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ANNEX

EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL EVALUATIONS

9th round of Mutual Evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty

REPORT ON CROATIA

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1. EXECUTIVE SUMMARY

The visit was organised by the Croatian authorities in a professional and exemplary way. The evaluation team learned about the Croatian legislation and institutional system through presentations and meetings with representatives of the courts, prosecutor's offices and other responsible authorities in Croatia.

The representatives of the Croatian authorities were well-prepared, and open and sincere in their responses to the evaluation team. It was obvious to the evaluation team that there is a genuine desire by the Croatian representatives to apply the EU legal framework covered by the ninth round of mutual evaluations, and that their conditions for doing so are good.

The evaluation team's overall impression is that the four Framework Decisions (FDs) covered by the evaluation have been implemented well into the Croatian legislation. It is also the evaluation team's impression that the application of the FDs works well.

In the Croatian legal order, all legislation on cooperation in criminal matters has been incorporated into a single law, the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union (hereinafter: JCA). The law seems to be comprehensive and clear. As regards FD 2008/909/JHA, the issuing and executing authorities are the County Courts having jurisdiction for the place of the domicile of the person concerned or his/her family.

As regards FD 2002/584/JHA and FD 2009/947/JHA, the competent executing authority is the **county court**. The competent authorities for issuing the relevant decisions are all judicial authorities, i.e. criminal courts and Public Prosecutor's offices, the latter also being regarded as independent judicial authorities in accordance with the Croatian constitution.

The competent executing authorities are the county courts having jurisdiction for the place where the sentenced person is domiciled or resides. However, the competent authorities for receiving the decision of the foreign judicial authorities are the State Attorney's Offices.

A central authority has been established for all four FDs concerned. The Ministry of Justice and Public Administration (hereinafter 'Ministry of Justice') competent for justice affairs in Croatia is the central authority that provides assistance to domestic authorities and competent authorities of the Member States in establishing contacts and judicial cooperation with respect to the decisions referred to in Art. 1 of the JCA (Art. 5 (5) in conjunction with Art. 1 of the JCA). The Ministry of Justice has a limited role which is restricted to coordinating competences (Art. 5a (1) of the JCA). In addition the central authority is entitled to request information on cases in the area of judicial cooperation in criminal matters from the competent judicial authorities (Art. 5a (3) of the JCA) and to submit information on cases in the area of judicial cooperation in criminal matters to the competent authorities of the European Union (Art. 5a (2) of the JCA). The Ministry of Justice does not take part in the decision-making process in individual cases.

When it comes to the various FDs, the evaluation team have made the following observations.

FRAMEWORK DECISION 584/2002/JHA

According to the distribution of competence described above, which is laid down in Art. 6 (1) of the JCA, the State Attorney's Office, the County Courts and also the Municipal Courts are competent to issue an EAW. The State Attorney's Office is independent in accordance with the Constitution of the Republic of Croatia. However, the decision issuing an EAW for investigation purposes is based on a court decision ordering detention. Hence the State Attorney's Office cannot issue such an EAW without a prior national decision ordering detention which, during the investigation stage, is rendered by the investigating judge. The County Court responsible for the execution of sentences is the only authority competent to issue an EAW for the purpose of executing a custodial sentence or sentence of detention, under Art. 5 (1) of the JCA.

According to the principle of legality, the prosecutors and judges are obliged to issue the EAW if in the specific case the legal preconditions are fulfilled.

The principle of proportionality is always taken into account by the Croatian judicial authorities when deciding to issue an EAW. Likewise, the principle of proportionality is also taken into consideration when deciding on the surrender of a suspect following a received EAW. This practice follows the provision of Article 3a of the JCA which provides that all decisions on judicial cooperation in criminal matters with EU Member States are to be issued in proportion to the nature of the need in each individual case and as provided for in the Criminal Procedure Act. Consequently, an EAW is not issued when its purpose can be achieved by a less stringent measure (serving of a summons abroad, carrying out of investigative measures abroad on the basis of a request for international legal assistance/a European Investigation Order (hereinafter 'EIO'), and transferring jurisdiction for criminal prosecution).

The competent national authorities take into account the guidelines provided in the Commission's 'Handbook on how to issue and execute a European arrest warrant'.

The Croatian authorities competent for the execution or issuing of EAWs seem to be very proactive in making direct contact with competent authorities in other Member States. Direct communication between Croatian judicial authorities and SIRENE is conducted by phone, e-mail or fax and works very well. In case of communication obstacles with a judicial authority of another Member State, the EJN contact points are used, which has proven highly effective. In complex cases concerning serious crimes or involving several Member States, the Croatian national member of Eurojust may be contacted to facilitate communication.

The aspect of double criminality is well taken into account when deciding upon issuing or executing an EAW, even in cases referring to catalogue offences. However, it does not seem to be clear to practitioners whether double criminality has to be assessed through an *in abstracto* or *in concreto* test. In this context the question of whether the lapse of a statutory limitation concerning a catalogue offence under Article 2 (2) of the JCA has to be assessed and taken into account has been answered by the Supreme Court of the Republic of Croatia to the effect that statutory limitation is an integral part of the concept of double criminality and hence the assessment of a potential lapse of statutory limitation is precluded in such cases.

In cases where an EAW is received by Croatian authorities to execute a custodial sentence or measure involving deprivation of liberty, and the requested person is a citizen of the Republic of Croatia or is permanently or temporarily resident in its territory and has consented to serve the sentence in the Republic of Croatia, the court is required to postpone the proceedings on the EAW in order to decide first concerning execution of the custodial measure in Croatia. The court must request the judgment and relevant documentation from the issuing State and set an appropriate time-limit for its transmission. The court must refuse recognition of the EAW once the decision to take over the execution of the foreign sentence based on FD 909 has become final.

A person against whom a European arrest warrant has been issued in the Republic of Croatia has, after being arrested in the executing State, the right to appoint a defence counsel in the Republic of Croatia of his or her choice and to receive a list of lawyers providing information and advice in proceedings under a European arrest warrant compiled by the Croatian Bar Association. In the case of an *ex officio* appointment, the issuing authority has to inform the competent authority of the executing State accordingly and without any delay. The knowledge of lawyers, in particular those on the list as *ex officio* counsels, is generally poor. The Bar Association should be encouraged to provide more training on this specific and challenging field of law.

Where Croatia has been the issuing State, Croatian authorities have received requests from the executing State's competent authorities for additional comments on detention conditions with, to date, three such requests that have led to delays in executing the EAW. In two cases before domestic courts in which EAWs were issued, queries were transmitted about detention conditions in the Republic of Croatia. One of the EAWs was executed, one was rejected.

As executing authorities, the Croatian courts identified some deficiencies relating to the information provided by issuing States, as well as situations where incomplete or distorted information had been provided. According to Art. 9 (1) of the JCA, documents submitted by foreign national authorities are to be translated into Croatian. An English translation is accepted only in urgent cases and on condition that the Member State transmitting a decision in English agrees to receive the decisions of the Croatian competent authorities in English. Croatian practitioners pointed out that translation issues, including poor translation quality, have frequently been encountered and made it difficult to keep to the strict deadlines imposed on the competent authorities by the JCA for the detention of the suspect.

If the EAW does not contain all relevant information the court may, in accordance with Art. 29 (2), request additional information or documents from the issuing authority and set an appropriate time-limit of no more than seven working days to provide them. This time-limit appears prima facie very short and has resulted in some difficulties for the requesting Member State to submit the required information or documentation in time. Missing the seven-day deadline, however, does not entail any legal consequences or sanctions, as this deadline stands alone without any other rules ensuring that it is adhered to.

According to Croatian practitioners the description of facts concerning the criminal act was in many cases not exhaustive or accurate in the respective SIS alerts, which did not make it possible to ask the defendant for his or her consent to the surrender. The process of acquiring additional information or documentation from issuing States, sometimes even repeatedly, resulted in the proceedings being notably prolonged in a few cases. Missing information was also reported, particularly in the context of trials in absentia. The ECJ judgments relating to cases involving trials *in absentia* had a significant role in increasing the number of requests for additional information.

As regards grounds for refusal, it has to be pointed out that the principles stipulated in Art. 4 of FD 2002/585/JHA are very well reflected in the respective provisions of the JCA. The jurisprudence of the CJEU on the FD on the EAW has led to changes in the Croatian national law transposing the FD EAW. The Judicial Cooperation Act has been amended several times to harmonize Croatian legislation with Framework Decisions and Directives regulating the area of judicial cooperation in criminal matters.

However, refusal to execute the European arrest warrant in the event of a potential risk of violation of fundamental rights in relation to detention is not specifically mentioned in Art. 20 and 21 of the JCA. The approach followed by the Croatian authorities when it comes to the question of whether the potential risk of violation of fundamental rights has to be evaluated *ex officio* in each single case does not seem to be unified.

Some Croatian practitioners pointed out that detention conditions have to be assessed *ex officio* if there are reasons to suspect that they might be a matter of concern in the issuing State, whereas other practitioners stated that concerns regarding detention conditions in the issuing State are only taken into account if raised by the defendant or the defence counsel. In any case, detention conditions are assessed on a case-by-case basis in accordance with the jurisprudence of the CJEU and the ECHR if a potential risk of violation of fundamental rights in relation to detention conditions is detected or raised.

As regards trials in absentia, the relevant provision of Art. 21 (2) of the JCA in general reflects Art. 4a of FD 584.

However, Art. 21 (2) no. 3, which refers to a representation by a lawyer, does not appear to be in compliance with Art. 4a of FD 584, because this provision fails to stipulate that the defendant must give a mandate to a legal counsellor 'being aware of the scheduled trial'. The provision should be amended accordingly, to make it possible to establish that the person was aware of the scheduled trial when giving a mandate to a lawyer.

In addition, Croatian practitioners addressed the issue that neither the respective FDs nor the Croatian legislation provide legal guidance with regard to the question of whether a judgment is rendered in absentia in cases where the defendant attended just one of numerous sessions.

FRAMEWORK DECISION 2008/909/JHA

FD 2008/909/JHA - This FD has also generally been implemented and applied well in Croatia. Croatia has significant experience in applying the FD, both as an issuing and as an executing State. The Ministry of Justice and the competent authorities provide valuable support to those requesting the application of this FD. In some respects, there may be reason for Croatia to consider amendments or clarifications to its legislation. However, only minor changes are needed to ensure that Croatia fully applies the FD correctly.

The evaluation team also appreciated the approach taken by the Croatian authorities on translation in the context of Framework Decision 2008/909/JHA. In practice, the competent authorities seek a compromise in view of the different legislation in other Member States, and in some cases the issuing State is asked to provide a translation of only the relevant parts of the judgment. In addition, at the request of the sentenced person, a translation of all the relevant documentation can be provided by the issuing State or through an authorised Court interpreter paid by the Croatian authorities.

This cooperative practice follows Article 23 (1) and (2) of Framework Decision 2008/909/JHA. The Croatian approach in this regard is a perfect example of how to improve the application of Framework Decision 2008/909/JHA.

A lack of accurate information has also been noted with regard to recognition of judgments which include consolidated sentences imposed on the defendant by previous court decisions. In such cases, the recognition of the judgment requires exhaustive information on the legal and procedural aspects of each individual judgment included, such as – but not limited to – description of facts, statutory limitation and whether the defendant was present when the respective judgment was pronounced. In practice, however, it seems that this information is provided by the Croatian authorities only on request.

According to Croatian law, a sentence of imprisonment can only be set in years and months, which is contrary to the criminal law systems in some Member States. As a result, the part of the sentence counted in days is disregarded when executing the sentence in the Republic of Croatia.

There is still room for improvement as regards the adaptation of sentences, which causes application problems in some cases in Croatia since the Member States' national legislation on non-harmonised crimes provides for very different penalties.

Through discussion it appeared that Croatian practitioners consider that this mutual recognition instrument is not always needed, because the sentenced person does not want their families and friends in Croatia to know that they have been sentenced in another country and would rather serve their sentence in the sentencing State.

LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

Croatian general practice for the purposes of the enforcement of a sentence is that an EAW will be issued if the whereabouts of the requested person are unknown; if the whereabouts are known, the court will assess whether to issue an EAW or a certificate under FD 2008/909/JHA, taking into account all the merits of the case. Decisions are taken on a case-by-case basis.

As regards Croatia as issuing State, the Croatian authorities wait to be addressed by the sentenced person and therefore seek their consent even in cases where it is not required. The sentenced person is usually informed of his or her right to transfer during the trial or a later interview when arriving in prison.

As regards Croatia as executing State, it is important to underline that the competent authorities for the execution of an EAW and the enforcement of a sentence based on FD 909 are the same, which facilitates coordination between the two European instruments. They always postpone the decision on the EAW in order to take over the enforcement of the sentence through FD 909 before refusing the EAW. The Croatian authorities reported that they have refused an EAW because the requested person was a Croatian citizen, or had been granted the right of asylum, or was a permanent resident. The Croatian authorities agree that in such cases, to ensure legal certainty, enforcement of sentences should always be based on the transmission of an FD 909 certificate from the issuing State.

Nevertheless, regarding the divergence of practice among Member States, the evaluation team consider that amending Article 25 of the Framework Decision on custodial sentences would avoid diverging interpretations among Member States on whether or not an FD 2008/909/JHA certificate should be issued in such cases.

FRAMEWORK DECISION 2008/947/JHA

Generally speaking, Framework Decision 2008/947/JHA ('FD 947') is rarely used in Croatia, but the evaluation team would note that this is not specific to Croatia, as the situation is similar in the majority of Member States. The Croatian authorities say that the very limited use of this instrument is due to its complexity and the variety of probation and alternative sanctions in all the different Member States. Furthermore, practitioners are not very familiar with it.

The evaluation team think that the Ministry of Justice could raise awareness and knowledge within the judiciary by issuing a circular and develop some practical tools. Moreover, the Judicial Academy could provide some dedicated training programmes that could be useful in the field, especially a national programme that would bring together all the potential competent practitioners so that they discuss their best practices and challenges with the enforcement of this instrument.

FRAMEWORK DECISION 2009/829/JHA

There are no grounds for comments on the transposition and application in Croatia.

As expected, use of Framework Decision 2009/829/JHA by Member States is rare. The Croatian authorities have not had any case concerning this instrument, either as executing or issuing State.

This is not due to Croatia's legislation. Indeed, practitioners consider the legislation to be comprehensive. In addition, the authorities responsible for handling these mutual recognition instruments (the Ministry of Justice) are skilled in judicial cooperation.

The reasons why the FD in question is not used are that:

- in the cases of serious crimes where there are grounds for detention (risk of influencing witnesses, the danger of absconding, continued offending), Croatian practitioners hesitate to apply the ESO Framework Decision due to the risk that the accused person will fail to appear for trial or interfere with evidence or witnesses or otherwise obstruct justice, that the person will commit a further offence while on bail (to avoid the criminal proceedings being frustrated if the person absconds, hides, or influences a witness);
- there is a lack of trust in the person concerned and his or her reliability if detention is replaced by a supervision measure, due to inability to obtain the relevant information about a person's way of life and his or her reliability;
- there is a lack of practical experience and a sufficient level of awareness.

Application at EU level needs to be encouraged, and there is reason to consider reviewing the functionality of this FD in order to allow for increased use of this important alternative to deprivation of liberty.

Overall, the evaluation team is very satisfied with Croatia's practice in the use of mutual recognition instruments. The evaluation team considers that Croatia successfully promotes mutual trust. For these reasons, the evaluation team has a positive opinion.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, CATS decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW'),

- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('Custodial sentences'),

- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures'),

- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the link between the legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947 on probation and alternative measures and FD 2009/829 on the ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and ensuring better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which may not have implemented all aspects of the various instruments.

The Republic of Croatia was the twelfth Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended on the proposal of certain Member States and in the absence of any objections (ST 9278/19 REV 2).

In accordance with Article 3 of the Joint Action, the Presidency drew up a list of experts in the evaluations to be carried out. Member States nominated experts with substantial practical knowledge in the field, in response to a written request sent on Friday 17 May 2019 to delegations by the Secretariat of the Council of European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJN should be invited as observers.

The experts entrusted with the task of evaluating the Republic of Croatia were Mr Norbert Koster (Germany), Ms Anna Ondrejova (Slovakia), and Ms Elise Coutant (France). Observers were also present: Ms Ana Wallis de Calvaho (Eurojust), together with Ms Maria Bacova from the General Secretariat of the Council.

This report was prepared by the evaluation team with the assistance of the General Secretariat of the Council, based on findings arising from the preparatory video-teleworking conference meeting (VTC) that took place on 27 May 2021, the evaluation visit that took place in the Republic of Croatia between 6 and 9 September 2021, and the Republic of Croatia's detailed replies to the evaluation questionnaire, together with its detailed answers to the ensuing follow-up questions.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

Framework Decision 2002/584/JHA on the European arrest warrant has been transposed into the legislation of the Republic of Croatia by the Act on Judicial Cooperation in Criminal Matters with Member State of the European Union under Title II (hereinafter: 'the JCA').

3.1. Authorities competent for the execution of the European Arrest Warrant (EAW)

The County State Attorney's Office (hereinafter: 'CSAO') having jurisdiction for the place where the person who is the subject of the European arrest warrant resides or is domiciled - or, if the person concerned does not reside or is not domiciled in the territory of the Republic of Croatia, for the place where he or she was arrested - is the competent authority to receive a European arrest warrant issued by another Member State. This is stipulated in Art. 5 (1) of the JCA, which refers to Art. 1 (1) point 1 of the JCA.

The authority competent to render a decision granting surrender is the investigating judge or the pre-trial panel of the competent court.

The Ministry of Justice is the central authority that provides assistance to the domestic authorities and competent authorities of the Member States in establishing contacts and judicial cooperation with respect to the decisions referred to in Art. 1 of the JCA[1] (Art. 5 (5) in conjunction with Art. 1(1) point 1 of the JCA).

The role of the central authority is further defined in Art. 5a of the JCA.

Art. 5a (1) is almost entirely a verbatim copy of Art. 5 (5) of the JCA, just adding that the Ministry of Justice is the central 'coordinating' authority.

The Ministry of Justice submits to the competent authorities of the European Union information on cases in the area of judicial cooperation in criminal matters, in accordance with the obligations laid down in the legal acts of the European Union referred to in Art. 1 (1) of the JCA, which include the European arrest warrant and surrender proceedings (Art. 5a (2) of the JCA).

Under Art. 5a (3) of the JCA, the Ministry of Justice is empowered to require the competent judicial authorities to provide information on cases in the area of judicial cooperation in criminal matters.

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1 Art. 1 of the JCA

(1) This Act regulates judicial cooperation in criminal matters between competent domestic judicial authorities and competent judicial authorities of other Member States of the European Union, with regard to:
1. the European arrest warrant and the surrender procedure;
2. the European Investigation Order;
3. orders freezing property;
4. the recognition and execution of decisions on the confiscation of property or objects;
5. the recognition and execution of decisions on financial penalties;
6. the recognition and enforcement of judgments imposing custodial sentences or measures involving deprivation of liberty;
7. the recognition and enforcement of judgments and decisions imposing probation measures and alternative sanctions;
8. the recognition and execution of decisions on supervision measures;
9. the European protection order.

3.1.1. Procedure when the Republic of Croatia acts as the executing state

If the domestic judicial authority which receives a decision within the framework of judicial cooperation has no jurisdiction to receive it and to take the necessary measures and actions for its execution, this authority is required to forward the EAW to the competent authority and promptly and directly inform thereof the judicial authority of the issuing State (Art. 5 (4) of the JCA).

Additional rules with regard to the reception of a European arrest warrant are laid down in by Art. 19 (1) of the JCA which stipulates that a European arrest warrant may be received through the secure telecommunication system of the EJN in criminal matters. According to Art. 19 (4) of the JCA the competent authority may receive a European arrest warrant via Interpol if it is not possible to access the Schengen Information System through the national SIRENE Bureau.

According to Art. 9 (1) of the JCA the competent judicial authority is required to execute the decisions referred to in Article 1 of the JCA (which include the EAW - Art. 1 (1) point 1 of the JCA) issued by foreign national authorities if these decisions and the accompanying documents are translated into Croatian. In urgent cases an English translation is to be accepted, on condition that the Member State transmitting a decision in English agrees to receive the decisions of the Croatian competent authorities in English.

Croatian experts pointed out that translation issues have frequently been encountered. Translations into Croatian are often of poor quality, appearing to be performed by IT software rather than translators. In addition, strict deadlines are imposed on the competent authorities by the JCA. If the State Attorney does not receive the above-mentioned translation of the European arrest warrant within 48 hours from the arrest of the wanted person, the investigating judge may prolong custody for a further 36 hours (Art. 23 (1) and 5 of the JCA). The arrested person is to be released if the issuing State fails to submit the translation within the time-limit specified in Art. 23[2] (4) and (5). However, if the issuing State submits the required translation after the expiry of the time-limit referred to in Art. 23 (5), the person is to be arrested again and, within 24 hours of the arrest, brought before the competent investigating judge for the purpose of deciding on detention and initiating the surrender procedure. According to Croatian experts, it is usually impossible to acquire a translation within 84 hours (see footnote No 2); consequently, the SAO translates the EAW in such a case.

After a person has been arrested, the CSAO interrogates the person, informs him/her about his/her rights, enables him/her to appoint the defence lawyer and requests the investigating judge to issue a detention order. However, the CSAO may also decide to impose a supervision measure instead of the EAW.

If the CSAO does not impose supervision measures, it is required to order the police to bring the arrested person before the competent investigating judge within 48 hours from the arrest, for the purpose of deciding on detention and initiating the surrender procedure.

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2 Art. 23 (4) and (5) of the JCA

(4) If the European arrest warrant or the alert and the translation referred to in Article 9 of this Act are not in the possession of the State Attorney, he or she may issue a decision imposing custody for a period of not more than 48 hours after the time of the arrest.

(5) If the State Attorney does not receive the translation referred to in Article 9 of this Act within the time-limit specified in paragraph 1 of this Article, the investigating judge may, at the request of the State Attorney, prolong the custody for a further 36 hours.

Following the State Attorney's request, submitted together with the documentation, the investigating judge, as part of the procedure for executing an EAW, schedules a hearing with a view to deciding on detention in accordance with domestic law. The investigating judge informs the State Attorney, the requested person and his or her defence counsel, and, if necessary, an interpreter, about the time of the hearing concerning the decision on pre-trial detention.

The requested person and his or her defence counsel are required to comment on the statements in the EAW and state the reasons for opposing surrender or indicate the existence of grounds for refusing surrender. At the session of the pre-trial panel, the requested person may or may not consent to surrender.

If the person concerned consents to surrender to the issuing State, the investigating judge or the pre-trial panel of the competent court is required, without delay and no later than three days after consent is given, to issue render a decision granting surrender, unless there are grounds for the non-execution of the EAW (Art. 28 of the JCA).

If the requested person does not consent to surrender, the court is required to question him or her about the reasons for opposing surrender. The competent State Attorney may be present, while the requested person's defence counsel must be present at the questioning. The court may request additional information or documents from the issuing authority and, if necessary, take measures to obtain evidence in accordance with the relevant provisions of domestic law on criminal proceedings to determine whether all the preconditions for surrender are met.

Afterwards, the pre-trial panel of the competent court is required to render a decision granting or refusing surrender of the requested person (Art. 29 of JCA). However, the sentenced person and the competent State Attorney may appeal against a decision on recognition of the judgment within three days from the date this decision was served. The appeal must be decided on by the pre-trial panel of a higher court within three days.

As for the three-day time limit within which the High Criminal court has to decide upon appeal, practitioners said that it is always complied with since ensuring additional information if needed before submitting the case to the High Criminal Court is the duty of the respective County Court.

Regarding cases where the requested person is already being prosecuted in Croatia or is serving a sentence, the relevant court renders an order suspending the execution of the EAW until proceedings in Croatia have been completed and the person has served his/her sentence. Simultaneously, the Croatian judicial authorities inform the issuing State that the legal conditions for suspension of the execution of the EAW are fulfilled and about the possibility of requesting the person's temporary surrender if it is essential for the case. Thus, they combine these two types of institutions.

3.1.2. Authorities competent to issue the EAW

The Croatian judicial system has a decentralised structure; all judicial authorities - criminal courts and State Attorney's offices - issue EAWs (i.e. the State A office before an indictment and the court/executing judge after the indictment). Practitioners emphasised that the State Attorney's office is independent, under the Constitution. However, the decision to issue the EAW is based on the court decision on detention. Thus, they cannot issue the EAW without a decision ordering detention, which is rendered by the investigating judge.

Issuing judicial authorities, apart from the County State Attorney's Offices (CSAO) and county court, are the Municipal State Attorney's Offices, while it is the CSAO that also transmits the EAWs issued by the municipal State Attorney.

3.1.3. Procedure when the Republic of Croatia acts as the issuing State

According to the principle of legality, the prosecutors and judges are obliged to issue the EAW if in the specific case the legal preconditions are fulfilled[3].

The competent domestic authority may issue a European arrest warrant for offences other than those listed in Article 10 of this Act if they are punishable by a custodial sentence for a maximum period of at least one year or, where the final sentence has been passed, for a custodial sentence of at least four months, and for the purposes of criminal prosecution if a detention order has been made against the person to whom the warrant relates.

As practitioners noted, when issuing an EAW they always take account of proportionality. In cases where a defendant has his or her residence in another Member State and where he or she can be questioned on the basis of an EIO order, they issue the EIO. Thus, they first use all other types of judicial cooperation before using the EAW.

If the location of the person is known, the EAW is transmitted directly to the competent authority in the executing State. That competent authority may be identified via a database on the intranet of the Ministry of Justice, the EJN Atlas, or the EJN contact points in.

[3] Article 2 (1) of the Framework Decision on EAW

If the location of the person is not known, the national SIRENE Bureau issue an alert in the Schengen Information System for the purpose of executing the EAW. The Interpol channel may be used to receive and transmit the EAW in cases where access to the Schengen Information System through the national SIRENE Bureau is not possible. Such an alert, accompanied by the information specified in Article 18 of the Act[4], has the same effect as a European arrest warrant.

Judicial authorities send EAWs directly to SIRENE, since they don't have direct access to SIS SIRENE which contains biometrics and operational information on the possible whereabouts of wanted persons from competent police directorates, and have close cooperation with the General Crime Department. Direct communication between judicial authorities and SIRENE is conducted by phone, e-mail or fax and they have excellent cooperation.

[4] Content and form: Article 18 (OG 81/13)
A European arrest warrant shall contain the following information set out in the standard form (Annex 1), which constitutes an integral part of this Act:
1. the identity and nationality of the requested person;
2. the name, address, telephone and fax numbers and e-mail address of the issuing authority;
3. evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect within the meaning of Article 2 point 8 and Articles 10 and 17 of this Act;
4. the legal classification and statutory description of the offence, particularly within the meaning of Articles 10 and 17 of this Act;
5. a factual description of the offence, including the circumstances in which the offence was committed, the time, place and degree of participation in the offence by the requested person;
6. the type and level of the criminal sanction imposed in the final judgment, or the type and level of the criminal sanction prescribed for the offence concerned under the domestic law;
7. if possible, the consequences of the offence.

From the comprehensive replies to the questionnaire and the information provided during the evaluation visit, it appears that the Croatian judicial authorities use direct contact with other Member States' competent judicial authorities without any significant problems. If a difficulty in communication with a judicial authority of another Member State does arise in practice, the judge or the public prosecutor contacts a Croatian EJN contact point, who provides assistance, and the courts and public prosecutors do use this option in practice. This form of communication has proven highly effective. Within the Ministry of Justice, two people have also been named as contact points for the European Judicial Network and, if necessary, in the event of difficulties in individual cases, they assist in establishing contacts between the competent authorities of the Member States involved and in resolving the difficulties. In problematic cases concerning serious criminal activity or where other Member States are also involved in a case, the Croatian national member of Eurojust may be contacted for the purpose of facilitating communication.[5]

With regard to the lack of double criminality as a ground for refusal, Croatian experts pointed out that when issuing an EAW the public prosecutor's office provides a factual description of the offence with which the accused/requested person is charged in section (e) of the form. This is also done in the case of offences referred to in Article 2(2) of the FD on the EAW. In the experience of the courts, opinions are divided as to whether double criminality also involves grounds for excluding illegality and culpability – in other words, whether it is a case of abstract double criminality (in abstracto test), which requires the behaviour to be punishable in both Member States, or qualified, concrete double criminality (in concreto test), which, in addition to requiring the behaviour to be punishable in both states, also considers the potential additional impact of differences in grounds for excluding illegality (i.e. would the person have been convicted if the offence had been committed in the territory of the state concerned, e.g. in the case of last resort, necessary self-defence, etc.).

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5 According to Article 6(1) of the Judicial Cooperation Act, EAWs for the surrender of the requested person for the purposes of criminal prosecution are issued by the judicial authority conducting the proceedings (i.e., the public prosecutor's office prior to indictment, and the court after indictment), while EAWs for the purposes of executing a custodial sentence or compulsory admission are issued by the executing judge of the county court.

According to Article 7(1) of the Judicial Cooperation Act, the county public prosecutor's offices forward to the competent authority of the executing State EAWs which they themselves have issued, on the prescribed form, as well as EAWs issued by municipal public prosecutor's offices within their territorial jurisdiction.

Where non-catalogue criminal offences are concerned, a check is carried out to determine whether the essential features of the criminal offence also exist under national law (double criminality), and the factual description of the criminal offence as indicated on the EAW is compared with the factual description of the equivalent offence under national law so that the event described is subsumed under a concrete provision of national criminal law. Therefore, it is necessary to provide a factual description comprising all the essential features of the offence so that the executing State can determine which offence is concerned under its national law.

The case-law of the Supreme Court of the Republic of Croatia states that double criminality is an essential condition for assessment by the court as to whether, in respect of a given offence, the statute of limitations for criminal proceedings or for executing a sentence has expired both under foreign and domestic law. It follows that, without verifying double criminality, it is not possible to assess whether the statute of limitations for a given offence has expired. Therefore, when deciding on the execution of an EAW for a catalogue offence, no checks are made with regard to the statute of limitations or any grounds for refusal to execute which, as a first step, require prior verification of double criminality.

The relevant facts are described in the certificate, setting out the essential elements of the offence at issue in the case at hand, usually based on the operative part of the judgment. Problems arise as a result of very brief and limited descriptions of offences on certificates, along with missing judgments.

A person against whom a European arrest warrant has been issued in the Republic of Croatia has the right, after arrest in the executing State, to appoint a defence counsel in the Republic of Croatia of his or her choice. On receipt of the notification that the requested person wishes to appoint a defence counsel in the Republic of Croatia, the issuing authority must, without delay, submit to the competent authority of the executing State a list of lawyers providing information and advice in proceedings under a European arrest warrant compiled by the Croatian Bar Association.

The defence counsel appointed in the Republic of Croatia has the right, in addition to the powers provided for in the domestic law governing criminal proceedings, to take all actions related to providing information and advice to the defence counsel of that person in the executing State, for the purpose of effectively exercising the rights of the person concerned in the surrender procedure.

If the defence counsel of the requested person in relation to whom a European arrest warrant has been issued has been appointed *ex officio*, the authority that issued the warrant must, on notification of the arrest of the requested person, immediately inform the competent authority of the executing State. The notice must contain the information on the defence counsel appointed *ex officio* which is necessary for communication with the defence counsel.

The authority which issued a European arrest warrant must immediately withdraw it when the person concerned has been surrendered, when the statute of limitations for criminal prosecution or for the execution of the sentence runs out or when other reasons arise for which the European arrest warrant is no longer necessary.

3.2. The principle of proportionality

It follows from the information provided by the Croatian authorities that, in relation to the EAW, proportionality is assessed essentially in the same manner as if a national arrest warrant were to be issued. Where the accused person fails to appear before the court and fails to request the trial to be held in their absence, the court must secure their presence using all possible means and since it is required to fulfil its obligations promptly and without undue delay, the court has no choice but to issue an arrest warrant and subsequently, if needed, an EAW.

In this connection, Croatian experts pointed out that practitioners take into account the principle of proportionality both when EAWs are issued and when decisions are taken concerning incoming EAWs and concerning the surrender of the sentenced person.

The principle of proportionality is expressly provided for in national legislation, specifically in Article 3a of the JCA, which provides that the competent authorities of the Republic of Croatia are to issue all decisions on judicial cooperation in criminal matters with EU Member States, and therefore EAWs, in proportion to the need in each individual case and as provided for in the Criminal Procedure Act.

Furthermore, under Article 17(2) of the JCA, the competent authority issues an EAW for the purposes of criminal prosecution if pre-trial detention has been ordered in respect of the person subject to that EAW.

Thus, the court will order pre-trial detention when the accused person's presence for the criminal proceedings cannot be ensured by a less stringent measure. Consequently, an EAW is issued when its purpose cannot be achieved by a less stringent measure (serving of a summons abroad, carrying out of investigative measures abroad on the basis of a request for international legal assistance (via the EIO), and transferring jurisdiction for criminal prosecution).[6]

In practice, the competent domestic authorities generally issue EAWs for serious criminal offences, after repeated attempts to find the accused person and conduct proceedings without undue restrictions on human rights. EAWs are only issued in cases where it has not been possible to ensure that the accused person appears by other means.

The competent national authorities take into account the guidelines provided in the Commission's 'Handbook on how to issue and execute a European arrest warrant'. Croatian legislation is based on the principle of proportionality, and so the Croatian authorities will opt to propose or order less stringent measures if the latter can achieve the same aim as more stringent measures such as pre-trial detention. Where possible, other forms of judicial cooperation are applied before issuing an EAW, including issuing an EIO if the requisite conditions are met.

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6 According to Article 95 of the Croatian Code of Criminal Procedure:

(1) When deciding on measures to ensure that the accused person appears and on other precautionary measures, the court and other state authorities shall ex officio take care not to apply a more stringent measure if a less stringent measure can achieve the same purpose.

(2) The court and other state authorities shall ex officio withdraw the measures referred to in paragraph 1 or replace them with less stringent measures if the legal conditions for their application cease to exist, or if conditions arise allowing the same purpose to be achieved with a less stringent measure.'

Croatian experts pointed out that in each concrete case it is necessary to find the most appropriate solution, taking into account the principle of proportionality and the obligation to enable another Member State to conduct effective prosecution of the perpetrator of the offence. For example, if the EAW is issued for the purpose of questioning the defendant who has absconded, the issuing and executing judicial authority should consider applying Article 19 of the FD on the EAW in order to avoid an excessive duration of extradition detention due to COVID-19. The Ministry of Justice does not have statistics on refusal to execute an EAW due to non-compliance with the principle of proportionality and the Croatian representatives stated that they are not aware of any such cases in recent years. Nevertheless, Croatia did not provide statistics on this specific point.

3.3. Exchange of information

3.3.1. When the Republic of Croatia acts as the executing State

Croatia has appointed numerous EJN contact points in various regions of the country on the legal basis of Art. 11 of the Act. It was unanimously highlighted by Croatian experts that excellent direct contact with other EU Member States has been provided through these EJN contact points. Swift communication by them with their counterparts in the issuing Member States via telephone or email has proven to be an excellent tool for speeding up proceedings.

If the European arrest warrant does not contain all relevant information the court may, in accordance with Art. 29 (2), request additional information or documents from the issuing authority and set an appropriate time-limit of no more than seven working days to provide them. This time-limit appears prima facie very short and might result in some difficulties for the requesting Member State to submit the required information or documentation in time. Missing the deadline of seven days, however, does not entail any legal consequences or sanctions as this deadline stands alone without any other rules ensuring that it is adhered to.

Information provided by Croatian experts in this connection revealed some differences based on their personal experience. It is clear from their statements that acquiring additional information or documentation from issuing States has resulted in proceedings being notably prolonged in a few cases. Even though it generally seems to have been possible to obtain additional information or documentation from the issuing State within seven days thanks to the well-functioning communication channels of the EJN contact points or EUROJUST (which are also used), in some cases it was not possible to adhere to that deadline. In such cases the request was again sent to the issuing State, sometimes even repeatedly. It was added by the Croatian experts that the need for additional information or documentation arose in not just a few cases. Additional information or documentation was required especially with regard to:

- trials *in absentia*;
- description of the criminal offence committed by the wanted person;
- conflicting information between the SIS alert and the European arrest warrant;
- information on the identity of the wanted person;
- information on the judgment pronounced in the issuing State against the wanted person and the finality of that judgment;
- and in cases where a combined sentence was imposed on the wanted person.

Reportedly, there were also cases where the wanted person had to be released from surrender detention on the ground that additional information or documentation had not been submitted in time, with the consequence that the person subsequently was not found for the planned surrender. It is to be expected that the number of cases in which the issuing State is not able to comply with the seven-day deadline will grow in tandem with the number of European arrest warrants received.

As to required information submitted by issuing States, it was also pointed out by Croatian experts that in many cases the description of facts concerning the criminal act was not exhaustive or accurate in the respective SIS alerts. In such cases it was not possible to ask the defendant for his or her consent to surrender because it was impossible to define the criminal act in accordance with the speciality rule. Due to this lack of accuracy in these cases, the issuing States had to be requested to also submit the European arrest warrant, which unnecessarily delayed the proceedings.

3.3.2. When the Republic of Croatia acts as the issuing State

As regards Croatia as an issuing State, the Croatian authorities explained that in the case of outgoing EAWs usually the decision of the Croatian court to issue an EAW contains the necessary information on actions taken in relation to the execution of EAWs, and any additional queries from the executing authorities are always responded to.

All necessary documentation is provided promptly at the request of the executing State's competent authorities and no particular difficulties have been encountered in this respect. Queries from foreign States are forwarded to the courts or prosecution offices seeking the issuance of an EAW, which provide a response on the basis of the case files in their possession.

Croatian authorities provided specific examples of requests as issuing State, where the Croatian judicial authorities have received requests for additional information in enforcement proceedings relating to EAWs issued for the purposes of executing a custodial sentence.

In some cases where EAWs have been issued, the executing State's judicial authorities have asked for the decisions on the basis of which the warrant was issued (e.g. decision ordering pre-trial detention or decision on conducting an investigation). In some cases, additional questions are raised, e.g. if deportation is ordered by another decision, it is necessary to obtain that decision and determine whether deportation has indeed been ordered to the executing State, in cases relating to the recognition of foreign enforceable judgments where the sentenced person is not permanently/temporarily resident in the territory of the executing State; in such cases, a condition needs to be met, namely deportation to the executing State.

Practitioners noted that they had had several cases where information on prison conditions was requested. And in such cases, the Ministry of Justice, in cooperation with the Directorate for the penitentiary system, provided the Member State concerned with information about the general legal framework in Croatia regarding the penitentiary system and conditions in the prisons where the person would serve their sentence after being surrendered to Croatia.

3.4. Grounds for refusal

Art. 20 and 21 of the JCA provide for numerous grounds to refuse the execution of the European arrest warrant. The grounds for non-discretionary refusal are listed in Art. 20 of the JCA, whereas the grounds for optional non-execution of the European arrest warrant are governed by Art. 21 of the JCA. Most, but not all, of the relevant types of cases are covered by these provisions.

3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention

Refusal to execute the European arrest warrant in the event of a potential risk of violation of fundamental rights in relation to detention is not specifically mentioned in Art. 20, 21 of the JCA, however, the obligation of respecting fundamental rights and freedoms defined by the Charter of Fundamental Rights of the European Union is stipulated in Article 3a (2) of the Act. And thus, prosecutors and judges should carry out an assessment ex officio, in every case that might result in a refusal to execute the EAW.

In fact, some Croatian experts pointed out that detention conditions have to be assessed ex officio if there are reasons to suspect that they might be a matter of concern in the issuing State. Indeed, Art. 3a (2) of the JCA provides that surrender proceedings shall not affect the obligation of respecting fundamental rights and freedoms defined by the Charter of Fundamental Rights of the EU. Other experts, however, stated that concerns regarding detention conditions in the issuing State are taken into account only if raised by the defendant or the defence counsel. This practice cannot be seen as sufficient to safeguard the fundamental rights of wanted persons, the more so as Croatian experts from the Bar Association described the lawyers' level of knowledge in the field of legal cooperation in criminal matters as "generally very poor".

In addition, Croatian experts stated that in accordance with the above-mentioned Art. 3a of the JCA detention conditions have also to be assessed in cases where the requested person consents to his or her surrender. They furthermore pointed out that the potential risk of violation of fundamental rights in relation to detention conditions is assessed on a case-by-case basis in accordance with the jurisprudence of the CJEU and the ECHR.

Practitioners also noted that they had had cases where information on prison conditions was requested. In such cases, the Ministry of Justice, in cooperation with the Directorate for the penitentiary system, provided relevant MS with information about the general legal framework in Croatia regarding the penitentiary system and conditions in the prisons where the person will serve their sentence after being surrendered to Croatia. However, they noted that in the Republic of Croatia there are different types of prisons according to the severity of the penalty, so this is taken into account when deciding which prison a person will be sent to.

3.4.2. Refusal in the event of a judgment in absentia

Under Art. 21 (2) of the JCA the court may refuse to execute an EAW issued for the purpose of executing a custodial sentence or measure involving depravation of liberty imposed by a judgment in absentia unless specific criteria are fulfilled.

- The first option for accepting a conviction in absentia requires the summoning of the wanted person who must be summoned personally, in due time, to attend the hearing and thereby informed of the time and place of the hearing, or have received official notification of the time and place of the hearing in such a manner that it was unequivocally established that he or she was aware of the scheduled hearing, and was warned about the possibility of a judgment being rendered in absentia.

- The second option requires representation at the hearing by a defence counsel authorised by the defendant or appointed by the court.

- The third option allows a conviction in absentia to be accepted if the requested person, after being personally served with the judgment rendered in absentia and instructed about the right to an appeal in which he or she would be entitled to participate and in which the facts would be reassessed and new evidence presented, has expressly stated that he or she does not contest the judgment and does not wish to request or did not request a retrial.

- The fourth and last option provided for by Art. 21 (2) of the JCA requires the requested person to be personally served with the judgment rendered in absentia without delay after the surrender and given the right to request a retrial or appeal.

These provisions of the JCA in general reflect Art. 4a of FD 584.

With regard to representation by a lawyer, however, Art. 21 (2) no. 3 does not appear to be in compliance with Art. 4a of FD 584. The respective provision in the JCA does not contain the requirement of Art. 4a of FD 584 that the defendant has to give a mandate to a legal counsellor while "being aware of the scheduled trial". Instead, the provision in the JCA only requires representation by "a defence counsel authorised by him or her or appointed ex officio by the court". Based upon this clear wording it would appear to be sufficient that a defendant who did not have any knowledge of the scheduled trial was represented by a lawyer. An additional matter of concern arises from the fact that Art. 21 (2) no. 2 of the JCA does not require the lawyer appointed ex officio to be mandated by the defendant. This is not only in contradiction with Art. 4a of FD 584 but also allows of a judgment in absentia in a trial in which the defendant had knowledge of neither the scheduled session nor the lawyer appointed ex officio.

In essence, a judgment rendered in absentia would not be a reason to refuse execution of the European arrest warrant even in a case in which the judgment in absentia was rendered against a defendant who was neither aware of the scheduled trial nor had been informed about the ex officio appointment of a defence counsel.

This is not in compliance with Art. 4a of FD 584 and allows the surrender of a person to serve a custodial sentence imposed on him in a trial where the fundamental right to an effective defence was disregarded.

As to potential practical issues with surrender requests in the context of trials in absentia, numerous problems were reported by Croatian experts.

Predominantly, a lack of sufficient information provided in the European arrest warrant was noticed in many cases.

It was mentioned that relevant information as to the requirements "summoned in person" etc. was not always submitted in a way which allowed for the required legal assessment. Criminal Procedure Codes in some Member States, for instance, allow a legal fiction for a person to be deemed as summoned "in person". In such cases the facts need to be provided by the issuing State, not just the statement "summoned in person", in order to thoroughly establish whether the requirements of Art. 21 (2) no. 1 of the JCA are met.

Furthermore, information regarding the question of whether the judgment in absentia was issued at first or second instance level was usually not provided.

Particular problems resulted from European arrest warrants requesting surrender of a defendant on whom a combined sentence – including one or more previous convictions - had been imposed. Information as to whether the defendant had been present during the previous trials and, if not, as to the factual circumstances of these previous convictions in absentia was usually not provided in the European arrest warrant.

There were reportedly also cases where the information as to whether the judgment rendered in absentia had become final was missing or not accurate, even though in some Member States judgments handed down in absentia cannot become final. Accurate information as to the finality of the judgment in absentia, however, is essential because according to the Croatian legal system a European arrest warrant which has been issued to serve a sentence imposed by a judgment which has not become final is deemed to be issued for the purpose of conducting a criminal prosecution rather than executing a custodial sentence.

In some cases, it had reportedly been difficult to establish whether the defendant was represented by a lawyer during the trial. This also includes the question of whether the representation was effective. Such effectiveness might be arguable for Croatian practitioners, for instance in cases where the defence counsel has failed to file an appeal even though an unconditional custodial sentence had been imposed on the defendant.

Finally, it is not clear for Croatian practitioners whether a judgment is rendered in absentia in cases where the defendant attended just one of numerous sessions. Neither the respective FDs nor the Croatian legislation provide legal guidance with regard to the issue in question.

As a result, in many cases there was a need for additional information in the context of judgments handed down in absentia, with the consequence of proceedings being delayed.

3.4.3. Other grounds for refusal

Other grounds for refusal are listed in Articles 20 and 21 of the JCA.

According to Article 20 (1) of the JCA a European arrest warrant issued for the purpose of conducting criminal proceedings can only be executed if the criminal act is punishable by the law of the issuing Member State for a maximum of more than 1 year. Likewise, in accordance with this provision a European arrest warrant that has been issued for the purpose of serving a custodial sentence which has been imposed on the defendant by a final judgment can only be executed if the period of deprivation of liberty is more than four months. In addition, a European arrest warrant can only be executed if the act concerned contains the essential elements of a criminal offence under domestic law, regardless of its statutory description and legal classification indicated in the warrant received.

According to Article 20 (2) of the JCA the court **must** also furthermore refuse to execute a European arrest warrant in the following cases:

- if the EAW has been issued for an offence covered by amnesty in the Republic of Croatia, and the domestic court has jurisdiction under the law;

- if the court is informed that the requested person has already been sentenced by a final judgment in a Member State in respect of the same offence, provided that the sentence has been served or is currently being served or it may no longer be executed under the law of the sentencing Member State;

- if the requested person had not reached the age of 14 at the time the offence was committed;

- if the offence referred to in Article 17 (1) of this act to which the EAW relates does not constitute a criminal offence under domestic law. In relation to fiscal offences, the execution of an EAW must not be refused solely on the ground that domestic law does not impose the same kind of tax or duty or does not contain the same provisions as regards taxes, duties, customs or exchange regulations as the law of the issuing State;

- if the person who is the subject of the EAW is being prosecuted in the Republic of Croatia for the same offence for which the warrant has been issued, unless the State Attorney and the competent authority of the issuing State have agreed that criminal proceedings shall be conducted by a judicial authority of the issuing State;

- if the domestic judicial authority has decided not to prosecute for the offence for which the EAW has been issued because the suspect has fulfilled the obligations imposed on him or her as a condition to cease prosecution;

- if the criminal prosecution or the execution of the criminal sanction is statute-barred according to domestic law, provided that Croatian authorities have jurisdiction under domestic law;

- if the court is informed that the requested person has been sentenced by a final judgment in a third State in respect of the same offence, provided that the sentence has been served or is currently being served or it may no longer be executed under the law of the sentencing State.

In addition, Article 21 (1) of the JCA provides that the court - as optional grounds for non-execution of the EAW - **may**, guided by the principles of efficient cooperation, expediency and the right to a fair trial, refuse to execute the European arrest warrant:

- if the domestic judicial authority has decided not to prosecute for the offence for which the EAW was issued or the proceedings have been suspended, or if a final judgment has been passed upon the requested person in a Member State in respect of the same offence;

- if the EAW relates to offences which have been committed in whole or in part in the territory of the Republic of Croatia, or if the offences have been committed outside the territory of the issuing State and domestic law does not allow prosecution for the same offence when committed outside the territory of the Republic of Croatia.

Croatian experts stated that the national judicial authorities have faced challenges relating to the question of double criminality and the statute of limitations. According to Article 10 of the JCA, which corresponds in substance to Article 2(2) of FD 584, the competent judicial authority must execute the a foreign judicial authority's decision which has been received without verification of double criminality of criminal acts that are specified in this provision of the JCA in accordance with FD 584. The question of whether the lapse of a statutory limitation concerning a catalogue offence under Article 2 (2) of the JCA has to be assessed and taken into account has been answered by the Supreme Court of the Republic of Croatia, ruling that statutory limitation is an integral part of the concept of double criminality and hence an assessment of a potential lapse of statutory limitation is precluded in such cases.

As to offences committed in part on the national territory of the Republic of Croatia as a ground for refusing to surrender a requested person (Art. 21 (1), point 2(a) of the JCA) Croatian experts pointed out that this optional ground for refusing surrender is taken into account in practice. However, applying the principles of effective cooperation, rationality and the right to a fair trial, the courts usually give priority to criminal proceedings in the issuing State and authorise the surrender of the requested person.

Likewise, Croatian experts pointed out that in cases where the requested person is the subject of criminal proceedings in the Republic of Croatia for the same offence (Art. 20 (2) no.5 of the JCA), surrender of the requested person will be authorised if the public prosecutor and the competent authority of the issuing State have agreed that the proceedings will be conducted by a judicial authority of the issuing State. Hence the principle of reaching agreement is applied if there are parallel proceedings in the Republic of Croatia and another Member State.

Finally Croatian experts mentioned that the execution of an EAW is often refused due to the absence of double criminality. This happens, for instance, in cases of specific drug and traffic offences which are criminal acts under the law of the issuing State but just minor offenses in accordance with Croatian legal provisions.

3.5. Further challenges

Challenges related to the case-law of the CJEU:
From the comprehensive replies to the questionnaire and the information provided during the evaluation visit, the Croatian experts reported that the national authorities have been involved in EAW proceedings where detention-conditions-related arguments were raised.

As the issuing judicial authority, the public prosecutor's office has received requests from the executing State's competent authorities for additional comments on detention conditions. Croatian experts stated that, to date, there have been three such requests that have led to delays in executing the EAW/extradition (surrender of a requested person from France for the purposes of conducting criminal proceedings in respect of an offence committed in 1991, i.e. before 1 November 1993, the date specified by France as the date of entry into use of the EAW in accordance with Article 32 of the FD on the EAW; surrender of a requested person from the UK for the purposes of prosecution for war crime offences; surrender from Germany for the purposes of prosecution for organised crime offences), with the information in question being quite extensive and involving comments from several competent authorities (the circumstances are assessed in abstracto and in concreto) which are not judicial in nature (e.g. the Ministry of Justice). The proceedings in question are still ongoing.

Apart from the aforementioned proceedings, a request of this type was made in one case involving the execution of an EAW issued by an executing judge for the purposes of executing a criminal sentence, in which the executing State refused to surrender the requested person to the Republic of Croatia on the grounds that the information provided was not sufficient to dispel concerns around the risk of an infringement of Article 4 of the EU Charter of Fundamental Rights in the event of surrender of the requested person to the Republic of Croatia. This decision was taken because the competent authorities of the Republic of Croatia had not provided the requested information.

As regards providing further comments to enable the executing State to determine whether all the legal conditions for surrender of the requested person are met, in particular respect of the rights guaranteed by Article 6 TEU (and in particular Title VI of the EU Charter of Fundamental Rights), there have been two procedures in which the executing State requested further comments in order to confirm that the requested person's right to a fair trial under Article 6 of the European Convention on Human Rights and Fundamental Freedoms would not be manifestly infringed. One of those procedures – which is the case in France referred to above – is still ongoing.

The other procedure concerns a surrender from the UK for the purposes of prosecution for an economic offence, namely breach of trust in an economic activity through membership of a criminal organisation. In that case, surrender of the requested person was authorised after additional documentation was transmitted showing that criminal proceedings against the requested person had been instituted on the basis that there were reasonable grounds to believe that the requested person had committed the criminal offence with which they were charged (disclosure of evidence obtained in the proceedings against the requested person) and that the proceedings were not politically motivated. Information was also transmitted showing that the requested person would be guaranteed the right to a fair trial before an independent and impartial court.

The executing State has often requested a guarantee that a person who is surrendered to Croatia will be returned to the executing State to serve a sentence because the person lives in this State or is its citizen. In such cases, Croatian authority informs the authority of that MS that after the judgment rendered in the Croatian case is recognised by its authority, the person will be returned if other conditions in accordance with FD 2008/909/JHA are fulfilled.

In the margin of the word 'guarantee', Croatian practitioners noted that it is difficult to give a guarantee on behalf of the executing judge who would be competent for the execution of the judgment that will be rendered in future.

In the context of EAW proceedings, a request was made for a preliminary ruling from the CJEU, resulting in judgment C-268/17 of 25 July 2018, following which judgment, and contrary to it, the competent Hungarian judicial authorities continued to refuse to execute the EAW, as notified to the CJEU. In relation to other CJEU case-law and the matter of deprivation of liberty, no problems have been identified in practice.

In two cases before domestic courts in which EAWs were issued, queries were transmitted about detention conditions in the Republic of Croatia. The queries came from Ireland and the UK. One of the EAWs was executed, and one was rejected. Such queries naturally prolong proceedings, as they involve a multitude of questions and clarifications.

The extensive jurisprudence of the CJEU on the FD on the EAW lead to changes in Croatian national law transposing the FD on the EAW. The Judicial Cooperation Act has been amended several times to harmonise Croatian legislation with Framework Decisions and Directives regulating the area of judicial cooperation in criminal matters. With the adoption of the Acts amending and supplementing the Judicial Cooperation Act, the national legislation was harmonised with the case-law of the CJEU (for example with the interpretations given by the CJEU in the following cases: Jeremy F. C-168/13 PPU[7], Aranyosi and Căldăraru C-404/15 and C-659/15, ML C-220/18 PPU, Dorobantu C-128/18, C-216/18 PPU[8], Kozłowski C-66/08 and Lopes Da Silva Jorge[9], I.B. Case C-306/09[10]).

Challenges related to the practical application:

In the comprehensive replies to the questionnaire and the information provided during the evaluation visit the Croatian experts stressed the other legal and practical problems related to the practical application of the EAW.

They pointed out that the practitioners are of the opinion that the catalogue of criminal offences in Article 2(2) of FD EAW should be more clearly defined (for example, whether the executing State authorised to determine whether a specific offence for which a warrant has been issued and which has been classified as a catalogue offence under Article 2 of FD EAW by the issuing State can be classified as such or what are the consequences of not verifying double criminality in relation to the other conditions for surrendering the requested person, in particular the grounds for refusing to execute the EAW).

7 Article 41 Judicial Cooperation Act

8 Article3a (2) Judicial Cooperation Act

9 Article 22(3) and (4) Judicial Cooperation Act

10 Article 22(5) Judicial Cooperation Act

Furthermore, they think that the grounds for refusing to execute an EAW need to be clearly defined. Given that the legal systems of most EU Member States are not based on case-law, for the sake of legal certainty the criteria for applying the grounds for optional non-execution of the EAW should be clearly defined, or it should be clearly specified which of the optional grounds in Article 4 of FD EAW constitute an outright barrier to the execution of the warrant and these grounds for non-execution of the EAW should be mandatory, deleting the others. In addition, it is necessary to clearly define the statute limitation period as grounds for the optional refusal to surrender the requested person (according to which law the statute limitation period is verified and whether the statute limitation period is also verified in relation to the criminal offences listed in Article 2(2) of FD EAW).

Consideration should then be given to clarifying the provisions of Article 5(3) of FD EAW (whether what is involved in that specific case is a guarantee or conditions under which the requested person is surrendered, and which conditions the executing State is obliged to respect).

The EAW procedures would be better if cooperation between states was improved in terms of the provision of supplementary information or documentation relevant to the final decision, i.e., if more detailed and more complete documentation was provided in annex to the EAW, which would speed up the decision-making process and compliance with the deadlines set out in Article 17 of FD EAW. Also, the competent judicial authorities encounter both inadequate translations of the EAW into Croatian and inadequate translations of the operative part of court decisions in cases where the EAW is being executed in order to enforce a custodial sentence.

In the experience of the courts, problems most commonly arise in relation to requests for supplementary information and, as a result, compliance with the specified time-limits.

The Croatian authorities pointed out that some Member States issue an EAW based on judgments that are not final. However, according to Croatian law, the judgment is final only after the decision on appeal is rendered. However, MSs' legislation concerning when a judgment is final varies.

Another problem the Croatian authorities mentioned was the verification of double criminality, since MSs apply different practices. According to some MSs, the verification of double criminality means not verifying the lack of a statutory limitation, while the other Member States do so. The Croatian authorities always surrender requested persons if the EAW is issued for the offences listed in Art. 2(2) of FD 2002/584/JHA even if there is a statutory limitation under Croatian law in cases where they have jurisdiction (Article 4(7) of the FD).

Regarding the transfer of persons, during the COVID period there were quite a lot of transit cases, but not an adequate number of flights. Consequently, persons were transferred by car, which however was time-consuming. Another problem the Croatian authorities faced was with states where courts give permission for transit or countries that had to deal with a lot of transit requests. In such cases, the Croatian authority used EJN contact points to speed up the procedure.

3.6. Statistics

The Croatian authorities provided the evaluation team with annual statistics data on EAWs issued from 2018 to 2020. The data shows that during 2018 and 2019 most of the EAWs were issued for the purposes of execution of sentences; however, in 2020 the number of EAWs issued for prosecution and for the execution of sentences is almost equal. As the Croatian authorities do not keep statistics regularly, they have not provided us with information on the number of EAWs rejected or withdrawn.

EAWs issued by the Croatian authorities

EAW	**2018**		**2019**		**2020**	
	For prosecution	**For execution of sentence**	**For prosecution**	**For execution of sentence**	**For prosecution**	**For execution of sentence**
	88	265	154	340	126	128
Total	**353**		**494**		**254**	

Concerning statistics, when the Republic of Croatia acts as executing State, the Croatian authorities do not keep track of the total number of incoming EAW applications. However, they provided the evaluation team with the numbers of persons arrested in the Republic of Croatia, of those who had actually been surrendered and numbers of EAWs for which execution was refused, which are sent to the European Commission. The statistics cover the period from 2018 to 2020.

When the Republic of Croatia acts as executing State

	Persons arrested	Persons surrendered	Rejected EAWs
2018	309	162	3
2019	46	75	4
2020	81	68	5

Regarding the rejected applications for execution of the EAW, the Croatian authorities provided the evaluation team with information about the grounds on which requests for the execution of EAWs were rejected, as follows:

- the act on which the EAW was based did not constitute an offence under the law of the Republic of Croatia;
- the punishment of the requested person was statute-barred according to the law of the Republic of Croatia;
- the sentence was less than four months;
- the final judgment has been passed upon the requested person in the other Member State, in respect of the same acts, which prevented further proceedings;
- the European arrest warrant has been issued for the execution of a custodial sentence where the requested person was a national of the Republic of Croatia and the Republic of Croatia undertook the execution of the penalty under its domestic law;
- The EAW's content was not in conformity with the FD.

3.7. Conclusions

- The practical implementation of the EAW in Croatia, both as issuing and executing Member State, seems to work well.
- The provisions of the JCA provide in general for exhaustive and accurate transposition of FD 584 into domestic legislation.
- Some deadlines in the law – such as Art. 29 (2) - appear too short and should be reviewed and amended.
- Art. 21 (2) no. 3 of the JCA should be amended to specify that the defendant must be aware of the scheduled trial when giving a mandate to a lawyer.
- It should be made mandatory for potential infringements of human rights arising from detention conditions in the issuing Member State to be assessed *ex officio* by Croatian authorities.
- Croatia as issuing Member State has received requests from other Member States for additional information with regard to detention conditions in Croatian prisons in only a few cases. The surrender of the defendant to Croatia was refused in only one of these cases.
- The Croatian authorities competent for issuing or executing EAWs are very proactive in establishing direct contact with their counterparts in other Member States.
- EJN contact points and EUROJUST are also used to establish excellent communication channels.
- Communication with other Member States has proven to be very good, resulting in usually expeditious proceedings.
- The principle of proportionality is well taken into account when issuing and executing an EAW.
- Less severe measures are considered before issuing an EAW.
- Time-limits are usually complied with, even though many of them are very tight.
- The question whether double criminality is assessed on an abstract or concrete basis should be regulated so that a unified approach by Croatian authorities is ensured.

- Problems with EAWs submitted by issuing Member States without the required translation into English or without the required documentation have emerged in more than a few cases, sometimes resulting in delays due to the need for translation or additional information.
- Trials *in absentia* have in many cases given reasons for additional questions addressed by Croatian authorities to issuing Member States.
- The right of the defendant to legal representation is guaranteed by law.

However, lawyers' knowledge in the field of international legal cooperation in criminal matters needs significantly to be improved.

4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION

Framework decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty and their enforcement within the European Union has been transposed into the legislation of the Republic of Croatia by the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union" in Title VII - European Arrest Warrant (hereinafter 'JCA').

4.1. Authorities competent for the recognition of the judgment and execution of the sentence

The county court having jurisdiction for the place where the person concerned resides or is domiciled, or alternatively, of the place where the family of the sentenced person resides or is domiciled, is the authority competent to receive requests for the recognition and enforcement of judgments imposing custodial sentences or measures involving deprivation of liberty issued by another Member State. This is stipulated in Art. 5 (1) of the JCA, which in turn refers to Art. 1 (1) point 6 of the JCA.

The county public prosecutors who act before the above courts in proceedings for the recognition and enforcement of foreign criminal judgments imposing custodial sentences or measures involving deprivation of liberty are party to the proceedings for the recognition and enforcement as follows:

- they take part in hearings of the investigation chamber of the county court at which decisions are adopted concerning the recognition and enforcement of foreign criminal judgments imposing custodial sentences or measures involving deprivation of liberty;
- they have the right to a legal remedy against a judgment recognising and enforcing a foreign criminal judgment imposing a custodial sentence or other measure involving deprivation of liberty.

As for direct communication, in some proceedings for the recognition and enforcement of foreign criminal judgments imposing a custodial sentence or other measure involving deprivation of liberty, the National Correspondent for the European Judicial Network in criminal matters had mediated between the county courts and the judicial authorities of the other EU Member States to facilitate the direct contacts or the acquisition of specific documentation. This type of mediation was more common at the beginning of the application of this form of judicial cooperation. However, nowadays, the competent county courts have strengthened and developed direct contacts with the judicial authorities of other EU Member States both in proceedings in which the Republic of Croatia is the executing State and in those in which it is the issuing State.

The Ministry of Justice is the central authority that provides assistance to domestic authorities and competent authorities of the Member States in establishing contacts and judicial cooperation with respect to the decisions referred to in Art. 1 of the JCA (Art. 5 (5) in conjunction with Art. 1 (1) point 6 of the JCA).

The role of the central authority is further defined in Art. 5a of the JCA.

Art. 5a (1) is almost entirely a verbatim copy of Art. 5 (5) of the JCA, just adding that the Ministry of Justice is the central "coordinating" authority.

The Ministry of Justice must submit to the competent authorities of the European Union information on cases in the area of judicial cooperation in criminal matters, in accordance with the obligations laid down in the legal acts of the European Union referred to in Art. 1 (2) of the JCA, which also include mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement, Art. 5a (2) of the JCA.

Art. 5a (3) of the JCA empowers the Ministry of Justice to require from the competent judicial authorities information on cases in the area of judicial cooperation in criminal matters.

4.1.1. Procedure when the Republic of Croatia acts as the executing State

If the domestic judicial authority which receives a decision within the framework of judicial cooperation has no jurisdiction to receive it and to take the necessary measures and actions for its execution, this authority must forward the certificate etc. to the competent authority and promptly and directly inform thereof the judicial authority of the issuing State (Art. 5 (4) of the JCA).

When the competent court receives a request for the recognition and enforcement of the judgment, it verifies whether:

- it is accompanied by the judgment and the certificate;
- the sentenced person is a Croatian national and resides or is domiciled in the Republic of Croatia;
- he or she is a Croatian national who does not reside or is not domiciled in the Republic of Croatia but a measure has been imposed on him or her ordering deportation or expulsion to the Republic of Croatia after he or she is released from the enforcement of the sentence based on a judgment, administrative decision or any other measure taken consequential to the judgment.

In cases not covered by the above conditions, the Ministry of Justice is competent to give consent to the issuing State to transmit the judgment imposing a custodial sentence or any measure involving deprivation of liberty to the Republic of Croatia for its recognition if the sentenced person has consented to this (Art. 91 (1) point 3).

According to Art. 91 (2) of the JCA, the Ministry of Justice is required, when deciding upon giving consent to transmit the judgment, in particular to take into account the purpose of facilitating the social rehabilitation of the sentenced person, and determine through the Directorate for Probation whether the sentenced person or members of his or her family have domicile/residence in the Republic of Croatia, whether he or she owns any immovable property in the Republic of Croatia, and what other personal and social circumstances connect the sentenced person with the Republic of Croatia.

After receiving the judgment and the certificate, the court must immediately initiate the procedure and, within a time-limit of ninety days, issue a decision recognising the judgment and a decision committing the person to serve a sentence, unless it decides to postpone the recognition of the judgment based on grounds for refusal.

If a EAW is issued to execute a custodial sentence or measure involving deprivation of liberty, and the requested person is a citizen of the Republic of Croatia or is permanently or temporarily resident in its territory and has consented to execute the sentence in the Republic of Croatia, in that case the court must postpone deciding on the EAW in order to take over the sanction. The court must request a judgment and relevant documentation from the issuing State and set an appropriate time-limit, not exceeding 15 working days, for its transmission. Once the decision to take over the execution of the foreign sanction has become final, the court must refuse recognition of the EAW.

However, the court is competent to adapt a custodial sentence imposed in the judgment received as follows:

- if, in duration, the sentence exceeds the maximum custodial sentence provided for the same or similar offences under domestic law, it is to be adapted so as to impose the maximum penalty provided for the same or similar offences under domestic law; or
- if the sentence is incompatible with domestic law in terms of its nature, it is to be adapted so as to impose the criminal sanction for the same or similar offence under domestic law which corresponds as closely as possible to the sentence imposed by the judgment received; the sentence shall not, however, be converted into a financial penalty.

Without delay, the court must forward a final decision on recognising the foreign judgment to the executing judge who is competent under the law governing the execution of criminal penalties.

4.1.2. Authorities competent for issuing and forwarding the judgment

According to Article 7(3) of the JCA, the authority competent to issue a certificate regarding the enforcement of custodial sentences is the same authority that is responsible for executing the certificates of other Member States acting as issuing State: the County Court of the domicile of the requested person or his/her family.

The county public prosecutors who act before the above courts take part in the hearings and have the right to seek a legal remedy against the judgment recognising and enforcing the sentence.

The Ministry of Justice is the central authority, which assists the domestic competent authorities, helping them establish contacts with other competent authorities within the EU.

4.1.3. Procedure when the Republic of Croatia acts as the issuing State

According to Art. 103 (4) of the JCA, to initiate a procedure for forwarding the judgment and the certificate, a sentenced person may submit his or her application to the executing State or to the issuing State.

In practice, the initiation of the forwarding procedure starts only based on the request of a person sentenced. Once a sentenced person is in prison, it is required to have his or her consent to be transferred. Prison staff inform them about the possibility of serving a sentence in their home country and provide them with the form on which they can state if they wish to be transferred. A statement of the sentenced person's opinion on the forwarding of the judgment to a foreign country for enforcement may be made orally or in writing. For minors and persons without legal capacity, a legal representative must state an opinion. However, if the opinion of the sentenced person was given orally, a written record must be made. When deciding on whether to forward the judgment to the executing State, the court must consider the opinion of the sentenced person.

Irrespective of whether the person sentenced to a custodial sentence by a domestic court, who has given his or her consent, is in the Republic of Croatia or in the executing State, the court must forward the judgment together with the certificate to the competent authority of the Member State of the nationality of the sentenced person in which he or she resides or is domiciled or to the Member State of the nationality of the sentenced person in which he or she does not reside or is not domiciled, but to which he or she will be expelled once he or she is released from the enforcement of the sentence on the basis of a domestic judgment or other decision issued by the competent domestic authority, or to another Member State the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

The court must forward the judgment, the certificate, and the written opinion of the sentenced person for recognition and enforcement to the executing State if it establishes that the enforcement of the sentence by the executing State would facilitate the social rehabilitation of the sentenced person.

For that purpose, the court may, where appropriate, contact and consult the competent authorities of the executing State before forwarding the judgment. Consultation with the competent authorities of the executing State is obligatory in cases referred to the other Member State of the nationality of the sentenced person.

Where the transfer of the sentenced person to the executing State requires transit through the territory of a third Member State, the Ministry of Justice is competent, at the request of the court, to transmit a transit request to that State together with a copy of the certificate. At the request of the third Member State, the Ministry of Justice must transmit a translation of the certificate in one of the languages indicated in the request.

4.2. Documents required for recognising the judgment and executing the sentence

According to Framework Decision 2008/909/JHA, the issuing State must first provide:

- a completed certificate, and
- the related judgment (or at least its essential parts).

The Croatian law also requires a written judgment and certificate. This sometimes raises an issue when the issuing State does not provide it because its legislation is different.

"According to Article 103(1) of the JCA, 'Irrespective of whether the sentenced person on whom the domestic court has imposed a custodial sentence, and who has given their consent within the meaning of Article 105(1) of this Act, is in the Republic of Croatia or the executing State, ***the court referred to in Article 7(3)(2) of this Act shall forward the judgment with the certificate which forms an integral part of this Act*** *(Annex 6):...'.*

According to Article 91(1) of the JCA, '1) ***When the competent court receives a foreign judgment, it shall verify whether it is accompanied by a certificate*** *within the meaning of Article 103(1) of this Act and whether the following conditions have been met...* "

According to Article 9 of the JCA *"'(1) The competent judicial authority will execute the decisions by foreign judicial authorities referred to in Article 1 of this Act* ***if the decision and any supporting documents are translated into Croatian.****"*

In practice, the competent authorities seek a compromise in view of the different legislation in other Member States. For instance, the issuing State is asked to provide a translation of only the relevant parts of the judgment**.**

In addition, at the request of the sentenced person, a translation of all the relevant documentation can be provided (by the issuing State or through an authorised Court interpreter paid by the Croatian authorities).

A translation into English is also accepted in urgent cases.

In addition to the certificate and the related judgment, the file should also indicate the period of detention to be taken into account. This criterion sometimes creates difficulties (cf. point 4.7 below regarding "challenges"). Furthermore, the documents provided should always include the sentenced person's opinion regarding the proceedings;

Regarding this last criterion, if the person remains in the issuing State, he or she is invited to express his or her opinion in each case:

- orally on the record (before the executing judge)
- or in writing, through the penitentiary administration if they are already serving a custodial sentence;
- and/or orally at the hearing if the Court considers it necessary.

4.3. Criteria for assessing the facilitation of social rehabilitation

When Croatia is the issuing State, the competent authorities must verify, before issuing a certificate, that transfer of the enforcement of the sentence to another Member State will serve the purpose of facilitating the social rehabilitation of the person concerned. Thus, they assume that social rehabilitation of the sentenced person will usually be easier in their country of origin or the country in which they have chosen to settle.

Therefore, in order to issue a certificate, the Croatian authorities take into account various aspects of the personal situation of the sentenced person (such as the person's age, his or her health situation, the family environment and the financial situation of the person) as well as other circumstances that can be relevant in the process of decision making (language, culture, social ties, etc.).

They consider whether the connections of the person with the State are close enough to allow successful rehabilitation and integration into Croatian society after serving their sentence – especially when the sentenced person is not a national of Croatia or ordinarily resident there.

The temporary residence criterion is not defined by law or case-law in Croatia, and is assessed in a case-by-case approach by the competent authorities. Nevertheless, the possession of a temporary residence permit can be considered as sufficient to fulfil the criterion. The duration of the temporary residence permit is one year.

4.3.1. Exchange of information between the issuing State and executing State

The approach is case-by-case, with additional information requested by Croatian authorities from the issuing State where appropriate.

Additional information has been requested regarding uncompleted certificates (even though in general they are complete), missing judgments (especially when various judgments are concerned by the recognition), the exact duration of the deprivation of liberty (especially in the case of contradiction between the sentence expressed in days or in years/months/days, the exact duration of the deprivation of liberty (especially in the case of contradiction between the sentence expressed in days or in years/months/days).

Information regarding the identity of the sentenced person may be requested, for instance if their data has changed after they were sentenced.

As executing State, Croatia informs the issuing State about the recognition proceedings and the enforcement of the sentence and sends the complete judgment enforcing the sentence by post and by e-mail. In addition, at the end of the enforcement of the sentence, a notification is sent to the issuing State.

4.3.2. Opinion and notification of the sentenced person

As issuing State: In the majority (if not all) of the cases, the initiative to start the process was taken by the sentenced person and/or his/her lawyer.

The transfer decision is end notified to the sentenced person by an official letter. If he or she is in the executing State, the decision is transmitted to that State, for it to carry out this notification.

There is no remedy offered to the sentenced person regarding the decision on transferring the execution of the sentence, whether it is a positive or negative one.

As executing State: There is a right to appeal to the Supreme Court of the Republic of Croatia against a judgment recognising and enforcing a judgment of another State. A lawyer can assist the sentenced person and a diplomatic or consular representative as well.

4.4. Adaptation of the sentence

According to the legal provisions of the JCA the court must adapt the custodial sentence imposed in the received judgment where that sentence, in terms of its duration, exceeds the maximum custodial sentence provided for the same or similar offenses under domestic law, in such a manner as to impose the maximum penalty provided for the same or similar offences under domestic law (Art. 91 (4) of the JCA).

The court must also adapt a custodial sentence or other measure involving deprivation of liberty where that sentence or measure is incompatible with domestic law in terms of its nature, in such a manner as to impose the criminal sanction for the same or similar offence under domestic law which corresponds as closely as possible to the sentence imposed by the received judgment; the sentence must however not be converted into a financial penalty (Art. 91 (5) of the JCA).

When adapting a custodial sentence, the court must not impose a sentence under domestic law which would aggravate the sentence handed down in the issuing state in terms of its nature or duration (Art. 91 (6) of the JCA).

Practical problems with the adaption of a sentence have emerged in cases where a life imprisonment sentence has been imposed on the defendant by a court of the sentencing State. Life sentences are, for instance, provided for in the legal systems of Austria and Germany, which are the main Member States for the Republic of Croatia in the field of legal cooperation in criminal cases. The Croatian legal system, however, does not allow the defendant to be sentenced to life imprisonment. Instead, it provides for a long-term custodial sentence of from 21 to 40, and in exceptional cases, 50 years.

In practice, when the Croatian executing authority has received a certificate with a life imprisonment sentence, the sentence has been adapted by imposing the strictest prison sentence for the offence prescribed under Croatian law. However, the adaptation of life imprisonment sentences under Croatian law has not been a reason to withdraw the certificate.

The adaptation of a life sentence in accordance with Art. 91 (4) of the JCA does not in itself appear to be a problem, because the maximum custodial sentence, i.e. 40 or, in particular cases, 50 years, has to be imposed. The provisions granting the possibility of conditional release, however, might be more favourable in the sentencing State for a defendant sentenced to life imprisonment than for a defendant sentenced to 40 years' imprisonment under Croatian law.

The Croatian experts pointed out that in order not to put the sentenced person in a less favourable position than in the sentencing State, the conditional release provisions of the sentencing State should either be taken into account when adapting the sentence or be applied *ex legem* when executing the sentence. It has to be noted that clarity does not appear to exist on how to resolve this issue. To make things even more complicated, the question of the applicable law does not appear to have been resolved either. It is not clear to Croatian practitioners whether the law which is in force at the time of initiating the recognition and execution procedure should apply, or the law which was in force at the time when the crime was committed, or in general the more favourable law.

The question of what constitutes a "similar offence" in accordance with Art. 91 (4) of the JCA is determined by Croatian practitioners by comparing the factual description of the criminal act(s) committed by the defendant. In contrast to surrender proceedings, which in quite a few cases are affected by an insufficient description of facts in the SIS alert or European arrest warrant, the assessment of the facts concerning the offence committed in recognition proceedings does not appear to be an issue because these facts are usually stated in a thorough manner in the judgment issued by a court of the sentencing State.

According to the Croatian experts, there have not been any cases where the sentencing State withdrew the certificate due to a sentence which was too lenient after its adaptation.

4.5. Grounds for non-recognition or non-enforcement

The grounds for non-recognition or non-execution of the judgment provided for in Croatian law are in accordance with Article 9 of FD 2009/909 /JHA.

According to Article 91 (1) and (2) of the JCA, a competent court must verify the following conditions after receiving a foreign judgment, to establish whether:

- the sentenced person is not a Croatian national and is not resident or domiciled in the Republic of Croatia or;
- the sentenced person is a Croatian national who is not resident or domiciled in the Republic of Croatia, but a measure has been imposed on him or her ordering deportation or expulsion to the Republic of Croatia after he/she is released from the enforcement of the sentence based on a judgment.

In the cases mentioned above, the consent of the Ministry of Justice is not required.

However, in cases other than those listed above, the consent of the Ministry of Justice is required.

The non-existence of double criminality is the most frequent ground for the non-recognition or non-enforcement of foreign criminal judgments. However, the Croatian authorities stated that they check double criminality in every single case and whether it comprises essential characteristics of a criminal offence under Croatian law, regardless of the legal description or legal classification of that act in the judgment they received, as well other preconditions laid down in Article 94 of the 'Grounds for non-recognition and non-enforcement' of the judgment.

The grounds for non-recognition or non-enforcement of the judgment may also be applied in situations where the certificate referred to in Article 103(1) of the Act is incomplete and evidently does not correspond to the judgment or has not been filled in or corrected by the issuing State within the deadline set by Croatian authorities, or when the criteria set out in Article 91(1) points, 1 and 2 of the JCA have not been met[11].

The Croatian experts also had experience with the partial recognition of the judgment, where the issuing State issued a certificate for several criminal offences and one of them was not a criminal offence under Croatian national law. There are also the issues of the statute of limitations for enforcement, ne bis in idem, cases where the perpetrator was younger than 14 at the time of the crime or has less than 6 months left to serve, or where the sentenced person no longer (actually) resides in the Republic of Croatia.

Other grounds for non-recognition and non-enforcement or the foreign judgments which the Croatian authorities have encountered relate to cases where a measure of deportation or expulsion was imposed. However, in the judgment, the Republic of Croatia was not explicitly stated as the State to which the person should be deported or expelled.

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11 Article 91 of the JCA

(1) When the competent court receives a foreign judgment, it shall verify that it is accompanied by the certificate referred to in Article 103(1) of this Act and whether the following conditions are met:
1. the sentenced person is a Croatian national and resides or is domiciled in the Republic of Croatia; or
2. the sentenced person is a Croatian national who does not reside or is not domiciled in the Republic of Croatia but a measure has been imposed on him or her ordering deportation or expulsion to the Republic of Croatia after he or she is released from the enforcement of the sentence on the basis of a judgment, administrative decision or any other measure taken consequential to the judgment; or
3. in cases not covered by points 1 and 2 of this paragraph, the Ministry of Justice has given consent to the issuing State to transmit the judgment imposing a custodial sentence or any measure involving deprivation of liberty to the Republic of Croatia for the purpose of its recognition, and the sentenced person has consented to this.

4.6. Partial recognition

The Croatian experts pointed out that the partial recognition of judgments[12] occurs most often in cases where the issuing State has issued a certificate in respect of several criminal offences and some of the offences for which the sentenced person was sentenced in the sentencing State are not criminal offences in the Republic of Croatia. Before issuing a judgment of this kind, the competent judicial authorities of the Republic of Croatia and the sentencing State consult each other.

It occurs in cases in which a sentence has been imposed both for a misdemeanour and for an offence, but under Croatian national legislation, misdemeanours are separate from criminal offences.

The consultation process has not been an issue. In some cases of partial recognition of judgments encountered by the courts, the competent authority in the issuing State was contacted and an agreement was reached on the partial recognition of the judgment and the enforcement of the sentence.

As the executing State, when deciding whether to recognise the judgment and enforce the sentence only in part, Croatian judicial authorities primarily take into account the level of the custodial sentence imposed for offences in relation to which the legal conditions for recognising the judgment and reaching an agreement with the competent authority of the issuing State in that specific case have been met.

12 Article 95 of the JCA
When the court establishes that grounds exist for a partial recognition of a foreign judgment, it shall, before deciding to refuse the recognition and enforcement of the sentence, consult the competent authority of the issuing State with a view to finding an agreement on the partial recognition of the judgment and enforcement of the sentence. Such recognition and enforcement shall not result in the aggravation of the sentence imposed in the issuing State

4.7. Challenges relating to compliance with the deadline for recognition and enforcement

Article 12(2) of the FD provides that "*Unless a ground for postponement exists under Article 11 or Article 23(3),* ***the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days*** *of receipt of the judgment and the certificate.* "

As issuing State, the Croatian authorities act with diligence in order to respect deadlines, although in a few particularly complex cases it has proved impossible to do so. It must be pointed out that the Croatian JCA lays down some deadlines which are stricter than that one fixed by the Framework Decision.

They have never received a notification from the executing State that the 90-day deadline was about to expire.

As executing State, the Croatian authorities have encountered exceeded deadlines from other Member States, most frequently when additional information or documentation relevant to the decision was needed in order to take the decision.

When they request additional information, they set a deadline to the issuing State for providing the additional information and warn them if the deadline of 90 days is exceeded.

4.8. Law governing the enforcement of the sentence

The applicable law is that in force in the executing State when the certificate was received.

A custodial sentence imposed in the recognised foreign judgment must be enforced in the Republic of Croatia in accordance with the provisions of the Croatian law governing the execution of criminal sanctions.

When deciding on conditional release, the competent authority must take into account the provisions on conditional release indicated by the issuing State. With Croatia as issuing State and as executing State, the Croatian authorities have never encountered a case where the certificate was withdrawn because of applicable provisions on early conditional release in the executing State.

Time spent serving a custodial sentence imposed in the recognised foreign judgment is deducted from the term of the sentence imposed. Regarding the deduction of the period of deprivation of liberty already served in the issuing State, difficulties were encountered owing to a lack of precision in the calculation of this period (in days or in months).

4.9. Further challenges

Further challenges which have been reported by the Croatian experts refer firstly to translation issues. Croatian authorities have encountered inadequate translations into Croatian of the certificate and of the judgment the recognition and execution of which is requested.

Secondly, they have also noted a lack of accurate information with regard to recognition of judgments which include consolidated sentences imposed onto the defendant by previous court decisions. In such cases, the recognition of the judgment requires exhaustive information on the legal and procedural aspects of each single judgment included, such as – but not limited to – description of facts, statutory limitation and whether the defendant was present when the respective judgment was pronounced. In practice, however, it seems that this information is provided only on request by the Croatian authorities.

The same applies to exhaustive information in general. Croatian practitioners have, for instance, encountered problems in cases where the sentencing State, even though indicating in the certificate that the sentenced person was subject to deportation or expulsion, failed to submit the respective decision.

Another problem encountered by the Croatian experts results from a peculiarity of the Croatian legal system. According to the Criminal Code of Croatia, sentences of imprisonment can only be set in full years and months, not in days. The legal provisions in the Criminal Code of Croatia also fail to provide guidance on how to convert days into months. This conflicts with criminal law systems in other Member States which allow sentence of imprisonment to be set not only in years and months, but also in days.

In particular in situations where a defendant has already partially served his or her sentence, an accurate and precise determination of the remaining sentence usually needs to be done in years, months and days. Nonetheless, the Croatian experts pointed out that it is not possible to execute the part of a remaining sentence which is counted in days as this would not be in compliance with Croatian law. As a result, the part of the sentence which is counted in days has to be disregarded when executing the sentence in the Republic of Croatia.

4.10. Statistics

The Croatian authorities provided the evaluation team with statistical data from 2016 to 2020 concerning certificates recognised, executed, and issued. The statistics show that the Republic of Croatia received many more requests for recognition and enforcement of judgments when acting as executing State than as issuing State. However, since the numbers cover four years, yearly numbers are still low.

When Croatia acted as the executing State, out of 128 requests, two were partially recognised, eighteen were rejected, and eight withdrawn.

Statistics for the period from 2016 to 2020, when the Republic of Croatia acted as the executing State

County courts	**Request received**	**Declined**	**Pending**	**Withdrawn**
ZAGREB	55 2 partially recognised	8		6
BJELOVAR	9	4		
PULA	10			
RIJEKA	8			
VELIKA GORICA	5			
VUKOVAR	6	5		
SISAK	4			
DUBROVNIK	1			
SPLIT	8			
SLAVONSKI BROD	5			
OSIJEK	5			
VARAŽDIN	5			
KARLOVAC	2			
ŠIBENIK	3	1		
TOTAL	**128**	**18**	**0**	**6**

Reasons for refusing recognition of the judgment and certificates were as follows:

- due to the statute limitations for the execution of a prison sentence under Croatian law in relation to Italy as the issuing State;
- convicted persons, who had been serving a prison sentence in the Republic of Austria, had lived in the Republic of Austria for a certain period of time, while they were only formally registered in the Republic of Croatia;
- sentenced persons had no registered residence in the territory of the Republic of Croatia (requests from the Kingdom of Belgium and the Republic of Austria), decisions did not impose a measure of deportation or expulsion to the Republic of Croatia after serving a sentence and it was ordered to place convicted persons in the Institute for Mentally Abnormal Offenders;

- from a reply from the United Kingdom seeking recognition and enforcement of the judgment it was not clear whether they agreed to the partial recognition of the judgment and the consequent reduction of the sentence, since one of the offences described in the UK judgment for which the defendant was found guilty and convicted was not a criminal offence under Croatian law, which is a mandatory condition for refusing to recognise and enforce the judgment in question;
- convicted persons did not have residence and domicile in the Republic of Croatia, and they were banished from the issuing country; the first from the Republic of Austria, the second from the Kingdom of Sweden and the third from the Kingdom of Denmark. However, it did not follow from the file that the convicted persons were sentenced to deportation or expulsion to the Republic of Croatia after their release from custody. The Croatian authorities requested clarification from the issuing State, but it was not provided;
- due to the fact that the act of possession of drugs for personal use, from the judgment of the City Court in Copenhagen, Kingdom of Denmark, does not constitute a criminal offence under Croatian law;
- the certificate was not in accordance with the submitted judgments (judgment of the Court of Svendborg of January 11, 2018, and judgment of the Copenhagen City Court of July 10, 2018), and the competent authority of the issuing State did not respond to the inquiry within seven working days of the inquiry being sent, or later.

As for reasons of suspension of the procedure due to withdrawal of the requests, they were as follows:

- the issuing Member State had information that the convicted person would leave its territory (however, the letter from the Republic of Austria did not specify the reasons for withdrawal);
- because, in the meantime, a judgment whose recognition was sought had been modified in part concerning the punishment and a new certificate submitted (the Republic of Austria);
- the convicted person was released (the Kingdom of Denmark);

- the convicted person was suspended from serving his prison sentence by a decision of the Regional Criminal Court, on condition that the prisoner leave to the Republic of Croatia (The Republic of Austria);
- the request was submitted on March 12, 2020; however, the statute limitation for executing the sentence was due to expire on March 30, 2020 (the Republic of Italy);

Statistics for the period from 2016 to 2020, when the Republic of Croatia acted as the issuing State

County courts	**Issued**	**Declined**	**Pending**	**Withdrawn**
ZAGREB	4			
BJELOVAR	2			
PULA	8			
RIJEKA	12		1	3
VELIKA GORICA	1			
VUKOVAR	2			
OSIJEK	2			
TOTAL	**31**		**1**	**3**

When Croatia acted as the issuing State, out of 31 requests, three were withdrawn, and one is still pending.

The reasons for withdrawal were as follows:

- in two cases, the statute limitation came into effect before Germany decided on recognition and enforcement;
- the request was sent to Germany; however, in the meantime, the sentenced person was arrested in the Republic of Croatia.

As for the pending request:

- The request for recognition and execution of the judgment by the Croatian Municipal Court was addressed to the Federal Republic of Germany on October 1, 2020. However, they still have not received information from the competent court in Germany as to whether the judgment has been executed or not.

4.11. Conclusions

The practical implementation of the recognition of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty with other Member States of the European Union is provided for in Title VII of the JCA.

There is, however, still room for improvement as regards the adaptation of sentences, which causes problems with application in some cases in Croatia, since the Member States' national legislation for non-harmonised crimes provides for very differing penalties.

The Croatian legal system does not allow the defendant to be sentenced to life imprisonment. Instead, it provides for a long-term custodial sentence of from 21 to 40, and in exceptional cases 50, years. It is of the utmost importance for the executing authority to be able to adopt measures for the adaptation of a sentence, as has become apparent in cases where a life imprisonment sentence has been imposed on the defendant by a court of the sentencing State.

Nevertheless, no cases have been reported where the certificate was withdrawn due to the adaptation of life imprisonment sentences under Croatian law.

The legal provisions in the Criminal Code of Croatia also fail to provide guidance on how to convert days into months: sentences of imprisonment can only be set in full years and months, not in days. This conflicts with criminal law systems in other Member States which allow a sentence of imprisonment to be set not only in years and months, but also in days. As a result, the part of the sentence which is counted in days has to be disregarded when executing the punishment in the Republic of Croatia.

Problems have been reported with regard to the translation of the judgement. Croatian law requires a written judgment and certificate and this sometimes presents a problem when the issuing State does not provide it because its legislation is different and the certificate and the judgment for which recognition and execution is requested are inadequately translated into Croatian.

In practice, the competent authorities seek a compromise in view of the different legislation in other Member States; in some cases the issuing State is asked to provide a translation of only the relevant parts of the judgment. In addition, at the request of the sentenced person, a translation of all the relevant documentation can be provided (by the issuing State or through an authorised Court interpreter paid by the Croatian authorities).

Some amendments to the law are suggested with regard to the criteria for assessing the facilitation of social rehabilitation, especially in relation to the temporary residence criterion, which is not defined by law or case-law in Croatia, and is assessed in a case-by-case approach by the competent authorities. The duration of the temporary residence permit is one year. Nevertheless, the possession of a temporary residence permit can be considered as sufficient to fulfil the criterion, especially when the sentenced person is not a national of Croatia or ordinarily resident there.

5. LINK BETWEEN FD 2002/584/JHA ON EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

5.1. Problems relating to the link between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences

As executing State: the Croatian competent authorities for the execution of an EAW and the enforcement of a foreign sentence are the same: the County Courts.

When an EAW has been issued for the purposes of executing a custodial sentence (or measure involving deprivation of liberty), and the requested person is a citizen of the Republic of Croatia (or is permanently or temporarily resident in its territory) and has agreed to serve the sentence in the Republic of Croatia, the Court is obliged to suspend its decision (Article 22(4) of the JCA).

In order to take over the enforcement of the sanction, the court must then request documentation from the issuing State and set an appropriate time-limit, which cannot exceed 15 working days, for its submission. Therefore, the Court systematically **requests the issuing State to provide the certificate** referred to in Framework Decision 2008/909/JHA **and the final judgment, with annexes.**

Then the court will reach a decision on the recognition and acceptance of the foreign judgment. Once the decision to take over the enforcement of the foreign sanction has become final, the court must refuse the execution of the EAW.

If the EAW has been issued for the purpose of conducting criminal proceedings, and the requested person is a citizen of the Republic of Croatia (or is permanently or temporarily resident in its territory), the court will surrender that person **on the condition that they are returned to the Republic of Croatia** if a sanction is imposed on them in the issuing State and they have agreed to serve the sanction imposed in the Republic of Croatia (Article 22(3) of the JCA).

Other criteria such as the connection of a person to the executing State, and the place where they have family, linguistic, cultural, social and other ties are also to be taken into account in order to enforce the sentence in Croatia.

In most cases, the person stays in detention during the process, as it is supposed to be short.

If the conditions are not met to enforce and recognise the foreign decision according to FD 909, the Court reverts to EAW procedure and surrenders the person if the legal conditions are met to execute the EAW as well.

As issuing State, the competent Croatian authorities will also use the certificate referred to in FD 909 in order to ask the executing State to enforce their sentence in case a EAW that has been issued for the purpose of enforcing and sentence and can be served in the Executing State.

5.2. Conclusions

In the cases referred to in Article 25 of FD 909 on the enforcement of sentences following a refusal to surrender on the basis of Article 4(6) of FD 584, the Croatian competent authorities always postpone their refusal decision up till to the decision to enforce the sentence based on FD 909, which is a good practice that should be highlighted.

Where Croatia acts as executing State, the evaluation team is in favour of more proactive action to empower both practitioners and sentenced persons, in order to encourage social rehabilitation by enforcing sentences in Croatia.

Regarding the divergence of practice among Member States, the evaluation team also consider that amending Article 25 of the Framework Decision on custodial sentences would avoid diverging interpretations among Member States on whether or not an FD 2008/909/JHA certificate should be issued in such cases.

The evaluation team would also point out that, when a requested person is under arrest in the Member State of which they are a national, that Member State should verify or conduct consultations in order to determine whether the surrender of the person concerned is the most appropriate procedure, or whether a certificate issued on the ba8sis of FD 909 would be more suitable.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

Framework Decision, 2008/947/JHA on non-custodial measures was implemented in Title VIII of the Act concerning Judicial Cooperation in Criminal Matters with Member States of the European Union, of 14 July 2010 which came into force on Croatia's accession to the EU on **1 July 2013 (**Official Gazette No.91/10, 81/13, 124/13).

6.1. Authorities competent for Framework Decision 2008/947/JHA

According to Article 5, item 5 in conjunction with Article 1 point 7 of the JCA, the authority competent **to receive** decisions of foreign judicial authorities on the recognition and enforcement of judgments and decisions imposing probation measures and alternative sanctions is the county court having jurisdiction for the place where the person concerned resides or is domiciled, or alternatively, of the place where the family of the sentenced person resides or is domiciled.

When Croatia is the issuing State, the competent authorities for issuing a judgment or decision imposing probation measures or alternative sanctions can be:

- the State Attorney's Offices (public prosecutor from the municipal or county prosecutor's office). In this case, the State Attorney may (after obtaining the prior consent of the victim) postpone or waive criminal prosecution if the suspect or defendant undertakes to respect some obligations.
- the Courts in charge of the hearing or the proceedings who sentence the defendant to a probation measure or alternative sanctions such as suspended sentence. The court may impose a suspended sentence on an offender sentenced to a term of imprisonment not exceeding one year or to a fine if it deems that, even without execution of the sentence, the offender will commit no further criminal offences.
- the Courts can also release a convicted person from serving a sentence of imprisonment after having served at least one half, but not less than three months, of the term to which he or she has been sentenced if it is reasonably expected that he or she will not commit a criminal offence and if he or she consents.

It is important to underline that neither the State Attorney nor the Court are specialised in the application of FD 947.

The Ministry of Justice is the central authority which assists the national competent authorities and the other Member States' competent authorities. They help them establish contacts in relation to the Framework Decisions referred to in Article 1 of the JCA.

In cases involving prior consent, i.e. when the sentenced person is not lawfully and ordinarily resident in Croatia, the Minister of Justice is competent to consent to the forwarding of a judgment and, where applicable, a decision on probation. If prior consent is given, the issuing State may then forward the judgment, together with the certificate, to the county courts (regarding probation decisions) or County State Attorney's Offices (regarding supervision measures) with territorial jurisdiction to decide on recognition and enforcement of the sentences imposed.

The Croatian competent authorities are in direct contact with the competent authorities of other Member States as regards the issuing and execution of requests for recognition and supervision, but also for the purpose of carrying out consultations prior to making such requests.

The Croatian probation office overtakes the competency to execute the probation measures on the basis of requests, final and enforceable decisions issued by domestic courts or the State Attorney's Offices (as well as requests issued by prisons and penitentiaries), and it is not within the competence of the Probation Service to recognise foreign court decisions.

Therefore, their role regarding the enforcement of sentences pronounced by foreign judicial authorities is the same as their role regarding their own national sentences.

6.1.1. Procedure when the Republic of Croatia acts as the executing State

The competent judicial authority accepts decisions and the accompanying documents translated into Croatian. In urgent cases, an English translation is accepted, on condition that the Member State transmitting a decision in English agrees to receive the decisions of the Croatian competent authorities in English.

After receiving a request from the issuing Member State, the competent authority verifies the documents attached and whether the certificate is complete. Afterwards, it verifies whether the sentenced person has his or her residence in Croatia.

The types of alternative sanctions and probation measures that may be recognised are listed in Art. 117 of the JCA, which entered into force on 19 December 2020.

Art. 117 of the JCA stipulates that only those **types of probation measures and alternative sanctions** are to be applied which are provided for in the criminal legislation of the Republic of Croatia. The JCA does not contain a list of applicable measures and sanctions. Hence it is not clear from the Act whether the list of applicable sanctions and measures fully reflects the requirements set out in recitals (9) and (10) as well as Article 4 of Framework Decision 2008/947/JHA (hereinafter: "FD 947"). Furthermore, such measures and sanctions might be governed by various domestic laws[13], making it even more challenging to understand which measures are applicable. Croatian experts pointed out that the country has submitted a declaration in this regard to the General Secretariat of the Council in accordance with Art. 4(2) of FD 947.

The grounds for refusing the recognition of a foreign judgment and enforcement of the sanctions and measures are governed by Article 120, 121 of the JCA which is mostly in compliance with Article 11 of FD 947.

13 According to the CPC, alternative sanctions and probation measures are as follows:

Alternative sanctions:

- community service;
- protective supervision with suspended sentence or community service

Probation measures imposed with conditional release or suspended sentence or with a partial suspended sentence are as follows:

1. continuation of education or training for a particular occupation which he or she has chosen with the expert help from the body in charge of probation;
2. employment in line with his or her qualifications or level of education, training and real possibilities of carrying our work assignment;
3. supervised disposition of proceeds in accordance with the needs of persons he or she is required by law to support;
4. medical treatment or continuation of medical treatment necessary for treating medical complaints that might be conducive to the commission of a new criminal offence;
5. treatment or continuation of treatment for alcohol, drug or other types of addiction in a therapeutic community;
6. prohibition on frequenting certain places, objects or events which might be conducive to the commission of a new criminal offence;
7. prohibition on socialising with a certain person or group of persons who might induce him or her to commit a criminal offence, prohibition from employing, teaching or accommodating such persons;
8. prohibition on leaving his or her residence during a certain period of the day;
9. prohibition on carrying, possessing or committing to somebody's care weapons or other objects that might induce the person to commit a criminal offence;
10. fulfilment of the obligation to pay maintenance;
11. regular reporting to the body in charge of probation, welfare centre, court, police administration or other competent authority;
12. and other obligations appropriate to the criminal offence committed (if the obligation clearly relates to the scope of the probation service).

The JCA discerns between grounds which must result in non-recognition (Art. 120) and those which may do so – i.e. based upon discretion (Art. 121). It is noteworthy that the rules concerning judgments in absentia are in compliance with FD 2009/299. It also should be highlighted that according to Art. 121 (2) of the JCA (if the person benefits from the immunity under domestic law) the court may, regardless of the existence of optional grounds for refusing recognition and execution of the judgment or decision, in agreement with the issuing State recognise and execute the foreign judgment in accordance with Art. 115 of the JCA, as provided for in Art. 11 (4) of FD 947.

Art. 121 (1) no. 3 of the JCA, however, partially deviates from the rule laid down in Art. 11 (1) (j) of FD 947 by allowing the court not to recognise and enforce the foreign judgment not only in cases where the measure/alternative sanction is of less than six months' duration but also in cases where less than six months of the sentence remain to be served. In addition, Art. 121 (1) of the JCA seems to be unclear when allowing the court to take into account "especially the need to protect the community from the criminal offender by influencing criminogenic factors".

Additional information from the requesting State can be obtained by the court in accordance with Art. 116 of the JCA (submission of a complete or corrected certificate), Art. 115 (4) of the JCA (requesting the submission of the judgment or probation decision) and Art. 127 of the JCA which, as the Croatian experts confirmed, is the general rule allowing the court to ask the requesting State for all other information which is deemed relevant to decide on the recognition request.

In contrast to Art. 115 (4) of the JCA, which does not specify a time-limit, Art. 116 and 127 stipulate a time-limit of seven days for obtaining additional information. This time-limit is far too short, even in the rare event of an email communication channel functioning well between the requesting State and the Croatian authorities. As a result, the unreasonable time-limit is usually disregarded by the judges, which does not expose them or the case to any consequences. There is simply no sanction prescribed by law for missing that specific deadline.

Probation measures or alternative sanctions that are incompatible with domestic law in terms of their nature, duration or the duration of the probation period are to be **adapted** by the court in accordance with Art. 118 of the JCA which implements Art. 9 of FD 947.
However, Art. 118 (2) of the JCA does not entirely reflect Art. 9(2) and (3) of FD 947. Art. 9(2) of FD 947 stipulates that a measure/alternative sanction/probation period which has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State shall not be below, i.e. shorter than, the maximum duration provided for equivalent offences under the law of the executing State. Art. 118 (2) of the JCA conflicts with this provision by stating that in such case the duration of the adapted measure etc. shall not exceed the maximum duration prescribed under domestic law for the same or a similar offence.

The **participation of the defendant** in the court proceedings is not regulated by the provisions of the JCA.

According to the Croatian experts the sentenced person will not be informed by the court about the request received, and will not be heard during the proceedings at first instance. However, the sentenced person, his or her lawyer and prosecutor are served with the court decision which he or she (or the prosecution) can **appeal** against within eight days, under Art. 119 (2) of the JCA. In the case of an appeal by the sentenced person (or the competent State Attorney) the higher court must decide within fifteen days, under Art. 119 (2) of the JCA.

As for specialisation, first-instance judges are specialised; however, this is not the case for judges at the High Court that was established on January 2021.

The JCA also remains silent as to the representation of the sentenced person by a **lawyer**.

The court is required, after receiving the request from the issuing State, to immediately initiate the procedure and render the decision within a **time-limit** of no more than sixty days, under Art. 119 (1) of the JCA.

If in exceptional cases it is not possible to render a decision within this time-limit, the court must notify the competent authority of the issuing State and give the reasons for the delay including an indication of the estimated time needed for the final decision to be taken, under Art. 119 (3) of the JCA.

After the recognition procedure and the final decision, the sentence is submitted to the competent probation office for enforcement. Afterwards, the probation officer summons the person in question, and the decision is executed according to the Probation Act and domestic law. Finally, the competent Croatian authorities inform the issuing State about the final decision.

6.1.2. Procedure when Croatia acts as an issuing state

Proceedings to forward a decision to the executing State are usually **initiated** at the sentenced person's request. Following such a request, the court decides whether the execution of probation measures or alternative sanctions in the State where the sentenced person resides would contribute to the social rehabilitation and reintegration of the sentenced person, under Art. 128 (3) of the JCA.

It does not seem to be clear whether there is an obligation for the court to **inform the sentenced person** about the right to request the judgment or probation decision being forwarded. Even the Croatian practitioners present at the meeting were not sure about such an obligation.

They noted that sentenced persons have usually had lawyers who contacted the IRC office and asked for the transfer of the sentence to another MS. However, prison practitioners stated that information concerning the right to transfer a sentence to the sentenced person's home country is not included in the information sheet. At the same time, they added that during the interview with a foreign sentenced person, the prison staff always inform the person concerned of this right orally, and note it in his/her file.

In practice – at least at the **county court** level - this does not appear to be a major problem as representation by a defence counsel is mandatory in trials at this level. The Croatian experts underlined that lawyers are well informed about FD 947 and the related rights of their clients.

At **municipal court** level, however, where representation of the defendant by a defence counsel is not mandatory and where apparently the vast majority of probation measures is issued, it seems to depend on the individual judge whether the sentenced person is informed about the rights provided for in FD 947.

The Croatian experts stated that the Croatian authorities have not encountered difficulties in **identifying the CA in the executing State**. The main reason seems to be that Croatia has been forwarding judgments and probation decisions almost exclusively to Austria and Germany. These are the two main countries in which Croatian citizens work and live abroad. The Croatian experts confirmed that the domestic authorities have established well-functioning contact channels with their counterparts in these two countries.

In practice, the European Judicial Network (EJN) is used to identify the competent authorities of the other Member State. They mainly communicate via email, using the contact email address indicated by the competent authority of the issuing State in the decision on probation measures and alternative sanctions. The Croatian authorities also use the contact points designated through the European Judicial Network in criminal matters.

The most frequent cases which probation officers encountered related to community service due to the employment circumstances of the sentenced persons (most often in Germany or Austria). The sentenced persons initiated the procedure and agreed with the transfer, whereupon the probation office forwarded their request to the courts responsible for filling in and certifying the content of the certificate submitted with the decisions and transmitting it to the competent authority of the executing State.

6.2. Problems relating to failure to apply Framework Decision 2008/947/JHA

Statistics covering the whole country do not exist and will have to be created. Nevertheless, from the information given by the Croatian experts it seems clear that there has been only a very small number of cases to date. Zagreb county court, for instance, has received no more than two requests for the recognition of a foreign judgment in accordance with FD 947 during the last four years.

The **number of cases** in which a judgment or a probation decision was forwarded to an executing State by the Croatian authorities remains low. Nevertheless, there have been some cases in which recognition was denied by the executing State.

In addition, in a few pending requests, Croatian authorities are still awaiting responses from the executing States even though the requests were submitted to them months ago. This refers only to cases in which community service was imposed on the sentenced person. These are in general the only types of measures addressed by Croatia as issuing State.

The reasons for the delays in responding on the part of the executing States are not known, as the executing States have failed to indicate them.

Two main problems were mentioned by the Croatian experts:

- Interpretation issues:

  Issuing States have in some cases failed to provide the certificate or other documents in a translated version which is understandable. Executing States, on the other hand, sometimes demand that judgments and other additional information be translated into their language, in doing so ignoring the fact that such a translation is not required by the Framework Decision.
- The time-limit for obtaining additional information is too short.
- In a few cases, the CAs of the issuing state did not provide Croatian CAs with additional information and documentation within the set time limit.

6.3. Statistics

The Croatian authorities provided the evaluation team with the statistics on certificates recognised, executed, and issued 2016 to 2020. The statistics shows that FD 2008/947/JHA has not been used often in practice. However, Croatian authorities have issued more requests (34) than they have received (9).

When Croatia acted as the executing State, the Croatian authorities received only 9 requests for recognition, of which 2 requests were rejected since the probation measure imposed on the convicted person was not applicable under the criminal legislation of the Republic of Croatia. In the other four cases, the probation measures imposed were changed to community service.

Statistics for the period from 2016 to 2020, when the Republic of Croatia acted as the executing State

County courts	**As executing authorities**		
	Requests received	**Rejected**	**Replaced by community service**
ZAGREB	2	1	
SISAK	2		
VARAZDIN	4		4
OSIJEK	3	1	
TOTAL	**9**	**2**	**4**

The Republic of Croatia, as the issuing State, issued 34 certificates. However, all issued certificates related to the alternative sanction - community service. As practitioners noted, one of the reasons could be that practitioners primarily consider community service as an alternative sanction that offers the defendant a chance to avoid going to jail.

As for 7 pending requests sent to the other MSs:

- 3 of the certificates were sent to Germany on October 2020 and the remaining 4 in May 2021. However, practitioners remarked, some deadlines as prescribed by law have been exceeded. Nevertheless, reasonable time-limits were respected even in those cases.

Statistics for the period from 2016 to 2020, when the Republic of Croatia acted as the issuing State

County courts	**Issued**	**Declined**	**Pending**
ZAGREB	12		
BJELOVAR	8		6
PULA	5		
RIJEKA	5		1
VELIKA GORICA	1		
OSIJEK	3		
TOTAL	**34**		**7**

6.4. Conclusions

The evaluation team would emphasise that practical use of this legal instrument is currently quite limited, which makes it difficult, as things stand, to offer general conclusions on its application by the Member States' competent authorities.

At a national level, only a limited number of requests have been received in previous years. In addition, recognition of a foreign decision by the domestic competent authority may present difficulties when not fully aligned with the legislation of the Republic of Croatia.

The Croatian authorities stated that some of the main reasons for not applying FD 947 were the complexity of mutual recognition legislation, a poor understanding of the instrument on the part of many of the authorities concerned, and differences in national legislation concerning decisions that might fall within its scope.

In the evaluation team's view, it is particularly important to draw practitioners' attention to the existence of FD 947. Moreover, practitioners in every Member State should be given ample opportunity to engage in in-depth discussions at national and EU level on the existing problems and the solutions which have been found, or may be possible, to improve the application of this Framework Decision.

Therefore, the evaluation team suggests that, in order to increase mutual trust between Member States, it would be useful to improve awareness of the other national systems and the non-custodial measures they provide for, and to be able to have this updated information available at EU level on the EJN website.

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)

Framework Decision 2009/829/JHA on supervision measures as an alternative to provisional detention was implemented by the **Act concerning Judicial Cooperation in Criminal Matters with Member States of the European Union** of **14 July 2010** (which came into force on Croatia's accession to EU on **1 July 2013**, Official Gazette No.91/10, 81/13, 124/13) – (JCA).

The following sections in this chapter describe the experiences which the Croatian authorities shared with the evaluation team to contribute to this evaluation, and the solutions they propose to further promote the use of this Framework Decision.

7.1. Authorities competent for Framework Decision 2009/829/JHA

7.1.1. The procedure when the Republic of Croatia acts as executing State

When Croatia acts as the executing State, the competent authorities for recognising a decision issued by the other MS are the county court having jurisdiction for the place where the sentenced person is domiciled or resides (Article 131b) of the JCA). Consequently, the County State Attorney's Offices are competent for receiving decisions of the foreign judicial authorities. However, if the place of residence is unknown, the County State Attorney's Office in Zagreb is competent.

In cases involving **prior consent**, i.e. when the sentenced person is not lawfully and ordinarily resident in Croatia, **the Ministry of Justice must give its prior consent** to the forwarding of a decision on supervision measures for the purpose of the recognition and monitoring of those measures. If prior consent is given, the issuing State may forward the decision, together with the certificate, to the public prosecution service with territorial jurisdiction to decide on the recognition and monitoring of the measures imposed.

Croatia has submitted a declaration to the General Secretariat of the Council under Art. 7(3) of the ESO FD stating that the Ministry of Justice and Public Administration is the central coordinating authority responsible for assisting the competent domestic authorities and competent authorities of other Member States in establishing contacts and judicial cooperation.

Decisions issued by foreign judicial authorities and accompanying documents should be translated into Croatian. However, in urgent cases, an English translation is accepted, but only if reciprocity applies.

The types of supervision measures that may be recognised are listed in Art. 131b of the JCA. Article 131b contains the list of applicable supervision measures to be recognised and executed by domestic competent authorities - the county court having jurisdiction for the place where the person is domiciled or resides - and fully reflects the requirements set by Article 8(1) of the FD on the ESO.

Croatia has made a declaration in this respect to the General Secretariat of the Council in accordance with Article 8(2), and the country will also monitor the execution of decisions prohibiting the pursuit of certain professional activities and measures prohibiting persons from driving motor vehicles by means of the temporary withdrawal of driving licences.

The grounds for non-recognition of a foreign decision on supervision measures are stipulated in Article 131e of the Act and they are fully in compliance with Article 15 of the FD on the ESO. The JCA regulates all grounds for refusal as mandatory.

Article 131e (4) of the JCA, however, allows the competent, court notwithstanding the mandatory ground for refusal laid down in point (c) of Article 131e (1) of the JCA, to consent to the forwarding of a decision on supervision measures issued by the competent authority of the issuing State in respect of a person who is not domiciled or does not reside in the territory of the Republic of Croatia, on condition that prior to the issue of the decision in the issuing State the person lived for at least one year in the Republic of Croatia, with which he or she has family or business ties. The country has submitted a declaration in this respect to the General Secretariat to the Council in accordance with Article 9(4) of the FD on the ESO.

Additional information from the requesting State can be obtained by the court in accordance with Art.131c (2) of the JCA (submission of a complete or corrected certificate), and the competent State Attorney's Office must set a time-limit of no more than 15 working days within which the competent authority of the issuing State is to submit a completed or corrected certificate. The court must postpone rendering a decision until a completed or corrected certificate is received.

According to Art. 131e (2) of the JCA, before issuing a decision on non-recognition of a foreign decision on supervision measures, the competent court shall communicate with the competent authority in the issuing State and, as necessary, request the latter to supply without additional delay information required for issuing the decision.

Adaptation of the supervision measures is governed by Art. 131f of the JCA, which is in compliance with Art 13 of the FD on the ESO. When foreign supervision measures are not provided for in domestic law, the State Attorney's Office must inform the competent authority of the issuing State of the measures that may be imposed in accordance with the provisions of domestic law and their maximum duration. The court must issue a decision recognising the foreign decision and impose supervision measures pursuant to domestic law, which must correspond as far as possible to those imposed in the issuing State. The supervision measure imposed pursuant to domestic law must not be more severe than the corresponding supervision measure which was imposed in the issuing State.

Time-limits for the recognition of a foreign decision on supervision measures are stipulated in Articles 131 c, 131d and 131f of the JCA. The competent State Attorney's Office, on receipt of foreign decision on supervision measures, must forward it to the competent court.

If **a certificate is incomplete**, the competent State Attorney's Office must set a time-limit of no more than **15 working days** in which the competent authority of the issuing State is to submit a completed or corrected certificate.

If a foreign decision and **supervision measures not provided for in national law**, a time-limit of 10 working days is set for withdrawal of the certificate.

The competent court, on receipt of a decision on supervision measures and a certificate, must immediately initiate the recognition procedure. The court decision on recognition is to be issued within no more than **15 working days** of receipt.

If **an appeal** has been filed against the decision on recognition of a foreign decision on supervision measures, the time-limit is to be extended by **another 15 working days**.

A time-limit of **10 working days** is laid down for the competent authority of the State of origin to submit its decision in cases where the person has infringed the supervisory measures. The national court is required to revoke the supervision measures and notify them to the issuing State for the purpose of delegating enforcement powers to that State, unless the competent authority of the issuing State provides the requested decision or information on the need for further supervision.

The right to appeal against the decision on recognition of a foreign decision on supervision measures is mentioned in Articles 131d (2) and 131h letter (c) of the JCA. It is not expressly provided for in Title VIIIA of the JCA, which states "*if an appeal has been filed against the decision on recognition of a foreign decision on supervision measures, the time limit set in paragraph 1 shall be extended by another 15 working days"*.

In such a case, the competent court must, without delay, inform the competent authority in the issuing State by any means which leaves a written record of the fact that an appeal has been filed against a decision on recognition of a foreign decision on supervision measures. The procedure when the Republic of Croatia acts as issuing State

Where Croatia is the **issuing State**, the competent authority pursuant to Article 6(2) of FD 829 (Article 6(3) of the JCA) is the **judicial authority hearing the proceedings**, which takes the decision on precautionary measures.

According to the Croatian law and the national Code of Criminal Procedure, this can be done

- before the indictment is confirmed: by either a **public prosecutor** or an **investigating judge**
- after the indictment is confirmed: by the competent **Court of Justice**

The **county public prosecutor's offices** and **Courts of Justice** are responsible for filling in and certifying the content of certificates and **forwarding** the certificates to the competent authority of the executing State - those they have issued as well as those issued by municipal public prosecutor's offices or municipal courts in the area of their territorial jurisdiction.

The decision on the supervision measure imposed must be forwarded to the competent authority of the Member State in which the person who is subject to the measure has his or her lawful and ordinary residence, if the person in question gives his or her consent.

The competent authorities must execute the measures imposed by the domestic judicial authority until they receive the notification from the competent authority of the executing State on the recognition of the decision imposing the supervision measures.

If the execution of the supervision measures in the executing State has not yet begun, the domestic competent authority may withdraw the certificate when the competent authority of the executing State submits the information on the maximum duration of the supervision measures according to law of that State or a decision by which the supervision measures were modified in accordance with the law of the executing State.

The decision on the withdrawal of the certificate must be communicated to the executing State immediately, and no later than 10 working days from the receipt of the above-mentioned information or decision.

The competent domestic authority must immediately inform the competent authority of the executing State if an appeal has been filed against the decision following article 131 (1), (2) of the JCA. .[14]

14 Article 131o of the JCA

(1) Before the expiry of the period referred to in Article 131m(2) point (b) of this Act, the domestic competent authority shall submit, *ex officio*, the decision on the extension of the duration of the supervision measures, if these measures are still necessary taking into account the circumstances of the case, along with the certificate referred to in Article 131l(3) of this Act in which they shall indicate the period of time for which such an additional extension is likely to be needed.

(2) Pursuant to the provisions of the domestic law and in the light of the circumstances of the case and the report of the competent authority of the executing State on breaches of the supervision measures or other decisive circumstances, the domestic competent authority may, in addition to extending the duration of the supervision measures in accordance with paragraph 1 of this Article:
a) discontinue the supervision measures;
b) modify the supervision measures;
c) order detention and issue a wanted notice or a European arrest warrant, and shall inform the competent authority of the executing State thereof without delay.

7.2. Problems relating to failure to apply Framework Decision 2009/829/JHA

According to practitioners, the national legislation implementing FD ESO is considered to be comprehensive and clear.

The Croatian authorities stated that they have not had any cases so far in relation to the application of the FD on the ESO. Also, the Probation Service in the Republic of Croatia does not have any information on the application of FD 829.

According to practitioners, the causes for not applying the FD as issuing State might be:

- Awareness of the FD on the ESO had not yet reached a sufficient level for practitioners to consider whether the FD on the ESO was applicable, thus lack of practical experience prevents judicial authorities from using them, and the added value of making practical use of the instrument is questionable to them;
- Some practitioners have expressed the desire for a more comprehensive programme of further training, better information, and organising some kind of training regarding this instrument.

- Practitioners noted that in the case of serious crimes where there are grounds for detention (risk of influencing witnesses, the danger of absconding, continued offending), Croatian practitioners hesitate to risk apply the ESO Framework Decision due to a risk that the accused person will fail to appear at trial or interfere with evidence or witnesses or otherwise obstruct justice, or that the person will commit a further offence while on bail. Therefore, the competent authority deciding on replacing detention with one of the supervisory measures had to consider all circumstances, to avoid the criminal proceedings being frustrated. It also needs to have at least basic information about a person's way of life, his or her reliability, work, residence, and what people he or she comes into contact with, etc.

- However, the competent authorities deciding on the alternative detention may only gain information from the person concerned. Consequently, it is a matter of trust in the person concerned and his reliability, not mutual trust between the authorities of the Member States of the European Union.

- Drawing up manuals and guidelines could also be useful.

- Practitioners also noted that the most common supervision measure that Croatian courts impose is restraining orders to protect victims. Thus, if a restraining order is imposed on the person who left Croatia to the other Member State, there is no need to transfer such supervision measures to the other Member State since the victim is not in danger.

- Croatian judges and prosecutors are continuously made aware of the new instruments and cooperation possibilities in the EU legislation. However, lawyers should also be more active and request the use of this measure in the cases allowed by law.

7.3. Conclusion

The evaluation team would emphasise that practical use of this legal instrument is currently quite limited, which makes it difficult to offer general conclusions on its application by the Member States' competent authorities.

The less frequent application of the FD on the ESO could also be because practitioners have only theoretical knowledge and no practical experience in its application.

It seems that practitioners do not consider the FD ESO as an adequate instrument of cooperation, especially in serious crime cases where replacing the detention with ESO measures represents a significant risk of frustrating the criminal proceedings, bearing in mind the grounds for detention (risk of influencing witnesses, danger of absconding and continued offending).

However, due to the lack of experience with using the FD on the ESO, they expressed the desire to participate in international training activities on the ESO, focusing on practical examples presented by MSs who have experienced some cases.

8. TRAINING

In Croatia, the **Judicial Academy** is the institution responsible for initial and ongoing training for magistrates. They organise **workshops** and also provide handbooks and **expert material** for the application of the Framework Decisions. They are available to its target groups on its website or sent by email to the participants.

In accordance with the **Judicial Academy Act (NN 52/19**), the Judicial Academy offers, among other training activities, ongoing professional training for judicial officials, advisers in judicial authorities and civil servants in the judiciary. In the context of this professional development, there is training on judicial cooperation in criminal matters, the Act concerning Judicial Cooperation in Criminal Matters with Member States of the European Union and the Act concerning international mutual legal assistance in criminal matters, in accordance with the training need identified and the financial and logistical capacity available.

The **number of experts trained** depends on the number of topics included in the annual professional development programme. On average, **100 participants are trained per topic**, of which on average 50 % are judges, 40 % are public prosecutors and 10 % are advisers in judicial authorities.

Regarding specifically F**ramework Decisions 2008/947/JHA and 2009/829/JHA**, Croatian judges, deputy public prosecutors and advisers in judicial authorities regularly take part in international seminars organised by the European Judicial Training Network (EJTN) and the Academy of European Law (ERA), and training on this topic offered through international projects in which the Judicial Academy is a partner. Framework Decision 2008/947/JHA is often part of the broader theme of judicial cooperation in criminal matters. For this reason, **there is no separate data** on the participation of judges or deputy public prosecutors or advisers in judicial authorities in training dedicated exclusively to that particular legal instrument.

The national authorities are familiar with the **tools of the European Judicial Network** in criminal matters. However, they rarely use them when applying Framework Decisions 2008/947/JHA and 2009/829/JHA as these Framework Decisions are rarely used in practice.

8.1. Training relating to FDs 2002/584/JHA and 2008/909/JHA

Regarding specifically **Framework Decisions 2002/584/JHA and 2008/909/JHA**, the subject of the EAW is often one of the topics proposed for the training of judges and prosecutors in accordance with the training needs identified and the financial and logistical capacity available.

In 2020 the Judicial Academy organised a course on 'EU law and Council of Europe law – Criminal law' and one of the topics was the EAW in that context.

Seminars have also been organised to study all the relevant decisions of the CJEU regarding EAW cases and, in addition to considering each individual instrument, the seminars covering instruments of judicial cooperation between EU Member States also cover the relevant CJEU decisions.

In order to help practitioners, the Croatian public prosecutor's office has produced a handbook. Experts from the Court have also drawn up a dedicated document – 'Europski uhidbeni nalog s primjerima iz sudske prakse'(The European arrest warrant with examples from case-law) – recording the relevant decisions of the Zagreb County Court as well as covering European criminal law, the impact of the Framework Decision on national law and the conditions for issuing an EAW. The authors also provide general instructions on how to fill in the EAW form, along with an official form with instructions. They also address the issues involved in acting on the warrant as either the issuing State or the executing State, as regards transmission of the warrant, the execution procedure and the surrender of Croatian nationals, as well as the relationship between the European arrest warrant and third countries.

Croatian judges, deputy public prosecutors and advisers in judicial authorities also regularly take part in international seminars organised by the European Judicial Training Network (EJTN) and the Academy of European Law (ERA), and training on this topic offered through international projects in which the Judicial Academy is a partner. The Croatian judicial authorities are familiar with the EJN's tools and use them regularly, particularly when determining the competent authorities. The competent authorities are also generally familiar with the work done by EuroPris and the relevant tools available on-line. The EJN contact points are a reference for their colleagues on this subject.

Framework Decision 2008/909/JHA is often part of the broader theme of judicial cooperation in criminal matters. For this reason, **there is no separate data** on the participation of judges or deputy public prosecutors or advisers in judicial authorities in training dedicated exclusively to that particular legal instrument.

8.2. Training relating FDs 2008/947/JHA and 2009/829/JHA

Regarding specifically **Framework Decisions 2008/947/JHA and 2009/829/JHA**, Croatian judges, deputy public prosecutors and advisers in judicial authorities regularly take part in international seminars organised by the European Judicial Training Network (EJTN) and the Academy of European Law (ERA), and training on this topic offered through international projects in which the Judicial Academy is a partner. Framework Decision 2008/947/JHA is often part of the broader theme of judicial cooperation in criminal matters. For this reason, **there is no separate data** on the participation of judges or deputy public prosecutors or advisers in judicial authorities in training dedicated exclusively to that particular legal instrument.

The national authorities are familiar with the **tools of the European Judicial Network** in criminal matters. However, they rarely use them when applying Framework Decisions 2008/947/JHA and 2009/829/JHA as these Framework Decisions are rarely used in practice.

The Judicial Academy regularly **evaluates educational activities** from both an organisational and a trainer's point of view in relation to the quality of the educational materials and training methods used in the courses. The Judicial Academy's Programme Council, which is responsible for the adoption of the professional development programme for all target groups in the Judicial Academy, analyses a brief **annual evaluation report** on the basis of which it assesses the impact and relevance of the training provided. Then, based on its findings, it adjusts the professional training programme planned for the following year.

The Croatian authorities intend to hold more **workshops** on cooperation in criminal matters and produce **handbooks** at national level to help judges, public prosecutors and probation officers to deepen their knowledge on the subject. They also support the idea of organising more training at European Union level on the Framework Decisions (in particular regarding Framework Decision 2008/947/JHA), **to ensure that any alternative sanctions and probation decisions imposed are enforced abroad.** They also want to include probation offices in any training on these Framework Decisions.

In the Republic of Croatia there is a growing tendency to impose alternative sanctions and, in order to be able to extend them to sentenced persons residing abroad, it is necessary to organise more training on these topics at EU level.

8.3. Conclusions

The Judicial Academy is in charge of all judicial training. Each year, the Judicial Academy organises training courses on mutual recognition, and especially focusing on the EAW instrument. Some training programmes are also organised each year on international cooperation, in which CJEU and ECHR case-law is discussed, and the Framework Decisions as well. Nevertheless, there is no dedicated national programme on each Framework Decision. The training includes some practical cases and general presentation of the cooperation instruments.

The evaluation team regrets that training programmes are held at local courts because the Judicial Academy does not cover the costs of accommodation for the training. This prevents practitioners from meeting and discussing common knowledge, best practices or challenges faced in the field. It is also pointed out that there is a lack of attendance, since not all places offered on the training programmes are taken up by participants. Practitioners' day-to-day workload may be an obstacle to attending such programmes, especially if the training is not mandatory for judges and prosecutors.

The Judicial Academy nevertheless ensures the participation of some judges and prosecutors in ongoing training, as well as the participation of other judicial staff in international seminars and conferences, and in foreign internships and exchange programmes thanks to the EJTN training is not provided for lawyers – which they regret – or to probation officers.

The statistics provided by the Croatian authorities do not make specific reference to training relating to each of the four Framework Decisions, which is the subject of the questionnaire, and no specific information has been provided relating to the number of training events specifically relating to each of the four Framework Decisions. However, the impression is that very few activities, or even none, are organised with regard to FD 2008/947/JHA and FD 2009/829/JHA.

Taking into account the fact that the Judicial Academy has limited premises, the evaluation team is of opinion that in addition to national-level training programmes, e-learning modules should be organised and e-learning material provided as well - which will also enable participation from remote areas.

It is nevertheless important to underline the key role that the EJN Croatian Contact Points play as reference persons for practitioners to consult in the event of any doubt or question. They are responsible for passing on the information received to other magistrates.

8.4. Bar Association

The evaluation team also met with representatives of the Croatian Bar Association. The discussion showed that the training of lawyers in the field of the Framework Decisions covered by this evaluation is insufficient.

There is the Bar Association Academy, which runs seminars for lawyers. As representatives of the Bar Association noted, the Academy holds seminars every month on commercial, civil or criminal law; however, in the last three years, the has not been any seminar dedicated to the EAW or the other FDs covered by the current evaluation.

As for lawyers appointed ex officio, there is a list of lawyers in each District Bar Association from among whom prosecutors or investigating judges can select a defence lawyer if needed. However, as representatives of the Bar Association remarked, most of them are not experienced with the FDs in question.

In their view, the problem is that any lawyer can apply to the Bar Association to be included in that list, and no one will examine his or her knowledge in the field in which he or she applies to be appointed as a defence counsel. They noted that once a lawyer obtains the licence, no one cares whether they are educated or and familiar with the new amendments to legislation or the new.

For example, they may attend a seminar lasting one or two days during which they get some idea of what these FDs are about; however, this is not sufficient since, during the seminar, there is no presentation concerning the practical problems lawyers might face; only the legislative text is studied.

Another problem they pointed out is the lack of access to training materials, such as the handbook on the EAW which prosecutors and judges have. They added that the European Bar Association has recognised this problem, and has prepared a handbook for lawyers. However, it is only a short set of guidelines which will be translated into all EU languages.

According to what was presented during the meeting with representatives of the Bar Association, it seems that neither the Croatian Bar Association nor the European Bar Association are aware of the EJN website where all materials, including the Handbook on the EAW, are freely accessible.

Therefore, even though the handbook is in English, the Croatian Bar Association or the European Bar Association might have it translated and disseminate it to lawyers, since most do not speak English.

The Croatian Bar Association should cover the FDs on which this evaluation is focused and the related case-law in their training programmes.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by Croatian authorities

9.2. Recommendations

As regards the practical implementation and operation of the Directives and the Regulation, the team of experts involved in the evaluation of the Republic of Croatia was able to satisfactorily review the system in the Republic of Croatia.

The Republic of Croatia should conduct an 18-month follow-up to the recommendations referred to below after this report has been adopted by the Working Party concerned.

The evaluation team saw fit to make a number of suggestions for the attention of the Croatian authorities. In addition, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJN in particular.

9.2.1. Recommendations to the Republic of Croatia

Recommendation 1: (all FDs) Training of judges and lawyers should not be limited to international legal assistance in criminal matters in general. It should also specifically address the respective FDs and the challenges arising from their application in day-to-day work.

Recommendation 2: (all FDs) The national authorities are encouraged to organise joint national training for judges and prosecutors concerning the instruments covered by the evaluation, to strengthen their cooperation.

Recommendation 3: (all FDs) A case management system for collecting and providing country-wide statistics should be set up and implemented.

Recommendation 4: (FD 947) Informing sentenced persons about their rights in accordance with FD 947 by the court should be made mandatory.

Recommendation 5: (all FDs) Reminders should be sent to the executing State in cases of failure to respond within a reasonable time.

Recommendation 6: (FD 909) To check detention conditions ex officio in particular cases.

Recommendation 7: (FD 909) The sentence imposed by the issuing State must be recognised if the calculation period is expressed in years + months + days.

Recommendation 8: (all FDs) The legislator should reassess the time-limit set in the national Act on cooperation, which is not prescribed by the respective FDs, as a potentially detrimental effect.

Recommendation 9: (909) The evaluation team believes that a legal remedy should be provided for against non-issuance of the certificate and also in cases where a certificate is issued without the person's consent in a case where the person concerned would wish to raise some legal or practical objection to it.

Recommendation 10: (all FDs) Create a folder on the intranet concerning the other EU countries' legal regulations, to facilitate practitioners' decisions on recognition.

9.2.2. Recommendations to the other Member States

Recommendation 1: (584, 909) To enter all relevant facts concerning the proceedings in cases of trials in absentia on the EAW form and the certificate, to enable a thorough legal assessment to be made.

Recommendation 2: (all FDs) When asked for additional information, to comply with reasonable time-limits set by the executing Member State and provide any explanation if this is not possible.

Recommendation 3: (548) To enter detailed facts of the case in the SIS alert, so that all the facts are available to the executing authority before asking the person concerned for their consent.

Recommendation 4: To draw up a list of translators to ensure that the EAW can be translated within a short timeframe in urgent cases.

Recommendation 5: (all FDs) Each Member State should comply with the obligation to inform the issuing State about the final execution of the sentence once the defendant has served it.

9.2.3. Recommendation to the Commission

Recommendation 1: The evaluation team encourages the EU Commission to complete the handbook on the EAW with particular emphasis on trials in absentia. The rules governing such trials, which show significant differences between the Member States, and their consequences for the validity of the respective judgments, including the right to an appeal or retrial, should be presented. Specific forms for the submission of accurate information to the executing Member State in such cases should also be provided.

Recommendation 2: The information mentioned above should also be provided in the context of FD 909.

9.2.4. Recommendations to the Croatian Bar Association and European Bar Association

Recommendation 1: The Croatian Bar Association should provide training or organise seminars concerning the FDs covered by this evaluation, including the related CJEU case-law and the use of the EJN website.

9.3. Best practices

1. Cooperation within the EJN community and with judges and prosecutors is proactive.
2. The Croatian authorities always consider less intrusive measures before issuing the EAW.
3. The Croatian authorities provide judges and prosecutors with training on legal English, for practitioners throughout Croatia.
4. Prison officials provide prisoners with information about their fundamental rights in written form.

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

Programme of the VTC preparatory meeting with representatives of the Republic of Croatia

Thursday, 27th May 2021

[Venue: the VTC meeting]

[Participants: representatives of the High Criminal Court, County Courts, the County State Attorney's Office, the Probation Office in Zadar and the Ministry of Justice]

09:00 - 09:15	Opening speeches, introduction of the host team and evaluation team;
09:15 - 11:30	Presentation by the Prosecutor's Office and Court, followed by Q&A; discussion;
11:30 - 12:00	Break
12:00 - 14:30	Presentation by the Prosecution Office and Probation Office followed by Q&A, discussion;

Programme of the on-site evaluation visit with representatives of the Republic of Croatia, Zagreb

Monday, 6th September 2021

Arrival of the evaluation team in the Republic of Croatia

18:00 - Internal meaning of the evaluation team and an observer.

Tuesday, 7th September 2021

[Venue: the Ministry of Justice, Grada Vukovara Street 49, Zagreb

[Participants: representatives of the High Criminal Court, county courts, the State Attorney's Office of the Republic of Croatia, the County State Attorney's Office, the International Police Cooperation Department - Sirene Section, the Judicial Academy and the Ministry of Justice]

09:00 - 09:15	Welcoming speeches, introduction of the host team and evaluation team;
09:15 - 10:30	Presentations by the Prosecution Service and the Court followed by Q&A: discussion;
10:30 - 10:40	Coffee break;
10:40 - 12:00	Continuation of the discussion;
12:00 - 13:00	Lunch break;
13:00 - 14:30	Presentation by SIRENE/police bureau followed by Q&A: discussion;
14:30 - 14:45	Coffee break;
14:45 - 16:15	Presentation by the Judicial Academy followed by Q&A: discussion;
18:00 - 19:30	Internal meeting of the evaluation team and an observer.

Wednesday, 8th September 2021

[Venue: Ministry of Justice, Grada Vukovara Street 49, Zagreb

[Participants: representatives of county courts, the Directorate for the Prison System and Probation, the Bar Association, and the Ministry of Justice]

09:00 - 10:30 Presentation by court representative followed by Q&A: discussion;

10:30 - 10:40 Coffee break;

10:40 - 12:00 Continuation of the discussion;

12:00 - 13:00 Lunch break;

13:00 - 15:00 Presentation by prison officials followed by Q&A: discussion;

15:00 - 15:10 Coffee break;

15:10 - 16:30 Representatives of the Bar Association, Q&A, discussion;

18:00 - 19:30 Internal meeting of the evaluation team and an observer.

Thursday, 9th September 2021

[Wrap-up meeting]

[Venue: Ministry of Justice, Grada Vukovara Street 49, Zagreb

[Participants: representatives of the High Criminal Court, County Court, State Attorney's Office, and Ministry of Justice]

09:00 - 10:30 Additional questions and discussion;

10:30 - 10:45 Coffee break;

10:45 - 12:00 Final remarks, preliminary conclusions;

14:00 - 15:30 Internal meeting of the evaluation team and an observer.

ANNEX B: PERSONS INTERVIEWED/MET

On Thursday, 27 May 2021, **from 9:30 to 14:00**, VTC preparatory meeting with representatives of the High Criminal Court, county courts, County State Attorney's Office, Probation Office and Ministry of Justice.

Venue: via the VTC platform

Person interviewed/met	**Organisation represented**
Tanja Pavelin	High Criminal Court
Marina Kapikul	High Criminal Court
Dražen Kevrić	Zagreb County Court
Irena Kvaternik	Zagreb County Court
Gregor Sakrađija	Bjelovar County Court
Sena Midžić Putigna	Pula County Court of
Tomislav Brđanović	Varaždin County Court
Natalija Slavica	County State Attorney's Office
Josipa Jermen	Zadar Probation Office
Anamarija Barać	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Tuesday, 7 September 2021, from 9.00 to 12:00, meeting with representatives of the High Criminal Court, county courts, State Attorney's Office of the Republic of Croatia, County State Attorney's Office, and Ministry of Justice.

Venue: Ministry of Justice (Grada Vukovara Street 49)

Person interviewed/met	**Organisation represented**
Tanja Pavelin	High Criminal Court
Tatjana Babić	Zagreb County Court
Erna Dražančić	Zagreb County Court
Sena Midžić Putigna	Pula County Court
Gregor Sakradžija	Bjelovar County Court
Danka Hržina	State Attorney's Office
Natalija Slavica	Zagreb County Attorney's Office
Maja Rakić	Ministry of Justice and Public Administration
Anamarija Barać	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Tuesday, 7 September 2021 from 13.00 to 14:30, meeting with representatives of the International Police Cooperation Department - Sirene Section and the Ministry of Justice.

Venue: Ministry of Justice (Grada Vukovara Street 49)

Person interviewed/met	**Organisation represented**
Dijana Sadarić	Ministry of the Interior (International Police Cooperation Department)
Maja Rakić	Ministry of Justice and Public Administration
Anamarija Barać	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Tuesday, 7 September 2021, from 14:45 to 16:15, meeting with representatives of the Judicial Academy and Ministry of Justice to discuss training on the FDs covered by the evaluation.

Venue: Ministry of Justice (Grada Vukovara Street 49)

Person interviewed/met	**Organisation represented**
Nella Popović	Judicial Academy
Anita Lazarin	Judicial Academy
Anamarija Barać	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Wednesday, 8 September 2021, from 9.00 to 12:00, meeting with representatives of the county courts and the Ministry of Justice to discuss FD 2008/909/JHA

Venue: Ministry of Justice (Grada Vukovara street 49)

Person interviewed/met	**Organisation represented**
Marina Kapikul	High Criminal Court
Ivana Bujas	High Criminal Court
Sena Midžić Putigna	Pula County Court
Gregor Sakradžija	Bjelovar County Court
Maja Rakić	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Wednesday, 8 September 2021, from 13.00 to 15:00, meeting with representatives of the Directorate for the Prison System and Probation and the Ministry of Justice

Venue: Ministry of Justice (Grada Vukovara Street 49)

Person interviewed/met	**Organisation represented**
Jana Špero	Ministry of Justice and Public Administration - Directorate for the Prison System and Probation
Adriana Mažar	Zagreb Prison
Maja Rakić	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Wednesday 8 September 2021, from 15.00 to 16:30, meeting with representatives of the Bar Association and Ministry of Justice

Venue: Ministry of Justice (Grada Vukovara Street 49)

Person interviewed/met	**Organisation represented**
Višnja Drenški Lasan	Bar Association
Berislav Živković	Bar Association
Maja Rakić	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

On Thursday, 9 September 2021, from 9:00 to 11:00, wrap-up meeting with representatives of the High Criminal Court, the County Court, the State Attorney's Office, and the Ministry of Justice

Venue: Ministry of Justice (Grada Vukovara Street 49)

Person interviewed/met	**Organisation represented**
Tanja Pavelin	High Criminal Court
Danka Hržina	State Attorney's Office

Person interviewed/met	Organisation represented
Natalija Slavica	Zagreb County Attorney's Office
Maja Rakić	Ministry of Justice and Public Administration
Lovorka Cvetičanin	Ministry of Justice and Public Administration

ANNEX C: THE IMPACT OF COVID - 19 ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

CROATIA	
EAW *-issuing of EAWs (suspension; impact on EAWs already issued; prioritisation in issuing new EAWs + criteria)* *- execution and postponement of the actual surrender (legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)* *expectedresumption of surrenders* *-transit*	Impact on the issuing of EAWs According to the principle of legality, prosecutors and judges are obliged to issue the EAW if in the specific case the legal preconditions are fulfilled (Article 2(1) of the Framework Decision on the EAW). So, in all cases where the legal preconditions are fulfilled the EAW will be issued. It is necessary to emphasise that, according to Croatia's Criminal Procedure Act and Act on judicial cooperation in criminal matters, the prosecutors and the judges render the decision on the issuance of the EAW in accordance with the principle of proportionality. The competent judicial authorities for issuing the EAW (courts and Public Prosecutor's Offices) issue EAWs in all cases where the legal preconditions have been fulfilled. Under Croatian law there is no possibility of temporarily suspending the issuing of EAWs. The EAWs are still entered in the SIS (alert) for the purpose of searching for the requested person. In most cases the whereabouts of the requested persons are unknown at the time of issuing the EAW. The issuance of the EAW must be distinguished from the surrender of requested persons after the finalisation of the surrender procedure in the relevant Member State. The Ministry of the Interior has postponed taking over of the requested person who has been arrested and detained in the executing Member State and whose surrender has been granted. Impact on the execution of EAWs and postponement of the actual surrender The Croatian authorities have not implemented any additional

	measures in connection with the surrender /transfer of requested persons/sentenced persons from Italy /other affected countries to Croatia. (…) In other words, regarding cases of surrender and cases of transfer of the requested person/sentenced person where the final decision has been issued and surrender has been agreed, the following provisions are relevant: Article 23(3) and (4) of Framework Decision 2002/584/JHA. This Framework Decision complies with fundamental rights and the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union. Consequently, the Framework Decision complies with Article 35 Charter of Fundamental Rights of the European Union, which reads as follows: "Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities." In other words, Member States of the EU are obliged to ensure a high level of human health protection. In this specific situation, the transfer/surrender of the persons who are detained /serving their sentence in Italy could endanger the high level of human health protection in other Member States of EU. Consequently, the abovementioned provisions could be interpreted in the following manner: the transfer of the sentenced person/surrender of the requested person from Italy /affected countries could be contrary to Article 35 of the Charter of Fundamental Rights of the European Union. The Croatian authorities emphasise that the execution of EAWs will not be suspended; only the surrender of the requested person will be postponed. In line with the recommendations of the Civil Protection Headquarters and further to the arrangement with the Prison System Directorate of the Ministry of Justice, the Ministry

	of Interior has postponed surrender, extradition and transfer of persons to and from the Republic of Croatia. Further to the above, after issuing a decision on surrender of a person, the courts are temporarily postponing the surrender of the requested person for serious humanitarian reasons (Article 35, par 3 of the Act on Judicial Co-Operation in Criminal Matters with Member States of the European Union – in line with article 23 of the FD on the EAW). Legal basis for postponing the actual surrender The temporary suspension of surrenders of requested persons can be based on Article 23 (3) and Article 23 (4) of the FD on the EAW. Courts are independent in the interpretation and application of the FD on the EAW. Accordingly, it is up to the court to decide with provision to apply in the concrete case of the temporary suspension of the surrender of the requested person due to the COVID-19 epidemic. The Croatian legal system does not apply the principle of stare decisis. In other words the courts are not obliged to abide by the precedent established by prior decisions. Adequacy of these provisions The Croatian authorities consider the abovementioned provisions applicable and sufficient to deal with the current situation. In each concrete case it is necessary to find the most appropriate solution taking into account the principle of proportionality and the obligation to enable another Member State to conduct effective prosecution of the perpetrator of the offence. For example if the EAW is issued for the purpose of questioning the defendant who has absconded, the issuing and executing judicial authority should consider the application of Article 19 of the FD on the EAW in order to avoid an excessive duration of extradition detention due to COVID-19. Meaning of 'circumstances beyond the control'

	The case law of the ECJ (Case C-640/15) has defined "circumstances beyond the control" as "exceptional circumstances, that resistance could not have been foreseen by those authorities and ….. could not have been avoided in spite of the exercise of all due care by those authorities". (…) Subsequently, the surrender of the requested person can be postponed on the basis of Article 23(4) of the Framework Decision ("serious humanitarian reasons"). The transfer of sentenced persons can be postponed due to unforeseen circumstances, until the circumstances cease to exist. Releases of requested persons following postponement of surrender Until now, no such case has occurred. The Courts render decisions taking into account the circumstances of the concrete case and impose the measure that will ensure the presence of the requested person during the procedure for executing the EAW. According to Croatia's Act on judicial cooperation in criminal matters with EU, Member States, non-compliance with deadlines cannot lead to the release of the requested persons. These deadlines are indicative. Measures to prevent requested persons from absconding In each concrete case the court can decide on the application of other, less severe, measures instead of extradition detention (bail, supervision measures). But these measures can be ordered only if they can secure the presence of the requested person and prevent his/her absconding. Expected resumption of the surrender The Croatian authorities are unable to answer this question. The physical surrender /extradition of requested person will be possible when the technical conditions are fulfilled and it is very hard to predict when these conditions will be fulfilled. In most of the cases the requested persons are being surrendered/extradited to the issuing State/Requested State by air transport. The "restart" of

	international airline aviation requires a number of obstacles to be overcome in order for Governments to allow travel, and further hurdles in terms of the passenger journey, which includes the airports of departure and arrival, the flights themselves, and other elements. Transit Transits are not possible.
Precautionary measures for surrender, extradition and transfer - *COVID19 test* - *health certificate* - *quarantine* - *facial masks*	Precautionary measures Generally speaking, all surrenders (esp. by air) are currently suspended. However, a different decision is possible in exceptional cases. To date, the Croatian authorities have not encountered any such cases. There is no special protocol in place for those cases, but there is an epidemiologist on call who can carry out testing for COVID-19 if necessary. Due to a heavy workload for the epidemiologists, the Croatian authorities we have been asked to refer cases to them only if absolutely necessary. The competent authorities in the Republic of Croatia (police SIRENE Bureau /Interpol Zagreb) have organised the physical surrender /extradition of the requested persons in only a few cases. In these cases, the following procedure was conducted: • the requested person was medically examined (tested for COVID-19) before the physical surrender/extradition; • Croatian and foreign police officers who were accompanying the requested person as well as the requested person had to respect the measures imposed by the Civil Protection Directorate (obligation to use personal protective equipment). In future cases, the testing of foreign police officers would be more than welcome. Furthermore, the recommendations of the Civil Protection Headquarters are being applied by the Ministry of Justice. Consequently, the Prison System Directorate of the Ministry of Justice applies all measures ordered relating to the health of

	prisoners and detained persons. Need (or not) for further guidance on precautionary measures The police officers who organise and execute the physical surrender/extradition of the requested person would appreciate such guidance, which will facilitate the application of the EAW surrender procedure across the EU.
Extradition *-suspension* *-legal basis* *-third countries involved* *-expected duration of suspension*	Impact on extradition procedures The Republic of Croatia has not suspended the international wanted notices issued by the third States. The police acts on the basis of the international wanted notices – if the requested person is on Croatian territory he/she will be arrested on the basis on the international wanted notice. After the arrest, the police and judicial authorities act in accordance with the Act on mutual legal assistance in criminal matters and applicable international agreements. When the Minister of Justice issues a ruling granting the extradition of the requested person, his/her surrender to the third State will be postponed due to the COVID -19 epidemic. Legal basis for postponing the actual surrender Provisions such as those referred to above are proscribed by the Council of Europe Conventions: Article 18(5) of the European Convention on Extradition reads as follows:" If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply."
Transfer of sentenced persons *-prioritisation in issuing/execution*	Impact on the transfer of sentenced persons Transfers of prisoners are not possible. The procedure for the transfer of the sentenced persons from affected countries should not be initiated during the current situation concerning coronavirus COVID-19. Regarding the cases of transfer of the requested person/sentenced person where the final decision has been brought and surrender has been agreed, the following provision is relevant:

	Article 15(2) of Framework Decision 2008/909/JHA. Regarding the transfer of sentenced persons who are serving their sentence in the Republic of Croatia to other EU Member States in accordance with FD 2008/909, it is necessary to emphasise that their surrender is postponed due to the COVID-19 epidemic. Besides, these procedures are not considered as urgent cases due the fact that convicts are already serving the sentence and there is no danger of their absconding.
EIO and MLA *-prioritisation in issuing/execution* *-electronic transmission* *-whom to contact*	Impact on the issuing of EIOs and MLA requests In accordance with the above, the judicial authorities do not prioritise the issuance of the EIO. According to our legal framework the judicial authorities are obliged to obtain all evidence in the concrete case (evidence proving the guilt of defendant as well as evidence in favour of the defendant). The investigation has to be concluded within proscribed time-limits. So it is impossible to prioritise EIOs. Impact on the execution of EIOs and MLA requests EIOs and other MLA requests are executed only in urgent cases. Please note that most EIOs are considered as urgent cases, since they are usually issued during the investigation. Given the nature of the instrument, the EIOs are therefore handled without delay. Electronic transmission and contact details EIOs and MLA requests should be sent by e-mail to the addresses in the EJN Atlas, and ordinary mail should be used in exceptional cases (transfer of the proceedings and service of documents). They should be sent to the central authority in MLA cases (service of documents and transfer of proceedings). The EIO should be sent to the competent County State Attorney´s office, to the e-mail addresses specified in the EJN Atlas and to the following e-mail addresses: Danka.Hrzina@dorh.hr and Bojan.Ernjakovic@pravosudje.hr
Freezing and confiscation	N/A

orders *-prioritisation in issuing/execution*	
JITs *-prioritisation and alternative telecommunications solutions*	N/A
Recommended channels for transmission of *-urgent requests* *-information exchange*	In urgent cases / situations it is highly recommended to use Eurojust, EJN and SIS Sirene channels. For the transmission of EIOs and MLA requests, see above: 'EIO and MLA'.
Any other relevant information	Regarding judicial cooperation, it should be emphasised that all urgent requests (criteria: serious crimes, urgent investigative actions, defendant is deprived of liberty) were/are being executed within short time-limits. Regarding the issuance of instruments of judicial cooperation, they were/are issued when the legal preconditions were/are fulfilled. (…) Extraordinary precautionary measures will apply to judges and prosecutors in the Republic of Croatia. Most judges and prosecutors will work from home. Urgent investigative measures will be carried out. Accordingly, all urgent MLAs, including EIOs and EAWs, will be handled. These extraordinary measures lasted until April 1 2020. (….) Please note that surrenders of requested persons /transfers of sentenced persons will be executed /postponed taking into account the specific circumstances of the concrete case. The details of the surrender are to be agreed between the SIRENE Bureaus of the countries involved. The measures imposed due to the epidemic COVID-19 are gradually easing in the Republic of Croatia. So, the judiciary is gradually returning to normal.

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF THE REPUBLIC OF CROATIA OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
EU		European Union
FD/s		Framework Decision/s
JCA		Act on Judicial Cooperation in Criminal Matters (Judicial Cooperation Act)
JHA		Justice and Home Affairs
EAW		European Arrest Warrant
EIO		European Investigation Order
EJN		European Judicial Network
SIS		Schengen Information System
CJEU		Court of Justice of the European Union
ECHR		European Court of Human Rights
ESO		European Supervision Order
VTC		Virtual Teleworking Conference
CSAO		County State Attorney's Office
SAO		State Attorney's Office
UK		United Kingdom
EUROJUST		European Union Agency for Criminal Justice Cooperation
ERA		Academy of European Law
EJTN		European Judicial Training Network