

# EIO

in Croatia



Co-funded by the Justice Programme of the European Union 2014-2020

# Competent authority

- When the Republic of Croatia is issuing EIO:
  - issue** >>> competent state attorneys' office and courts (criminal and misdemeanor)
  - forward** >>> court and county state attorney's office
- When the Republic of Croatia is executing EIO:
  - receive** >>> county state attorney's office (without delay, and in any case within a week of the reception of an EIO, acknowledge reception of the EIO)
  - recognize and execute** >>> County State Attorney's Office and Courts
- the issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf

# Before and after EIO

- Until implementing the Directive – EIO is considered as the Request for Mutual Legal Aid (EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTER, Treaties)
- After implementing the Directive – when we receive the Request, we ask the EU member State to send us EIO
- Problem: if the request was sent before implementing the Directive

# Grounds for obligatory non-execution

- 1. in a specific case the execution of the EIO would harm essential **national security interests**, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
- 2. the execution of the EIO would be contrary to the principle of **ne bis in idem**;
- 3. the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the Republic of Croatia, and the conduct in connection with which the EIO is issued is not an offence in the Republic of Croatia;
- 4. there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO **would be incompatible** with the obligations in accordance with Article 6 TEU and the Charter;
- 5. the conduct for which the EIO has been issued **does not constitute an offence** under the domestic law, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;
- 6. the use of the investigative measure indicated in the EIO is restricted under the domestic law to a list or **category of offences** or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

# Grounds for optional non-execution

- there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;
- the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would not be authorised under the domestic law in a similar domestic case

# Time limits for recognition or execution

- The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar domestic case.
- The competent authority shall take the decision on the recognition or execution of the EIO as soon as possible but no later than 30 days after the receipt of the EIO (may be extended by a maximum of 30 days).
- The competent authority shall carry out the investigative measure without delay, not later than 90 days following the taking of the decision (not possible-consultation with the issuing authority on the appropriate timing to carry out the investigative measure).
- Where the issuing authority has indicated in the EIO that a shorter deadline than those provided by the Law is necessary, the domestic competent authority will execute EIO in accordance with the indicated deadline unless there are objective obstacles.

# Legal remedies

- Non recognition – state attorney’s office can appeal within 3 days and shall inform the issuing authority about the legal remedy
- The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State.
- A legal challenge shall not suspend the execution of the investigative measure, unless the issuing authority indicates differently.

# Recourse to a different type of investigative measure

(a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or

(b) the investigative measure indicated in the EIO would not be available in a similar domestic case

IT does not apply to the following investigative measures:

(a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;

(b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;

(c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;

(d) any investigative measure that can be executed without court order

(e) the identification of persons holding a subscription of a specified phone number or IP address.



# proportionality

- The competent authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.
- When the competent authority decides to avail itself of this possibility, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.
- The competent authority shall notify the issuing authority that it has not been possible to provide the assistance requested:
  1. the investigative measure indicated in the EIO does not exist under the domestic law
  2. it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested

# General provision in Law on cooperation

- Obligation to respect fundamental rights
- Amendment 2017.
- (1) The competent authorities of the Republic of Croatia shall issue the orders and decisions in proportion to the nature of the need in each individual case.
- (2) The execution of orders shall not affect the obligation to respect the fundamental rights and freedoms defined in the Charter of Fundamental Rights of the European Union.

# Aranyosi and Caldaru

C-659/15 C-404/15

- 83. Second, as is stated in Article 1(3) thereof, the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in, inter alia, the Charter.
- **C-216/18:**
- Thus, where, as in the main proceedings, the person in respect of whom a European arrest warrant has been issued, pleads, in order to oppose his surrender to the issuing judicial authority, that there are systemic deficiencies, or, at all events, generalised deficiencies, which, according to him, are liable to affect the independence of the judiciary in the issuing Member State and thus to compromise the essence of his fundamental right to a fair trial, the executing judicial authority is required to assess whether there is a real risk that the individual concerned will suffer a breach of that fundamental right, when it is called upon to decide on his surrender to the authorities of the issuing Member State

# language

- The competent judicial authority shall execute the decisions referred to in Article 1 of this Act issued by foreign judicial authorities if these decisions and the accompanying documents are translated into the Croatian language. In urgent cases, the English translation shall be accepted, on condition that the Member State transmitting a decision in English agrees to receive the decisions of domestic competent authorities in English.

# specific provisions for certain investigative measures

- Same as in the Directive
- County court of Zagreb:
  - 1. Information on bank and other financial accounts
  - 2. Interception of telecommunications with technical assistance of Republic of Croatia
  - 3. a ban on disposing of items in a safe deposit box and a temporary seizure of items in a safe deposit box



---

**Thank you**

Tanja Pavelin, judge and EJM contact point on the County court of Zagreb

---