reliability of the evidence presented according to the law of the executing state was not questioned, it is not illegal evidence in the sense of Art. 10. ZKP/08." ¹⁰⁸⁸

The CJEU in C-852/19 Gavanozov II judgment, established that the legislation of the issuing Member State that does not provide for any legal remedy against the issuing of an EIO for searches, seizures, or witness hearing by videoconference is not in accordance with Arts 6

¹⁰⁸⁸ Ibid.

and 14 of the EIO D.¹⁰⁸⁹ The case concerned the crime of incitement to serious murder as part of a criminal association provided by Art. 111, ps. 2 and 4 in connection with Art. 37, par. 1 and Art. 329, par. 1, p. 6 of the Criminal Code/2011. It is a decision regarding an appeal against a decision on the extension of pre-trial detention after an indictment has been filed. The position of the defence, which triggered the appeal, was that the evidence obtained by EIO does not constitute lawful evidence for the reason that the national legislation does not provide for a legal remedy against EIO, which is in line with the CJEU's judgment C -852/19 Gavanozov II, of 11 November 2021. Against this, the High Criminal Court of the Republic of Croatia concluded that there was no violation because the first-instance court correctly reached the conclusion on the existence of reasonable suspicion based on the evidence in the file and which were not identified as unlawful at the time of the impugned decision, and that the legality of the evidence can be decided in a separate proceeding before the indictment panel regarding the request for the exclusion of illegal evidence.

4.4 The coordination with Regulation 2018/1805

4.4.1 Legal basis in the national system and scope

In Croatia, there is no special legislation transposing the Regulation 2018/1805 (hereinafter: Regulation). Therefore, the Regulation is applied directly as a standard. However, it is explicitly proclaimed that the implementation of the Regulation “is ensured” (and not “incorporated” into Croatian legislation) by the AJCCMEU (Art 1(3) AJCCMEU). This legal provision was introduced in the legislative amendments of 2020.¹⁰⁹⁰ In the explanatory notes, the Government of the Republic of Croatia stated that the Regulation replaces the Framework Decision 2003/577/JHA and the Framework Decision 2006/783/JHA, and that on the day the Regulation enters into force, the existing provisions of the AJCCMEU on the freezing of property and the confiscation of property and objects [which are in line with the aforementioned framework decisions, authors’ note], cease to be valid, except in relation

¹⁰⁸⁹ Case C-852/19 Gavanozov II [2021] ECLI:EU:C:2021:902.

¹⁰⁹⁰ Act amending the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union (*Zakon o izmjenama i dopunama Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije*), Official Gazette No. 141/20.

to Ireland and Denmark.¹⁰⁹¹ Yet, with the legislative amendment, it was necessary to determine the authorities responsible for receiving and recognition, as well as for issuing freezing orders and confiscation orders, and it was done in the AJCCMEU.¹⁰⁹² According to the current legislation, county State attorneys are responsible for receiving freezing orders and confiscation orders according to the place where the property or objects are located, or where a natural person has a place of domicile or residence, and a legal person has a registered seat (Art 5(1)(3) AJCCMEU). The order to secure confiscation and the freezing order is issued by the State attorney and the court conducting the proceedings (Art 6(2) AJCCMEU), while the decision on confiscation of property or objects, or the confiscation order according to the Regulation, is made by the competent court (Art 6(4) AJCCMEU). Finally, county courts have jurisdiction for filling out and verifying the content of certificates that are submitted with decisions on confiscation of property and objects, and now they have the same jurisdiction for confiscation orders in accordance with the Regulation (Art 7 AJCCMEU).

The High Criminal Court, in its recent decision, confirmed that, since the AJCCMEU now ensures the implementation of the Regulation, it actually derogates from the application of the aforementioned instruments of judicial cooperation – freezing and confiscation orders regulated in the AJCCMEU.¹⁰⁹³ The direct application of the Regulation and its primacy over the AJCCMEU was also explicitly confirmed in another decision of the High Criminal Court.¹⁰⁹⁴

On the other side, the Directive 2014/42/EU, which establishes minimum rules on the freezing and the confiscation of property, was transposed to the CPA with the legislative amendment in 2017.¹⁰⁹⁵ Since then, besides traditional confiscation of instrumentalities and proceeds of crime, the CPA regulates the confiscation procedure in the cases of illness or absconding of the suspect or accused person – the so called non-conviction based confiscation (Arts 560.a – 560.f CPA), in cases where criminal proceedings have already

¹⁰⁹¹ Vlada Republike Hrvatske, *Prijedlog Zakona o dopunama Zakona o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije* (2020) 2 <https://www.sabor.hr/sites/default/files/uploads/sabor/2020-10-01/104409/PZE_36.pdf> accessed 16 July 2024.

¹⁰⁹² *Ibid.*

¹⁰⁹³ I Kž-eu-26/2022-4[2023] VKSRH, point 7.

¹⁰⁹⁴ I Kž-eu-10/2023-4[2023] VKSRH, point 10.

¹⁰⁹⁵ Act amending the Criminal Procedure Act (*Zakon o izmjenama i dopunama Zakona o kaznenom postupku*), Official Gazette No. 70/17.

been initiated regarding a criminal offence. The CPA also regulates the procedure of confiscation from a person to whom the property gain was transferred. This person has important procedural rights, including the right to a proxy (who may be a lawyer), the right to be summoned to the main hearing, the right to propose evidence and to pose questions to the defendant, witnesses and expert witnesses (Art 558 CPA). The same rights are guaranteed to the 'third person' who claims to have certain right in relation to the property gain which is object of the procedure (Art 558 CPA).

In Croatian law, the confiscation of property gain acquired through a criminal offence is traditionally regulated in a Criminal Code¹⁰⁹⁶ as a measure *sui generis*¹⁰⁹⁷, or *in rem* measure,¹⁰⁹⁸ which primarily serves to achieve a restorative, and not a punitive purpose (Art 77 CC). Thus, the application of the confiscation measure does not imply the determination of guilt, nor the determination that a criminal offence has been committed – it is sufficient to determine that an 'illegal act' was committed. Yet, this does not refer to the extended confiscation (Art 78 CC), which is possible in cases of criminal offences under the jurisdiction of the Office for Suppression of Corruption and Organized Crime, criminal offences of sexual abuse and exploitation of children, criminal offences against computer systems, programs and data, as well as in cases of unauthorized production and trafficking of drugs, and enabling the consumption of drugs (Art 78(1) CC). If the perpetrator of any these criminal offences has or had assets that are disproportionate to his or her legal income, it is assumed that these assets are the proceeds of the crime and they will be the object of extended confiscation, unless the perpetrator makes it probable that its origin is legal (Art 78(2) CC). On one side, the court does not have to be completely convinced that the entire property included in the extended confiscation derived from a criminal offence, and on the other side, the extent of the extended confiscation of the perpetrator's property can be quite significant. Therefore, the measure of extended confiscation does reveal some punitive features,¹⁰⁹⁹ and that is why its application implies the determination of the perpetrator's guilt, as well as the determination of the commission of a criminal offence in

¹⁰⁹⁶ Criminal Code (*Kazneni zakon*), Official Gazette No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.

¹⁰⁹⁷ Marin Mrčela and Igor Vuletić, *Komentar Kaznenog zakona* (Libertin naklada 2021) 467; Ksenija Turković, et al., *Komentar Kaznenog zakona* (Narodne novine 2013) 113.

¹⁰⁹⁸ Elizabeta Ivičević Karas, *Kaznenopravno oduzimanje nezakonito stečene imovinske koristi* (2007) 14 Hrvatski ljetopis za kazneno pravo i praksu 674.

¹⁰⁹⁹ Elizabeta Ivičević Karas, *Komentar Zakona o postupku oduzimanja imovinske koristi ostvarene kaznenim djelom* (Narodne novine 2011) 13.

a judgment of conviction. All these types of confiscation in Croatian law are in line with the Directive 2014/42/EU and are therefore included in the scope of the Regulation.¹¹⁰⁰

4.4.2 Execution procedure

Issues for the rights of the suspect, accused and other parties

As concerns the direct application of the Regulation, so far, there are only four published decisions of the High Criminal Court of the Republic of Croatia, which decided as a court of the second instance.¹¹⁰¹ In one of these decisions¹¹⁰² the High Criminal Court decided to refer for a preliminary ruling to the CJEU, in accordance with Art 267(3) TFEU. Issues in question concern the rights of the accused and other parties, including the ‘third person’ or the ‘affected person’.

In this case, the first-instance judgment of the County Court in Zagreb, based on the provision of Art 18(1) of the Regulation, and in connection with Art 1(3) AJCCMEU, recognized the order for confiscation of illegal property gain from the judgment of the District Court in Maribor, Republic of Slovenia. In the judgment of the District Court in Maribor, four defendants were acquitted of the criminal offence of abuse of position and authority, due to the lack of evidence.¹¹⁰³ Yet, the court decided that the shares of another trading company were to be confiscated from trading company D. d.o.o. in favor of the Republic of Slovenia.¹¹⁰⁴ Finally, the court decided that the method of execution of confiscation would be determined in the executing State, in accordance with the provisions of the AJCCMEU, which refer to the recognition and execution of decisions regarding the confiscation of objects and property gains pronounced in another State.¹¹⁰⁵

Both the State attorney and the company D. d.o.o., to which the confiscation order applied, appealed against that decision. The State attorney pointed to significant procedural

¹¹⁰⁰ See the Regulation, Recitals 7, 8, 13 and 14.

¹¹⁰¹ The search of the case law was conducted with the search tools of the official website of the Supreme Court of the Republic of Croatia, using the key word ‘2018/1805’ <<https://sudskapraksa.vsrh.hr/search>> accessed 12 June 2024.

¹¹⁰² I Kž-eu-8/2023-4[2023] VKSRH.

¹¹⁰³ Under Art 244(2), in relation to Art 244(1) and to Art 25 of the Slovenian Criminal Code.

¹¹⁰⁴ According to Art 498a(1) point 1 of the Slovenian Criminal Procedure Act.

¹¹⁰⁵ I Kž-eu-8/2023-4[2023] VKSRH, point 1.

and factual errors with the proposal that the contested judgment be vacated and the case returned to the first instance court for a new decision.¹¹⁰⁶ The company D. d.o.o. filed an appeal due to violation of the CPA and the CC and due to factual errors, with a proposal to reverse the judgment, so to refuse to recognize and execute the order for confiscation of property gain from the judgment of the District Court in Maribor, which was passed in a procedure that represents a serious violation of fundamental rights and freedoms, or alternatively to vacate the judgment and return the case to a new trial.¹¹⁰⁷

The High Criminal Court, determined that the interpretation of the CJEU was necessary for the correct application of the Regulation and, therefore, referred to the CJEU a request for a preliminary ruling, in accordance with Art 267(3) of the Treaty on the Functioning of the European Union.¹¹⁰⁸ Consequently, the procedure before the High Criminal Court was suspended until the decision of the CJEU.

The following questions were referred to the CJEU, as quoted:

“1) Does the term ‘proceedings in relation to a criminal offence that may result in confiscation of property, including confiscation without a conviction’ within the meaning of Art. 2(3) of Regulation 2018/1805 also include criminal proceedings concluded with an acquittal?

2) Does the term ‘proceedings in relation to a criminal offence that may result in confiscation of property, including confiscation without a conviction’ within the meaning of Art. 2(3) of Regulation 2018/1805 also include criminal proceedings concluded with a judgment of acquittal that includes an order to confiscate property as undue proceeds derived from another criminal offence, which is not the criminal offence of which the defendants were acquitted, and in whose commission the defendants were not involved, but rather persons against whom no indictment was brought?

3) Is it contrary to Regulation 2018/1805, Art 1(2) thereof, and Art 47 of the Charter of Fundamental Rights, to recognise a confiscation order issued in criminal proceedings in which an affected person, within the meaning of Art 2(10) of the Regulation:

- was not summoned to participate in all stages of the criminal proceedings;
- was not advised of his or her right to a lawyer throughout the proceedings;

¹¹⁰⁶ *Ibid*, point 2.1.

¹¹⁰⁷ *Ibid*, point 2.2.

¹¹⁰⁸ *Ibid*, point 5.

did not receive the full text of the judgment containing the confiscation order in a language he or she understood, but only excerpts from that judgment, and did not appeal against the judgment thus served.”¹¹⁰⁹

The first question referred to the CJEU, on the possibility of confiscation of property in case of an acquittal, asks for the correct interpretation of the relevant provisions of the Regulation. Namely, on one side, Art 18(1) of the Regulation prescribes that ‘[T]he executing authority shall recognise a confiscation order transmitted in accordance with Art 14 and shall take the measures necessary for its execution in the same way as for a domestic confiscation order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Art 19 or one of the grounds for postponement provided for in Art 21.’ On the other side, in Croatian law, the property gain may only be confiscated by a court decision that established *that an illegal act has been committed*, even in case of non-conviction based confiscation (Art 77(1) CC, also Art 560(1) CPA and Art 560.d(1) CPA). This should lead to conclusion that it is not possible to confiscate property gain on the basis of an acquittal, even in cases when acquittal is due to exclusion of guilt,¹¹¹⁰ although there are some different opinions in domestic literature. Namely, some authors actually hold that the confiscation should also be possible in case of exclusion of guilt, for example, due to unavoidable mistake as to the elements constituting a crime, or due to an unavoidable mistake as to illegality, or exceeding the limits of self-defence or necessity.¹¹¹¹ So this question is obviously still open and it was, among others, referred to the CJEU, since in the concrete case the Slovenian court acquitted the accused persons and ordered the confiscation of property gain from a third person (or ‘affected person’).

Regarding the second question, in Croatian law, there is no possibility to confiscate in criminal proceedings the property gained through another criminal offence, and not the one that was specified in the indictment, with exception of extended confiscation when it is assumed that assets which are disproportionate to perpetrator’s legal income are the proceeds of (any) crime (and not necessarily of the crime for which the perpetrator was pronounced guilty), as already explained. The confiscation of property gain may only be

¹¹⁰⁹ Case C-8/24, D. d. o. o., *Request for a preliminary ruling from the Visoki kazneni sud Republike Hrvatske (Croatia) lodged on 9 January 2024 – Criminal proceedings involving D. d.o.o. and Županijsko državno odvjetništvo u Zagrebu* [2024].

¹¹¹⁰ Mrčela and Vuletić, *Komentar Kaznenog zakona* (Libertin naklada 2021) 468.

¹¹¹¹ Mrčela and Vuletić point to attitudes of these authors, with who they actually disagree See *ibid*.

pronounced by the court in a conviction, or in a decision that establishes that the defendant has committed an illegal act that is the object of the accusation, and the property was gained through that illegal act (Art 560(1) CPA). The same principle applies to the non-conviction-based confiscation (Art 560.d(1) CPA).

Finally, regarding the third question, as it was already mentioned, the Croatian law provides for the interested ‘third person’, of ‘affected person’ from Art 2(10) of the Regulation, important procedural rights allowing him or her to actively participate in the confiscation procedure and represent his or her interests (Art 558 CPA). It is alleged that the aforementioned rights were not guaranteed in the proceedings before the Slovenian courts, so the High Criminal Court is asking the CJEU for an interpretation as to whether this is an obstacle to the recognition of the confiscation order.

It should be mentioned that, in the same case, the High Criminal Court previously rejected the appeal, filed by the company D. d.o.o. against prolongation of provisional measures ordered by Zagreb County Court. It explained that the District Court in Maribor prolonged the provisional measure of securing the confiscation of property gain and added that ‘[A]t the same time, the first-instance court cannot get involved in the examination and determination of facts related to the validity of the decision on confiscation of property gain’.¹¹¹² Although the High Criminal Court pointed out that the Regulation is directly applicable in this case, it actually explicitly referred to the principle of mutual recognition and the principle of effective cooperation from Arts 3 and 4 of the AJCCMEU¹¹¹³.

This concrete case is still pending, since the proceedings before the High Criminal Court are suspended while expecting the preliminary ruling of the CJEU.

5. Conclusions

Croatia has normatively separated Mutual Legal Assistance and EU cooperation in criminal matters, establishing the AJCCMEU as the *sedes materiae* for implementing all EU mutual recognition instruments. In order to achieve complete and correct implementation of the EAW FD, the AJCCMEU has undergone eight amendments, with the latest in 2024 prompted by the EU infringement procedure. The most contentious amendment was from 2013, adopted three days before Croatia’s EU accession. It introduced the statute of limitations

¹¹¹² I Kž-eu-10/2023-4[2023] VKSRH, point 13.

¹¹¹³ *Ibid*, point 13.1.



on prosecution as a mandatory ground for refusing an EAW, aligning with the solution adopted in most EU Member States. To bypass this legislative obstacle, Croatian courts, led by the Supreme Court, developed an innovative interpretation that excluded the verification of the statute of limitations for offenses not subject to the principle of double criminality. Consequently, Croatia became one of the few EU Member States prioritizing mutual trust over reciprocity and protection of its citizens from surrender in cases of time-barred offenses. It led to the automatic surrender of Croatian citizens for economic crimes committed decades earlier without considering the principle of proportionality. Thus, Croatia's EAW system is broad in scope, offering limited protections for its nationals and excluding the statute of limitations as a ground for non-recognition.

As concerns using the protection of human rights as ground for refusal, Croatian courts heavily relied on other Member States' criminal justice systems for a long time, often neglecting human rights concerns. In 2017, Croatian legislation was aligned with the *Calderaru* and *Aranyosi* judgments and, since 2022, notable advancements were made in judicial decisions by invoking the principle of proportionality, considering family life, the right to translation as well as requiring thorough examination of prison conditions and the effective judicial protection in the issuing state. These developments represent a shift from automatic recognition of foreign judicial decisions, leading to enhanced protection of fundamental rights in Croatia.

The normative analysis has shown that Croatian law ensures the rights of accused individuals in line with the EAW FD and that persons arrested under an EAW have the same rights as those in domestic criminal procedures. Two unique aspects of the EAW execution procedure are that it may begin with an interrogation by the State Attorney instead of an arrest if deemed unnecessary by the police, and that while the State Attorney can refuse surrender if the offense is not recognized under Croatian law, this decision must still be validated by the court.

However, significant shortcomings remain in the implementation of the EIO Directive through the 2017 AJCCMEU, with only minor amendments since. The major problem is that, while 2024 amendment to the AJCCMEU converted the EAW mandatory grounds to optional, a same adjustment for the EIO did not occur, what is contrary to the EIO Directive. Additionally, partial implementation of several other EIO FD provisions was identified. The CJEU's *Gavanazov II* ruling exposed a critical gap: Croatia lacks legal remedies for challenging the issuance of an EIO for certain evidentiary actions, potentially affecting the execution of



EIOs and the admissibility of evidence in Croatian courts. These discrepancies with recent CJEU judgments and conflicts with EU law highlight the need for further adjustments to align with evolving EU standards.

In Croatia, Regulation 1805/2018 is applied directly without additional transposing legislation, as confirmed by the AJCCMEU amendments in 2020, which designates the State attorneys and courts as competent authorities. Croatian law regards property confiscation as a restorative measure, not implying guilt, but requires a conviction for extended confiscation related to serious crimes. Few court decisions exist regarding the Regulation's application, but notably, the High Criminal Court referred a case to the CJEU for a preliminary ruling. This case concerns the recognition of a Slovenian confiscation order despite an acquittal and raises questions about procedural rights and the scope of "proceedings in relation to a criminal offence" under the Regulation. The High Criminal Court is awaiting the CJEU's interpretation to resolve these issues.

In conclusion, Croatia has effectively integrated EU mutual recognition instruments into its legal system, demonstrating commitment to EU standards and principles. While challenges remain, recent legislative and particularly judicial developments indicate a stronger focus on protecting fundamental rights and ensuring proportionality in judicial cooperation.

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