Council of the
European Union

Brussels, 15 February 2024
(OR. en)

16309/1/23
REV 1

COPEN 431
EVAL 14
JAI 1608
CATS 71
EUROJUST 44
EJN 20

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	**EVALUATION REPORT ON THE 10th ROUND OF MUTUAL EVALUATIONS** **on the implementation of the European Investigation Order (EIO)** **REPORT ON THE REPUBLIC OF CROATIA**

ANNEX

EVALUATION REPORT ON THE

TENTH ROUND OF MUTUAL EVALUATIONS

on the implementation of the European Investigation Order (EIO)

REPORT ON THE REPUBLIC OF CROATIA

Table of Contents

1. EXECUTIVE SUMMARY

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('the Directive') responded to a well-identified practical need for a comprehensive system based on mutual recognition, for obtaining evidence in cases with a cross-border dimension, replacing the previous fragmented evidence-gathering system, while taking into account the flexibility of the traditional system of mutual legal assistance ('MLA'). Moreover, the European Investigation Order ('EIO') was intended to create a high level of protection of fundamental rights and to implement already gathered practical experience, based on direct communication between European judicial authorities. Consequently, the EIO struck a balance between the approaches of mutual recognition and mutual assistance. After the Directive had been in effect for more than five years, it was decided, within the tenth round of mutual evaluations, to assess the application of the main instrument for gathering evidence.

The information provided by the Republic of Croatia in the questionnaire and during the on-site visit was detailed and comprehensive, and the evaluation visit was both well prepared and well organised by the Croatian authorities. The evaluation team got a good overview of the strengths and weaknesses of the Croatian system, which enabled them to identify some key issues that need to be addressed at national and European level, resulting in the recommendations made below in Chapter 24.1.

The main obstacle to effectively applying the Directive in the Croatian system is the Croatian legislator's choice of transposing the definition of an EIO into national law by replacing the term 'investigative measure' as under Article 3 of the Directive, with the term 'evidentiary action' (see Chapters 3 and 5.1). This is a specific notion under Croatian criminal procedure which has limited the scope of application of the Directive, as it excludes the so-called 'inquiry measures' (i.e. measures taken in the early stages of an investigation) both when issuing and when executing EIOs. Furthermore, this legislative choice is being interpreted by Croatian practitioners in a very strict way, in line with the domestic criminal procedure and its internal distinction between 'inquiry actions' and 'evidentiary actions'.

As executing authorities, Croatian practitioners reported issues relating to the impossibility of following the formalities requested by the issuing State. Based on the interviews during the visit, the evaluation team had the impression that the Croatian authorities tend to adopt a wide understanding of what might be contrary to the fundamental principles of the Croatian legal order, as if it were covering any procedural aspect of the Croatian legislation. This might result in non-compliance with many of the formalities requested by the issuing Member State. In the opinion of the expert team, Croatian practitioners should avoid interpreting the notion of basic fundamental principles of the domestic legal order in a broad sense.

The possibility for victims and civil parties to request the issuing of an EIO has been identified as an undeniable strength of the Croatian system. Even though victims and their legal representatives do not have the right to apply for EIOs under the transposing legislation, in practice, the Croatian authorities do allow victims and civil parties to request the issuing of EIOs. Granting victims and their legal representatives the authority to request the issuing of EIOs is consistent with the overarching objective of strengthening victim protection.

The evaluation team found evidence of a potential need to revise the Directive in several points. In their view, the key points where the EU legislator should consider amending the Directive are as follows:

- expressly allowing the victim to request the issuing of an EIO;
- clarifying whether the rule of speciality applies;
- clarifying the notion of interception of telecommunication in relation to GPS-tracking and bugging and consider introducing the possibility of using an Annex C also for the said measures where no technical assistance is needed from the other Member State or a new specific Annex D;
- clarifying the legal regime applicable under the Directive to the use of malware.

Furthermore, the application of the Directive in relation to the Convention implementing the Schengen Agreement ('CISA')[1] in respect of cross-border surveillance should also be further clarified in order to ensure legal certainty. Also, the horizontal issue of the participation of the accused person at the trial via videoconference from another Member State should be revisited by the union legislator.

[1] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997[2] (the 'Joint Action') established a mechanism for evaluating the application and implementation at national level of the international arrangements in the fight against organised crime.

In line with Article 2 of the Joint Action, the Coordinating Committee in the area of police and judicial cooperation in criminal matters ('CATS') agreed after an informal procedure following its informal meeting on 10 May 2022, and as set out in the Directive, that the 10th round of mutual evaluations would focus on the EIO.

The aim of the 10th round of mutual evaluations 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 the Directive. This will allow areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, strengthening coherent and effective implementation of this legal instrument would further enhance mutual trust among the Member States' judicial authorities and ensure better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice. Furthermore, the current evaluation process could provide helpful input to Member States in their implementation of the Directive.

[2] Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.

The Republic of Croatia was the fifth Member State evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 29 June 2022 by a silence procedure[3].

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations to be carried out. Pursuant to a written request sent to delegations on 15 June 2022 by the Secretariat of the Council of European Union, Member States have nominated experts with substantial practical knowledge in the field.

Each 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 10th round of mutual evaluations, it was agreed that the European Commission and the European Union Agency for Criminal Justice Cooperation ('Eurojust') should be invited as observers[4].

The experts tasked with evaluating the Republic of Croatia were Mr Nicholas Franssen (NL), Mr Júlio Barbosa e Silva (PT) and Mr Tilen Ivic (SI). Observers were also present: Ms Sofia Mirandola (Eurojust), together with Ms Emma Kunsági from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on the detailed replies of the Republic of Croatia to the evaluation questionnaire, and the findings from the evaluation visit carried out in the Republic of Croatia between 28 and 30 March 2023, where the evaluation team interviewed the representatives of the Ministry of Justice and the Ministry of Interior, the Prosecutor General's Office, the judiciary and the Bar Association.

[3] ST 10119/22.
[4] ST 10119/22.

3. TRANSPOSITION

The Directive was transposed into national law by the Act on Judicial Cooperation in Criminal Matters with European Union Member States ('Act on Judicial Cooperation'), which entered into force on 26 August 2017. Croatia took the approach of transposing all instruments of judicial cooperation into one act, which the evaluators found as a good practice which could also be followed in other member states (s*ee Best practice No 1*).

The transposition seems to be a near verbatim reproduction of the Directive, except for Article 3 (scope of the EIO). In the Act on Judicial Cooperation, the Croatian legislator chose not to use the term 'investigative measure' as under Article 3 of the Directive, but to transpose it as 'evidentiary action'. This is a specific concept under Croatian domestic law and has resulted in a limitation of the scope of the application of the EIO in the Republic of Croatia, which excludes the so-called 'inquiry measures'.

For better understanding, it is necessary to highlight a particular aspect of the criminal procedure in Croatia, namely the so-called inquiry phase.

This is a confidential, pre-investigation phase stage during which the police gathers 'information' concerning an alleged offence, which cannot be used as evidence but is then excluded from the case file when the charge is filed in accordance with Article 86(3) of the Criminal Procedure Code ('CPC'). The aim of this phase and of the information gathered therein is only for the prosecutor[5] to clarify disputed facts at an early stage of the proceedings and determine whether to initiate criminal proceedings with a formal investigation or to dismiss the case[6].

[5] The literal translation of the term 'državni odvjetnik' is state attorney, but for the sake of readability, the English term 'prosecutor' is used throughout this report.
[6] Articles 206.f – 206.i and 207 – 208 of the CPC.

The subsequent investigation phase led by a prosecutor is indeed opened at a later stage, where a suspect is identified, and is not confidential (i.e. the suspect is informed of the investigations and case against him). The measures carried out in the investigative phase are to the contrary 'evidentiary measures' which allow to gather information that might be used as evidence later at trial. Only exceptionally and in urgent cases, during the inquiry phase, it is possible to carry out 'evidentiary measures'.

This legislative choice is interpreted by Croatian prosecutors in a very strict way, in line with domestic criminal procedure and its internal distinction between 'inquiry actions' and 'evidentiary actions'. As mentioned, former are 'informal' actions that may include the collection of various information useful for the subsequent conduct of criminal proceedings and that essentially may only serve the purpose of obtaining information that will enable the issuance of an EIO with precisely specified evidentiary actions at a later stage once the formal investigation has started. Therefore, in the Republic of Croatia, an EIO cannot be issued for the purpose of conducting inquiry actions, and such investigative measures can be requested only within the framework of police cooperation.

In conclusion, under Croatian law an EIO may only be issued in cases involving the collection of evidence as defined in national law.

Furthermore, when executing an EIO, it is up to Croatian executing authorities to determine whether the requested investigative measure constitutes an 'evidentiary measure' or not according to their national system and whether its result can or cannot be used as evidence in criminal proceedings and be the object of an EIO. Obviously, this practice has already caused issues during the execution of EIOs from other Member States which do not have such distinction and/or limitation in their criminal procedure.

For instance, the evaluation team was informed of a case where EIOs were issued by another Member State, requesting the gathering of information from several individuals in a criminal proceeding concerning fraud. Croatian prosecutors opposed the execution of such EIOs, arguing that the gathering of information from individuals whose role in the offence was not yet established does not qualify as an evidentiary measure as required by their law, and thus no EIO can be executed in such cases under Croatian law. As this was a systemic issue, a meeting was conducted with the participation of the respective contact points of the European Judicial Network ('EJN'), as well as representatives of the Croatian Ministry of the Interior and Ministry of Justice.

Due to the inability to find a solution allowing for the execution of these EIOs, it was decided that such cases would be handled through police cooperation channels, even though similar investigative measures could be requested via an EIO under the law of the issuing Member State.

The aforementioned example highlights the practical problems which may easily arise due to the transposition of the European legal concept of 'investigative measure' into a national concept and thereby narrowing down the scope of the Directive, whereas the majority of the Member States does not distinguish between the two investigative phases.

As a conclusion, the evaluators recommend that Croatian authorities adopt a more flexible interpretation of this section of the law, in conformity with Article 3 of the Directive, in order to be able to execute aforementioned EIOs. Should such an interpretation not be possible, the evaluators recommend to consider modifying the national law transposing the Directive by eliminating the reference to 'evidentiary action' when defining the scope of an EIO and replacing it with the broader wording 'investigative measures' used in Article 3 of the Directive (*see Recommendation No 1*).

4. COMPETENT AUTHORITIES

4.1. Executing authorities

In accordance with Article 5(1) indent 2 of the Act on Judicial Cooperation, competent authorities to receive an EIO are the county prosecutor's offices ('CPO') having jurisdiction for the place where the evidentiary action is to be carried out or the evidence is located. In accordance with Article 42h of the Act on Judicial Cooperation, the execution of the evidentiary action requested by the EIO by the competent authority constitutes its recognition. The EIO is executed in accordance with the provisions of the CPC.

When applying the Act on Judicial Cooperation, it is necessary to keep in mind that in accordance with Article 132 thereof, the provisions of the Law on International Legal Assistance in Criminal Matters[7], the CPC, the Law on the Office for the suppression of corruption and organised crime[8], the Law on Courts[9] and the Law on Youth Courts[10] are applied to all matters not regulated by the Act on Judicial Cooperation.

In accordance with Article 42h of the Act on Judicial Cooperation, for the purpose of execution of an EIO, the CPO responsible for receiving the EIO takes the necessary actions for its execution prescribed by the CPC. Under the CPC, depending on the type of measure, evidentiary proceedings are carried out either by the prosecutor's office or, for most coercive measures, by the investigative judge.

[7] Zakon o međunarodnoj pravnoj pomoći u kaznenim stvarim – Official Gazette 178/04.
[8] Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta – Official Gazette 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17.
[9] Zakon o sudovima – Official Gazette 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23.
[10] Zakon o sudovima za mladež – Official Gazette 84/11, 143/12, 148/13, 56/15, 126/19.

In the former case, the prosecutor instructs the investigator or carries out the evidentiary action himself: this is the case for hearing of a witness, hearing of the defendant, temporary seizure of objects, issuing an order for conducting an expert examination, issuing an order for conducting an autopsy. In the latter, at the request of the prosecutor, the investigative judge issues an order for conducting a search (of a person, home or other premises, movable property), an order for obtaining bank documentation, an order for the temporary suspension of a suspicious financial transaction, an order for exhumation, an order for conducting special evidentiary actions. Where the measure falls within the competence of the investigating judge, Croatian prosecutors often request the issuing authorities to provide also the underlying national order so as to facilitate the granting of the authorisation by the judge. Finally, where the judge refuses the execution of the EIO, the prosecutor can appeal against said decision (see Chapter 9.1).

As far as more complex EIOs are concerned, the prosecutor's office is coordinating their execution, including action days. Sometimes the national member of Eurojust is involved, as usually is the case in more complex matters.

During their visit, the evaluators determined that a network of judges and prosecutors with expertise in international cooperation should be established due to the manner in which EIOs, particularly the more complex ones, are carried out and forwarded to different prosecutor's offices. These judges and prosecutors could then assist with carrying out EIOs and other requests (*see Recommendation No 2*).

4.1.1. The Office for the Suppression of Corruption and Organised Crime

The Office for the Suppression of Corruption and Organised Crime ('USKOK') is a special prosecutor's office specialised for the prosecution of corruption and organised crime. Its seat is in Zagreb, and it is competent for the entire territory of the Republic of Croatia. The work of USKOK is regulated by the Act on the Office for the Suppression of Corruption and Organised Crime[11].

During the on-site visit a procedural peculiarity was identified in the competence of the USKOK in the field of international cooperation. While USKOK may issue EIOs in its proceedings, it has no competence to execute EIO issued in relation to offences falling within its material competence, although in case EIOs that are connected with the cases of USKOK, the execution is being conducted in cooperation and coordination with USKOK. Croatian prosecutors were of the firm opinion that USKOK lacks the necessary capacity to be able to execute EIOs, and seemed convinced that there would not be any added value in lifting this limitation.

However, in the opinion of the evaluation team, in cases falling within the material competence of USKOK, where the proceedings in the Republic of Croatia are directed and coordinated by USKOK, it would make sense for the EIOs to also be executed by USKOK, who would have a specific expertise in dealing with those matters. This is particularly true for more complex cases requiring coordination. In many Member States, similar specialised prosecutor's offices are also competent for executing EIOs and they have already proven their added value (*see Recommendation No 3*).

[11] Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta - Official Gazette Nos. 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17.

4.2. Issuing authorities

In accordance with Article 42b(1) of the Act on Judicial Cooperation, depending on the stage of the proceedings the EIO shall be issued either by the prosecutor (during the investigations) or by the court conducting the proceedings (after indictment and during trial). Where an EIO is issued for the purpose of carrying out evidentiary actions in relation to misdemeanour proceedings conducted by administrative authorities, the EIO shall be issued by the misdemeanour court following a proposal of the competent authority conducting the misdemeanour proceedings.

During the investigations, if there is an evidentiary measure falling within the competence of a judge, the prosecutor before issuing an EIO first obtains the underlying national order for the evidentiary measure by the investigative judge.

Additionally, it was mentioned that in case of urgent evidentiary measures, before the inquiry, the prosecutor has competence to issue an EIO.

Furthermore, the police can suggest the issuance of an EIO based on information obtained from police cooperation or the Financial Intelligence Unit. However, it is ultimately the decision of the prosecutor whether to proceed with issuing an EIO. This implies that while the police can provide recommendations, the prosecutor remains the ultimate decision-making authority regarding the use of an EIO during the investigative phase.

4.3. Central authority

In accordance with Article 5a of the Act on Judicial Cooperation, the Ministry of Justice and Public Administration is the central coordinating authority that provides assistance to domestic competent authorities and competent authorities of other Member States in establishing contacts and judicial cooperation with respect to all instruments of judicial cooperation implemented by the Act on Judicial Cooperation, including the EIO.

4.4. The right of the suspected or accused person or victim to apply for an EIO

Pursuant to Article 42b(2) of the Act on Judicial Cooperation, the issuing of an EIO may be proposed by an accused person or by his or her lawyer in accordance with the provisions of domestic law governing criminal proceedings.

In accordance with Article 234 of the CPC, after receiving a decision on the opening of an investigation, the defendant may propose to the prosecutor to carry out an evidentiary action. If the prosecutor accepts the defendant's proposal, he or she will carry out the appropriate evidentiary action. If the prosecutor does not accept the defendant's proposal, the prosecutor submits it to the investigative judge within eight days and informs the defendant in writing. If the investigative judge accepts the proposal for conducting the evidentiary action, he or she will order it to be carried out by the prosecutor. If the proposal is not accepted, the defendant will be informed accordingly.

Victims and their legal representatives do not have the right to apply for an EIO under the Act on Judicial Cooperation. In fact, the EIO Directive itself does not provide for such possibility but allows only the defence to request the issuing of an EIO. However, in practice Croatian authorities do allow for victims and civil parties to request the issuing of an EIO (*see Best practice 2*).

The victims' active engagement in the investigation should be recognised by allowing them to request for an EIO, as they often possess knowledge or have personal connections that can aid in locating crucial evidence. This inclusion not only respects their rights but also increases their confidence in the judicial system, resulting in improved collaboration and willingness to participate in the investigation.

Granting victims and their legal representatives the authority to propose an EIO would be consistent with the overarching objective of strengthening victim protection. Therefore, the evaluation team recommends the Union legislator to consider the merits of revising the Directive in order to expressly permit victims to request the issuing of an EIOs (*see Recommendation No 22*).

5. SCOPE OF THE EIO AND ITS RELATION TO OTHER INSTRUMENTS

An EIO can only be issued and executed in relation to the evidentiary actions prescribed by Title VIII of the CPC, which raises issues in practice (see Chapters 3 and 5.1).

An EIO cannot be issued for purposes other than obtaining evidence, such as service of documents, obtaining judgments not for evidentiary purposes, or obtaining information from criminal records. For these purposes, requests for mutual legal assistance are issued, that is, data is obtained through ECRIS. However, in practice, Croatian practitioners receive EIOs for the purpose of obtaining a judgment and execute them in accordance with the principle of effective cooperation.

In accordance with the relevant Croatian law, an EIO cannot be issued or executed for the purpose of executing a final decision, nor can it be issued for the purpose of recognizing a foreign judgment in the process of entering information about convictions into the criminal record.

Practitioners have not reported any instances in which EIOs were issued to locate individuals to transmit a subsequent request. Neither have practitioners encountered instances in which the legal basis and choice of instrument presented a problem. According to them, there is a clear distinction between the temporary transfer of the defendant under the Directive and the temporary surrender under the Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States.

The evaluation team was informed that there were no known cases where the Schengen acquis had already been applied in accordance with Articles 40 and 41 of the CISA. Considering however the importance of cross-border surveillance, a separate dedicated chapter was added (see Chapter 5.2.)

During the application of the EIO, the Republic of Croatia did not establish any joint investigation team (‘JIT’), therefore Croatian practitioners have no experience in the application of an EIO in relation to JITs.

Croatian authorities did not report any specific difficulties or practical issues related to the seizure of objects and money. However, concerning the investigative measure of seizure of objects, practitioners had the opinion that it was not always easy, obvious, or clear, upon receiving an EIO for execution regarding seizure of money, that it was issued for evidentiary purposes rather than freezing purposes. The latter cases would fall under the scope of a freezing order provided for by Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders. When in doubt, since the seizing of money may serve both purposes (evidentiary and freezing) Croatian authorities, nevertheless, still execute the EIO as demanded and do not request the said freezing certificate. When it is clear the request is not linked to evidentiary purposes, the EIO is not executed, and a freezing certificate is requested.

EIOs may be issued during the trial phase, but not after the trial has concluded. While some Member States may execute EIOs issued after the trial phase, since evidence may be needed for example in case of financial investigations, this is not the case in the Republic of Croatia. Under Croatian law, there are no post-decision evidence-gathering measures. During the evaluation visit, it was mentioned that the Croatian position is related to the fact that there is no common Union criminal procedural code. Also, it is important to note that Croatia is not a party to the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union of 20 May 2000 and the Additional Protocol thereto[12]. As an alternative, the European Convention on Mutual Assistance in Criminal Matters was mentioned. The evaluation team saw fit to recommend that the Croatian legislator reconsider its position on this matter and include the possibility of executing EIOs issued for evidence gathering purposes regardless under which phase this would fall in the Croatian CPC (*see Recommendation No 3).*

[12] This would require a unanimous council decision for determining the date for the entry into force of the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union of 20 May 2000 and the Additional Protocol.

5.1. The practical consequences of the limitation of the EIO to evidentiary actions

As was mentioned above, in accordance with the Act on Judicial Cooperation, EIOs are issued and executed by the Croatian authorities solely for evidentiary purposes. The evidentiary actions are defined by Title VIII of the CPC[13].

Evidentiary measures are formal actions that are performed when the formal investigation procedure has initiated, namely when the suspicion of a crime has been substantiated and a particular person has been identified as the perpetrator and has been informed of the investigations against him or her.

Croatian law distinguishes inquiry actions from evidentiary actions. Inquiry actions are informal actions undertaken by the prosecution and the police to clarify disputed facts during the inquiry phase, an early and confidential stage of the proceedings before a specific suspect has been identified, and include the collection of various information useful for the successful conduct of criminal proceedings. Under Croatian law, the results of these actions cannot be used as evidence in criminal proceedings and the notes on these inquiry actions will be excluded from the case file (Article 86(3) of the CPC).

In a cross-border context, such actions essentially serve the purpose of obtaining information that will enable the issuance of an EIO at a later stage with precisely specified evidentiary actions that need to be carried out. Therefore, an EIO cannot be issued for the purpose of conducting inquiry actions. Such actions are carried out within the framework of police cooperation.

[13] Evidentiary actions are as follows: search of a home; search of a person; search of movable property and bank safe; search of computer; temporary confiscation of objects; special evidentiary actions (surveillance and technical recording of telephone conversations and other remote communications; interception; collection and recording of computer data; entry into premises for conducting surveillance and technical recording of premises; secret monitoring and technical recording of persons and objects; use of undercover investigators and confidants; simulated sale and purchase of objects and simulated giving of bribes and simulated receiving of bribes; provision of simulated business services or conclusion of simulated legal deals; supervised transport and delivery subject of a criminal offense); retention and opening of postal items; reconciliation of personal data; verification of establishment of telecommunication contact; physical examinations; expert testimony; autopsy; exhumation; inquest; reconstruction; taking of fingerprints and prints of other body parts; examination of the elders; examination of witnesses; proof with documents.

However, the majority of the Member States interpret the term ‘investigative measures’ in a wider sense since their legal systems do not distinguish within the investigation phase between ‘inquiry actions’ and ‘evidentiary actions’ and therefore, do not assign them different evidentiary values. As a result, the Republic of Croatia, as the executing Member State, often receives an EIO which its authorities consider as falling under their inquiry phase thus requiring police cooperation.

While it is true that an EIO can be issued solely for the purpose of obtaining evidence, and police cooperation tends to be somewhat neglected since the introduction of this instrument, it is necessary to ask to what extent the executing Member State can actually enter the internal legal system of the issuing Member State, i.e., to what extent it can independently determine what constitutes evidence and what does not. Such concerns must be coordinated and resolved through consultation between the issuing and executing Member States but the qualification of an investigative measure as such should in principle be determined only by the issuing Member State.

Therefore, the evaluation team, again, stresses the need to address the issue resulting from differentiating between ‘inquiry actions’ and ‘evidentiary actions’ (see Chapter 3 and *Recommendation No 1*).

Moreover, during the evaluation visit, the prosecutors mentioned that some EIOs received require both inquiries and also subsequently evidentiary actions, depending on the results of the inquiries. In the opinion of Croatian prosecutors, the disadvantage of such an EIO is its vagueness and impreciseness, both in relation to the factual description of the act, as well as in relation to the actions that need to be carried out and the way in which they need to be carried out. The question is often raised whether the legal prerequisites are fulfilled for all the requested actions in accordance with the law of the issuing Member State, such as a previously issued court order.

The execution of such an EIO presents considerable difficulties, since the prosecutor does not have the case file of the issuing Member State at its disposal, but only the (imprecisely) drawn up EIO. In such cases, the Republic of Croatia consults with the issuing Member State and, as a rule, carries out those actions that are possible to carry out. At the same time, it was again pointed out that sometimes actions carried out in this way fall within the scope of inquiry actions, therefore the issuing authority is informed that their results are not considered evidence in accordance with the CPC.

5.2. Cross-border surveillance

Following the Council Conclusions from 9 December 2021 on the fulfilment of the necessary conditions for the full application of the Schengen acquis in the Republic of Croatia, on 8 December 2022, the Council adopted a decision[14] on the full application of the Schengen acquis in Croatia. From 1 January 2023, checks on persons at internal land and sea borders between Croatia and the other countries in the Schengen area will be lifted. Checks at internal air borders were lifted from 26 March 2023, given the need for this to coincide with the dates of IATA summer/winter time schedule.

The evaluation team was informed that there were no known cases where the Schengen acquis had already been applied in accordance with Articles 40 and 41 of the Convention implementing the Schengen Agreement ('CISA'), namely hot pursuits or cross-border surveillances ordered by judicial authorities or carried out by the police.

Croatian prosecutors informed the evaluation team that in their view, Croatian law does not allow for an EIO to be issued for cross-border surveillance, as cross-border surveillance is not considered as a judicial investigative measure but only as a police cooperation measure. Croatian police officers were of the opinion that this investigative measure would not pose a problem and saw no impediment on the issuance or execution of an EIO of a similar nature, under Article 28 of the Directive (for example, surveillance of Croatian suspects while traveling only in Slovenia, from one city to another). This lack of uniform interpretation of Croatian law and a restrictive point of view on the available investigative measures may pose some delicate issues in international cooperation in criminal matters.

[14] Council Decision (EU) 2022/2451 on the full application of the Schengen acquis in the Republic of Croatia.

Recital (9) of the Directive clearly states that the Directive should not apply to cross-border surveillance as an investigative measure as referred to in Article 40 of the CISA. However, this provision must be read alongside with Article 40 of the CISA, which only regulates the procedure of police authorities conducting surveillance. Consequently, it does not regulate the procedure of judicial authorities ordering surveillance, which could then fall under the scope of the Directive[15]. The evaluation team would therefore invite the Commission to clarify the application of the EIO Directive in relation to Article 40 of the CISA in respect of surveillance and propose an amendment to the Directive in that sense, where appropriate (*see Recommendation No 23*).

In the opinion of the evaluation team, the Croatian law could be interpreted in a way to consider cross-border surveillance a standalone judicial evidentiary measure[16]. Otherwise, there would be practical problems if the information gathered by the police during the surveillance cannot be used as evidence.

In the light of these findings, the evaluation team concurs with the concerns and questions raised in the 'Comments and Conclusions of the 59th Plenary Meeting of the European Judicial Network (EJN) (Prague, 9 – 11 November 2022)', as well as the conclusions it has reached[17].

Regardless of the findings and interpretations on this measure–and probably linked to the recent accession of the Republic of Croatia do the Schengen Area–the evaluation team also noted that there is no information in the EJN website's Fiches Belges and therefore invites the Croatian authorities to update the information given (*see Recommendation No 4*).

[15] The cross-border surveillance is often conducted through technical means, recording movement and/or conversations, making dispensable any action on behalf of another Member States' authorities. It may also be carried out by the police authorities following the vehicle from one Member State to another. In the first case, quite often only after the vehicle has crossed the border will the police have knowledge of that fact and the need may arise to use the surveillance records as evidence in the subsequent judicial proceedings. A request to and an approval of the authorities of the Member State of the destination may be needed in order to use the recording as evidence.

[16] Article 42ai of the Act on Judicial Cooperation refers the matter to domestic law and Article 332 (1) (1) and/or (4) of the CPC mentions surveillance and covert tailing and technical recording of individuals and objects, which can encompass several types of surveillance/following of people and objects, both based on a judicial order and as a police measure as well.

[17] https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3752.

6. CONTENT AND FORM

6.1. Challenges

Croatian issuing authorities have not encountered problems with completing the EIO form and did not have any suggestions for improving Annex A.

As executing authorities, Croatian practitioners have frequently encountered EIOs with insufficient, inconsistent, or inaccurate information. These deficiencies in the EIOs pose substantial obstacles to the effective and swift execution of the requested measures and can result in delays or misunderstandings during the execution.

In these instances, Croatian practitioners have actively consulted with the issuing authority, recognising the significance of plain and complete information, they have proactively requested clarification or additional information from the issuing authority.

The purpose of these consultations is to clarify ambiguities, resolve any inconsistencies, and obtain any missing information necessary for the EIO's effective execution. By requesting clarification, Croatian practitioners seek to ensure a precise comprehension of the intended scope, nature, and goals of the requested measures. These consultations are essential for mitigating the risk of misinterpretation and ensuring that the implemented measures are consistent with the issuing authority's original intent.

Also mentioned was the questionable practice in some Member States of merely attaching a court order or copying its text into the EIO form, especially in case of cascading EIOs. This has not proven to be the most effective practice and gives rise to numerous requests for additional information.

In light of the above, the evaluators recommended to other Member States to explain in clear, simple and precise terms the factual basis of the EIOs, and that relevant details be included, bearing in mind that the practitioner who will receive the order is unfamiliar with the legal order of the issuing State. Information-heavy orders that blur the main point are undesirable (*see Recommendation No 12*).

6.2. Language regime

Croatian authorities accept EIOs in Croatian and, only in urgent cases and subject to the principle of reciprocity also in English (see Article 9 of the Act on Judicial Cooperation). However, in urgent cases, practitioners have shown pragmatism by accepting EIOs in English even if the condition of reciprocity is not met (*see Best practice No 3*).

Urgent cases frequently necessitate immediate action, but language barriers can significantly impede the implementation of requested measures. By accepting EIOs in English for urgent cases, Croatian prosecutors can promptly initiate the necessary investigative steps, ensuring a timely response and cooperation with the issuing member state. This adaptability demonstrates the dedication of Croatian prosecutors to effective cross-border cooperation, especially in time-sensitive situations where prompt action is essential. Therefore, the evaluators recommend that all Member States adopt this approach (*see Recommendation No 13).*

The issue of poor translation in EIOs is another significant obstacle also for Croatian practitioners. EIOs are typically issued in the language of the issuing Member State. However, the translation into Croatian or English may be erroneous or inadequate, impeding proper comprehension and interpretation.

The Croatian practitioners have developed strategies to address the issue of poor translation in EIOs. First, they consult with their counterparts in the issuing Member States to clarify any ambiguities or discrepancies caused by translation errors. This conversation allows the prosecutors to gain a clearer understanding of the requested measures and their intended scope, thereby reducing the likelihood of misinterpretation. In addition, Croatian practitioners frequently rely on legal experts or translators fluent in the issuing state's language to ensure the accuracy of translations thereby remedying to poor translations on their own costs.

Even though this practice is commended, it points to a more horizontal issue concerning the quality of translations. Issuing authorities should seek to ensure the quality of translation (*see Recommendation No 14*).

From the point of view of the issuing Member State, Croatian practitioners explained that the translation process requires a certain amount of time, which can be problematic in cases where an urgent, coordinated action is required.

6.3. Multiple requests in one EIO

The coordination of EIOs with multiple requests to be executed in different areas of the Republic of Croatia is generally a task of the prosecution, including the organisation of action days, where different law enforcement agencies collaborate to execute measures simultaneously in different Member States and/or third countries.

In particularly intricate cases, especially those requiring expertise in handling transnational criminal networks, the prosecutors seek the assistance of the Croatian national member of Eurojust. The decision to involve the national member of Eurojust in investigations varies based on the nature and complexity of the case. Typically, Eurojust's assistance is requested in cases that span over multiple Member States or involve intricate criminal networks.

Eurojust is sometimes involved in the transmission of the EIOs, especially where there are different competent executing authorities in Croatia for the different requested measures. In many instances, the prosecutor receives EIOs directly from Eurojust, streamlining communication and cooperation between the relevant authorities. This direct collaboration ensures that the requested measures are promptly and efficiently executed, enabling a swift response to criminal activities.

Furthermore, the Croatian national member of Eurojust is a higher-ranking prosecutor than the county prosecutors. As a result, the national member can send the same EIO to various law enforcement and judicial offices involved in the investigation. This approach fosters a coordinated and cohesive response, avoiding duplication of efforts and ensuring a unified strategy in addressing criminal activities.

Such cases, where coordination at national level is needed, particularly point to the need to set up the network of judges and prosecutors mentioned in the recommendations above to assist in international cooperation (see Chapter 4.1. and *Recommendation No 2*).

During the on-site visit, the Croatian practitioners also raised the issue of 'excessive' EIOs, where in their view, the issuing authority effectively transfers a large part of the investigation to the executing Member State. Croatian authorities emphasised that the executing authority just provides assistance to the issuing authority but cannot conduct the investigation on their behalf. The evaluation team agrees that the practice of issuing unnecessarily broad EIOs could be problematic (s*ee Recommendation No 15*).

The evaluation team acknowledges that the Member States have different methods for investigating criminal offences with different issuing and/or validating authorities. Experience shows that some Member States are not particularly fond of executing conditional or cascading EIOs and may find them particularly time consuming.

The cascading nature of the EIO, however, cannot be the ground for non-recognition/non execution and the fact that some investigative measures depend on a prosecutor's order and some are subject to a court order or validation, must not to be seen or used as an obstacle for the coordinated execution of all of the investigative measures requested.

Practitioners of other Member States issuing cascading or conditional EIOs are of the opinion that such EIOs are time saving and are no different from their own national investigation approach.

Therefore, as long as the EIO is effectively supported with all the necessary information which allows the execution of all the different investigative measures requested, from the evaluation team´s point of view, the executing authorities are not entitled to make an assessment on whether the grounds for that decision are indeed sufficient to back the issuing of the EIO and must execute such EIO´s, even if internally they would have a diverse investigative approach (see also Chapter 21.4).

6.4. EIOs issued in urgent cases

Croatian practitioners have no experience with orally issued EIOs. Furthermore, Croatian law does not provide for an orally issued EIO, nor is it possible for the Croatian National Member of Eurojust to issue an EIO, even in cases of urgency. The evaluators' recommendation is that all Member States should introduce the possibility for the National Member of Eurojust to issue EIOs in cases of urgency as provided under Article 8(3) point b) and (4) of the Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 2002/187/JHA ('Eurojust Regulation') (*see Recommendation No 16*).

In accordance with the above-mentioned Article of the Eurojust Regulation, the National Member of the Republic of Croatia has this power, especially taking into account that national member is the Deputy General Prosecutor of the Republic of Croatia.

7. NECESSITY, PROPORTIONALITY AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURES

The principle of proportionality and necessity is the fundamental principle of the CPC. Article 4 of the CPC reads:

> '(1) Any action or measure of restriction of freedom or rights based on this Law must be proportionate to the nature of the need for restriction in each individual case.
> (2) The court and other state bodies, when deciding on actions and measures of restriction of freedom or rights ex officio, ensure that a more severe measure is not applied if the same purpose can be achieved with a milder measure. Their duration must be limited to the shortest necessary time.'

Pursuant to Article 42c of the Act on Judicial Cooperation, the competent judicial authority shall issue an EIO if the issuing of an EIO is necessary and proportionate to the purpose of the proceedings (specifically criminal proceedings).

Croatian practitioners reported cases where the EIO issued by another Member State was not necessary or proportionate, but they stressed that they were not rejected based on this assessment. Through consultation, a compromise solution was found, and the evidentiary actions were carried out.

The prosecutors are bound by the principle of legality, but there are some exceptions. During the on-the-spot visit, practitioners mentioned a threshold for prosecution set at 150,00 EUR. As executing authority, Croatian practitioners do not consider costs.

In any case, the competent authority can apply evidentiary measures that are more lenient than the ones requested if the same purpose can be achieved (see Article 42i(3) of the Act on Judicial Cooperation), but it needs to inform the issuing authority first, which can then decide to withdraw or amend the EIO (see Article 42i(4) of the Act on Judicial Cooperation)[18].

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

Article 42e of the Act on Judicial Cooperation regulates that EIOs can be transmitted by any means capable of producing a written record under conditions allowing the executing state to establish authenticity, including through the secure telecommunication system of the EJN.[19]

In practice, the EIO is submitted electronically and by regular mail. Croatian practitioners believe that it would be sufficient to send the EIO electronically, especially if it is provided with an electronic signature and delivered via a secure telecommunication channel. However, considering that most of the Member States still do not use electronic signatures and there is no secure telecommunication channel (except for the secure communication channel of the EJN, the use of which is limited to the EJN contact point and the case management system of Eurojust), the EIO still needs to be sent by post, according to Croatian practitioners. At the same time, sending the EIO in scanned form via electronic mail speeds up the procedure, as it enables the authority of the executing state to start its execution before receiving the original by post.

Croatian practitioners are familiar with the Judicial Atlas of the European Judicial Network ('EJN Atlas'). When in a specific case it was not possible to determine which authority is competent for an evidentiary action in the executing state using the EJN Atlas, the prosecutors or judge working on the specific case requested help from the EJN contact point. In exceptional and complex cases, the competent authority in the executing state is determined through the involvement of Eurojust.

[18] See EIO-LAPD report on Croatia, p. 11.
[19] See EIO-LAPD report on Croatia, p. 9–10 and on experiences with the form, p. 24.

However, there might be cases where it is impossible to identify the competent executing authority due to the lack of information. A problem arose with an EIO to be issued for the hearing of a person, but there was no information available on the address of the person, and the Member State affected did not designate a competent authority for receiving such EIOs.

No severe problems were reported in cases where the execution of the EIO would involve multiple executing authorities, thanks to the involvement of Eurojust or EJN.

Communication takes place directly between the judicial authorities of the issuing and executing state. In exceptional cases (long-term EIO execution, problems with EIO execution), the EJN or Eurojust are included in the communication.

In very urgent cases, prior consultation on the competent authority would be necessary according to the Croatian authorities. Experience shows that in this case it is best to ask the question via the EJN, and it is a good practice to resolve uncertainties with the contact point in the executing State, as the competent authority can prepare in advance for the receipt of the EIO and the execution itself is then quicker.

Representatives of the Ministry of Justice reported that the tools for international cooperation are also being digitalised. They were participants in the EXEC I and EXEC II projects, in which they agreed to use the e-EDES. The Republic of Croatia is still in the process of establishing the system.

The experts are of the view that the efficiency, speed and security of the transmission of EIOs could be further improved if Croatia were able to use the e-EDES (*see Recommendation No 5).* In that sense Croatia is not the only Member State who could benefit from the e-EDES, actually (*see Recommendation No 17).*

9. RECOGNITION AND EXECUTION OF THE EIO AND FORMALITIES

9.1. Recognition and execution in line with the mutual recognition principle

Article 1(2) of the Directive lays down the principle that Member States shall execute an EIO on the basis of the principle of mutual recognition. In accordance with Article 3 of the Act on Judicial Cooperation, the principle of mutual recognition is the basis for judicial cooperation in criminal matters within the European Union. In turn, Article 4 of the Act on Judicial Cooperation lays down the principle of efficient cooperation in the sense that the competent authorities of the Republic of Croatia shall have, within the scope of their powers and in accordance with the fundamental principles of the legal order of the Republic of Croatia, the obligation to act in such a way as to achieve, as far as possible, the purposes of judicial cooperation.

The Croatian criminal procedure differs from that of many other Member States in the sense that it includes an inquiry phase before the proper investigation, during which certain investigative measures can be undertaken, be it without the same character and guarantees that follow from the decision to start of a formal investigation (see Chapter 3). In practice, this may pose an obstacle to the execution of EIOs at a stage of the criminal proceedings elsewhere that would not correspond to evidentiary measures that can be taken during that investigation phase in the Republic of Croatia. The Croatian authorities either do not execute the EIOs or, if they do, they thus feel compelled to inform the issuing authority in this type of case that the result of the execution of the EIO may not be considered as evidence under Croatian law.

Croatian law does in fact allow for the execution of evidentiary measures inexistent in Croatian law requested by another EU Member State through the EIO with certain modifications. Generally, pursuant to Article 42i(1)(a) of the Act on Judicial Cooperation, in these cases the competent authority shall carry out evidentiary measures different from that specified in the EIO. In this way, it is not possible to challenge the application of such measures by arguing that they lack foreseeability, because the measure that is applied exists in Croatian law. In such a case, however, the executing authority needs to inform the issuing authority first, which can then decide to withdraw or supplement the EIO (see Article 42i(4) of the said Act on Judicial Cooperation).

However, in exceptional circumstances, pursuant to Article 42i(2) of the Act on Judicial Cooperation, evidentiary measures inexistent in Croatian law can be executed if:

a) obtaining information or evidence is already in the possession of the competent Croatian authorities, and such information or evidence could be obtained, in accordance with domestic law, in criminal proceedings or for the purposes of an EIO;
b) obtaining information is already contained in databases maintained by the police or judicial authorities and directly accessible to the judicial authority in the course of criminal proceedings;
c) the EIO requests examination of witnesses, experts, damaged persons and victims, suspects or defendants or third parties in the territory of the State of execution;
d) evidentiary proceeding is requested in the EIO for which no court order is needed; or
e) the EIO requests identity information of persons who have a telephone number subscription or IP address.

The Croatian authorities apparently do not take a formal decision on the recognition of an EIO issued by a judicial authority in another Member State as they consider the execution of an EIO as a form of implicit recognition. It is the view of the evaluation team that giving such decision a more formal nature, especially in cases of refused recognition, might increase the level of transparency to all those involved (*see Recommendation No 6*).

Also, with respect to decisions not to execute an EIO, only courts adopt formal decisions, while prosecutors merely inform the issuing authorities of the impossibility to carry out the measure, normally via email. *Mutatis mutandis*, the same observation thus applies to a decision to not effectively execute an EIO, particularly when it takes the form of a "soft non-recognition" rather than an explicit refusal, in which case the formal verdict on the EIO runs the risk of remaining unclear and the grounds on which it came about equally so.

During the on-site visit a question arose regarding the need to attach the underlying national order to the EIO. Where the measure falls within the competence of the investigating judge, Croatian prosecutors often request the issuing authorities to provide also the underlying national order so as to facilitate the granting of the authorization by the judge. The decision to attach a national order depends on the prosecutor and his or her actions. While the mention of attaching a national order may be more common in sensitive and specific cases, it is not explicitly mandated or regulated. Therefore, the decision to attach a national order seems to be at the discretion of the prosecutor, potentially as a means to avoid additional questioning or to provide for transparency (see also Chapter 4.1).

9.2. Compliance with formalities

As issuing Member State, special attention is granted for EIOs issued for the hearing of the suspect, given the significant differences in the procedural legislation of the EU Member States. Therefore, when Croatian authorities are issuing such an EIO, the executing Member State is required to conduct the evidentiary action in accordance with the Croatian CPC.

As executing authorities, Croatian practitioners often encountered incomplete and unclear EIOs, including cases where the issuing authority had not completed section I of the EIO form, containing the information on formalities, but all ambiguities could be cleared up by way of consultation. Problems that were mentioned by practitioners relate to: the procedural status of the person to be interrogated; insufficient information to legally classify the criminal offence in relation to which the EIO was issued; insufficient information to identify the requested evidence-gathering action; contact information missing; some parts of the form were missing; problems with translation into Croatian[20].

[20] See EIO-LAPD report on Croatia, p. 23.

As executing authorities, Croatian practitioners reported issues relating to the impossibility to follow the formalities requested by the issuing Member State, resulting from the differences between the relevant criminal procedural rules in place. In particular, some Member States were insisting on the hearing of a suspect requested evidentiary action to be carried out by the court, even though that evidentiary action can be carried out only by the prosecutor under the Croatian CPC. In such cases, it was not possible to comply with the requested formalities of the issuing Member State.

Based on this example and the interviews during the visit, the impression on the part of the experts is that the Croatian authorities tend to apply a rather strict approach to the possibility to take on board formalities applicable to criminal proceedings in other Member States and are inclined to not comply with requested formalities if that would be contrary to or not foreseen by the CPC, thereby adopting a wide understanding of what is contrary to the fundamental principles of the Croatian legal order in Article 4 of the Act on Judicial Cooperation.

In the opinion of the expert team, Croatian practitioners should avoid interpreting the notion of basic fundamental principles of the domestic legal order in a broad sense, as it were covering all procedural aspect of the Croatian legislation, which might result in, as a rule, non-complying with most of the formalities requested by the issuing Member State *(see Recommendation No 7).*

In general, all Member States, when executing an EIO, should make every effort to comply with procedural formalities requested by the issuing Member State and not only apply their own procedural conceptions, as those are crucial for admissibility of evidence in the issuing Member State (*see Recommendation No 18).*

On a side note, during the interviews with the Croatian authorities, a point that was raised is that in case of formalities and procedures expressly requested in the EIO it would be a good practice in all Member States to attach a letter of rights or clearly state in the EIO the list of rights of the person concerned, linked to their procedural status, covering cases in which that status could shift from witness to suspect/defendant as well as to attach or insert in Annex A a comprehensive list of questions to the defendant/suspect, witness or expert *(see Recommendations No 19 and 20).*

10. ADMISSIBILITY OF EVIDENCE

The main finding of the experts here goes back to the distinction mentioned earlier between the inquiry and investigation phase in the Croatian criminal procedure (see Chapter 3). As a result of this, the Croatian interviewees stated that they can, in theory anyway, execute certain EIOs but would at the same time not be able to undertake them as evidentiary actions under the CPC, the consequence being that the Croatian authorities would then in practical terms have to inform the issuing authority that the outcome of the EIO could not be regarded as evidence under Croatian law. This practice could pose problems as regards the admissibility of the evidence in the issuing Member State, as it is then ultimately up to the trial judge in the issuing State to assess the evidentiary value of the result of the executed EIO, which tends to cause a degree of uncertainty in such cases.

11. RULE OF SPECIALITY

The Directive itself does not contain a provision on the application of the speciality principle. Hence, Member States have a varying understanding of that issue and, therefore, different positions on its place within the context of the mutual recognition principle. The Act on Judicial Cooperation does not mention the rule of speciality explicitly in the context of the Directive but is provided only in relation to MLA. Therefore, the interviewed practitioners were of the opinion that the rule of speciality is not applicable to the EIO in Croatia.

However, practice[21] has taken a position on the use of evidence obtained in other criminal proceedings, where the practice distinguishes between material (e.g. goods, documents) and personal evidence (e.g. the process-verbal following an interrogation). Considering the principle of immediacy in the presentation and assessment of personal evidence, the use of personal evidence obtained in other criminal proceedings is very limited. In accordance with Article 351 of the CPC, the verdict can only be based on the facts and evidence presented at the main hearing.

[21] On the diverging views concerning the speciality principle see the EIO-LAPD report on Croatia, p. 32.

Accordingly, as the issuing authority, Croatian practitioners do not seek the consent of the executing authority if there is a need to use evidence obtained in other procedures undertaken in the Republic of Croatia, unless this has been expressly requested by the executing Member State.

As the executing authority, there is no legal basis on which the required consent to use the evidence in other proceedings could be given. However, if an EIO were to be received in a specific case for the implementation of an evidentiary action that needs to be carried out in a domestic procedure (as a rule, in cases in which comparative procedures are conducted in several Member States), then the execution of the EIO would be postponed.

When, during the execution of the EIO, there are indications that a criminal offence has been committed in relation to which the Republic of Croatia has jurisdiction, proceedings will be initiated for that criminal offence. In accordance with Article 205(6) of the CPC, if the prosecutor is informed that a criminal offence has been committed, the prosecutor is obliged to draw up an official note about it, which is entered in the register of various criminal cases (i.e. case management system). If the prosecutor does not have information that gives sufficient grounds to decide whether to conduct an investigation or take evidentiary actions, the prosecutor will conduct investigations himself or order them to be conducted by the police.

In the light of the above, the evaluation team considers it appropriate to invite the Commission to consider clarifying the Directive (either way), given the different positions and understanding across the Member States on the rule of speciality and its place within the mutual recognition principle, thus allowing a more consistent application and common understanding of EU law (*see Recommendation No 22*).

12. CONFIDENTIALITY

The Act on Judicial Cooperation does not foresee the disclosure of the EIO at any stage during the criminal procedure to the person concerned when confidentiality has been requested by the issuing State. Article 42s of the Act prescribes the issue of secrecy of proceedings in the following way:

> '(1) Based on the information and expressly indicated requirements in the EIO for the purpose of ensuring confidentiality and in accordance with its national law, the competent judicial authority shall guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute an evidentiary action. If the competent judicial authority cannot comply with the confidentiality requirement, it shall notify the issuing authority without delay.
>
> (2) The competent judicial authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, not disclose any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.'

The defendant's right to inspect the case file is regulated by Article 184 of the CPC as follows:

'(4) The defendant and the defence counsel have the right to inspect the file:

> 1) after the defendant has been questioned, if the questioning was carried out before the decision on the investigation was made, i.e. before the notification from Article 213, paragraph 2 of this Act, was delivered;
>
> 2) from the delivery of the decision on conducting the investigation;
>
> 3) from the delivery of the notification from Article 213, paragraph 2 of this Act;
>
> 4) from the delivery of a private lawsuit.

(5) If an urgent evidentiary action has been taken against a known defendant (Article 212 of this Law), and the conditions from paragraph 4 of this Article have not been met, the defendant and the defence council have the right to inspect the record of the implementation of that action no later than within 30 days from the day of its implementation.'

The Croatian prosecutors have not encountered problems related to disclosure either in the capacity of the issuing state or in the capacity of the executing Member State.

One court had a case, in which data from a bank in Austria was requested, first through MLA. The bank submitted an answer that the information constitutes bank secrecy. The bank clarified that this information can only be provided based on the approval of the person to whom the information relates. After the consent was obtained, a response was received that this consent is invalid because it is the resignation of a person who is not authorised to represent the client of the bank, a legal entity, because it was deleted from the court register.

The notification under Article 19(2) of the Directive was not submitted. An attempt was made to remove the obstacle by drawing up an EIO, requesting bank's data, or if this was not possible, by examining as a witness an authorised representative of the bank. The executing Member State replied that it could not provide the requested data, but bank employees were interviewed and in this way the information necessary for making a decision in the case was obtained.

13. GROUNDS FOR NON-RECOGNITION OR NON-EXECUTION

Pursuant to Article 42j(1) of the Act on Judicial Cooperation, the competent judicial authority may, based on the principles of effective cooperation, expediency and the right to a fair trial, decide whether to execute or refuse recognition and enforcement of the EIO in two situations:

a) first are cases involving immunity or privilege under Croatian law which preclude the execution of an EIO or there are rules on the establishment and limitation of criminal liability in relation to freedom of the press and freedom of expression in other media, which impede the execution of an EIO.

b) second are cases in which the EIO has been issued

i. in proceedings instituted by administrative authorities for acts under the domestic law of the issuing State because they constitute a violation of domestic law and where the decision may lead to proceedings before a court having jurisdiction in criminal matters, or
ii. in proceedings instituted by judicial authorities for acts under the domestic law of the issuing State because they constitute a violation of domestic law and where the decision may lead to proceedings before a court having jurisdiction in criminal matters – and the evidentiary action would not be applicable in a comparable domestic case under domestic law.

Pursuant to Article 42j(2) of the Act on Judicial Cooperation, the competent judicial authority shall not recognise and execute the EIO in the following cases:

a) where the execution of the EIO would harm the essential interests of national security, jeopardise the source of the information or imply the use of confidential information pertaining to certain intelligence activities;
b) where the execution of the EIO would be contrary to the ne bis in idem principle, unless the issuing authority has given assurance that the evidence obtained by the EIO will not be used for the purpose of prosecuting or punishing a person for whom it has already been legally adjudicated in a Member State;
c) where the EIO relates to an offense alleged to have been committed outside the territory of the issuing state and partially or wholly committed in the territory of Croatia, and the conduct for which the EIO is issued is not a crime in Croatia;
d) where there are reasonable grounds to believe that the exercise of the evidence referred to in the EIO would be incompatible with the obligations laid down in Art. 6 of the TEU and the Charter of Fundamental Rights of the EU;
e) where the conduct giving rise to the EIO is not a punishable act under Croatian law, unless it relates to an offense for which double criminality check is excluded; and
f) where the EIO has been issued in respect of an evidentiary proceeding whose application under Croatian law is limited to a catalogue of offenses or to offenses with a certain minimum sanction, which does not include the criminal offense for which the issuing State is undertaking the proceedings[22].

[22] See EIO-LAPD report on Croatia, pp. 15–16.

By means of a preliminary observation, the experts would like to note that unlike Article 11 of the Directive, most of the grounds for non-recognition or non-execution mentioned in Article 42j of the Act on Judicial Act are mandatory. The explanation for this given during the visit, is that it fits into the legal tradition of the Republic of Croatia to give the courts very clear criteria to enable them to fulfil their role in the interest of legal certainty. The experts are not convinced that this choice is in conformity with the Directive (*see Recommendation No 3*).

The Republic of Croatia also applies the additional non-recognition grounds provided for specific special investigative measures (see Articles 22 to 31 of the Directive). Regarding the temporary transfer to the issuing Member State of persons held in custody for the purpose of carrying out an investigative measure, the execution of the EIO may also be refused if:

a) the person in custody does not consent; or
b) the transfer could prolong the detention of the person referred to in the EIO (see Article 42u(6) of the Act on Judicial Cooperation).

Temporary transfer of persons held in custody for the purpose of carrying out an investigative measure to the Republic of Croatia (as executing state) shall be refused if the person in custody or his legal representative or guardian does not consent with the transfer (see Article 42z(2) of the Act on Judicial Cooperation).

The additional non-recognition grounds are also applied to hearing by videoconference or other audio-visual transmission. Under Article 42ab(3) of the Act on Judicial Cooperation the execution of an EIO *can* be refused if:

c) the suspected or accused person does not consent; or
d) the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the domestic law.

The last additional non-recognition ground is applied to covert investigations. In accordance with Article 42ak(2) of the Act on Judicial Cooperation it is *possible to refuse* the execution of EIO regarding an undercover investigator if it was not possible to reach an agreement with the competent authority of the issuing state on the details regarding the use of covert investigators.[23]

Regardless of whether the Republic of Croatia is in the position of the issuing Member State or the executing Member State, the written replies to the questionnaire state that there are no cases to the knowledge of the Croatian practitioners, in which the EIO was refused due to the reasons from Article 11 of the Directive. At the same time, according to the statistics provided by the Croatian authorities, the Zagreb County Court did in fact refuse an EIO as executing authority in at least 6 cases. As a matter of fact an investigative judge acting as executing authority wrote a letter to the issuing authority to explain why an EIO concerning intercepting conversation in a car that crossed the Croatian border from the issuing Member State was refused. A copy and translation of that letter was kindly handed over to the evaluation team. The investigative judge wrote in the said letter that under Article 42al(1) and Article 42an (3) of the Act on Judicial Cooperation solely the interception of computer data, the monitoring and technical recording of telephone conversations and other telecommunication communications and the verification of the establishment of telecommunication contacts would fall under the scope of Article 31 of the Directive.

There were, however, instances, where it was impossible to execute the EIO due to factual reasons. Namely, due to the fact that the person whose questioning was requested was not located on the territory of the executing Member State. Should an issue relating to a possible refusal arise, the Croatian authorities exchange information with the relevant authority, if necessary.

If in the specific case it was not possible to perform all the requested actions because the EIO was issued at a very early stage of the procedure in which it was not possible to specify the evidentiary action that had to be carried out or to obtain the necessary court decisions according to domestic law, then the EIO was performed in the part in which it was possible to execute it, and after consultation with the issuing Member State.

[23] See EIO-LAPD report on Croatia, p. 16.

14. GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

In practice, if an EIO is received for conducting an evidentiary action that needs to be carried out in a domestic procedure in the Republic of Croatia, priority will be given to the domestic procedure and the execution of the EIO will be postponed in accordance with Article 15 of the Directive.

15. TIME LIMITS

The Act on Judicial Cooperation correctly reflects the time limits prescribed by article 12 of the Directive[24].

There are no specific consequences foreseen for the situation where the competent judicial authority was not able to act within the prescribed time-limits. Croatian legislation foresees the possibility for the public prosecutor to appeal against a court decision not to recognise or not to execute an EIO (see Article 42m(1) of the Act on Judicial Cooperation. When the public prosecutor uses such a possibility, he or she shall inform the competent issuing authority thereof. Such an information does not postpone the execution of an EIO, unless the competent issuing authority requires differently (see Article 42m(4) of the Act on Judicial Cooperation. Therefore, there is a possibility to extend the time limits for the recognition and execution of an EIO, when the competent issuing authority requires so.[25]

As a rule, time limits are respected by Croatian issuing authorities. Croatian practitioners consider the deadline for the execution of an EIO appropriate.[26] Certain authorities of other Member States fail to fill out and submit Annex B within the time limit set by the Directive.

[24] See Articles 42k (1)–(5) of the Act on Judicial Cooperation.
[25] Information on the described time limits is based on the EIO-LAPD report on Croatia, pp. 17–18.
[26] See EIO-LAPD report on Croatia, p. 25.

The Republic of Croatia, as the executing Member State, considers all received EIOs as urgent cases. The investigation is considered a stage of the criminal procedure that should be completed as soon as possible, respecting the rights in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, it is necessary to emphasise that most of the evidentiary actions are to be carried out swiftly anyhow in order to preserve the evidence and obtain circumstantial and credible witness statements. Urgency is also required in situations where the defendant is in pre-trial detention.

In cases in which the Republic of Croatia is the issuing state, EJN or Eurojust will be involved if it is an extremely urgent EIO.

16. LEGAL REMEDIES

Article 42m(2) of the Act on Judicial Cooperation confirms the principle in Article 14 of the Directive that the substantive reasons for issuing an EIO may be reviewed only in the issuing State. Likewise, an application to review the substantive reasons for issuing an application to review the substantive reasons and conditions established in Article 42c of the said Act on Judicial Cooperation for issuing an EIO may be submitted only before the competent court in the issuing State, in accordance with its national law.

However, there is no specific legal remedy available for a defendant or accused against the issuing of an EIO by a competent Croatian authority. That becomes effectively possible, under Article 239a of the CPC, only after the end of the investigation, when the indictment panel may decide to disregard elements of the file presented to it. Furthermore, under Article 239a of the CPC, the defendant who considers any evidentiary measure has infringed a certain defence right may file a written complaint with the prosecutor.

Depending on the stage of the proceedings, the motion will be decided by the indictment panel or trial chamber. A special appeal is allowed against that decision. Defence lawyers reported that this remedy was used at least once in relation to an EIO. Another relevant provision in this context is Article 10 of the CPC. That could be applied to consider whether (illegal) evidence should be extracted from the file.[27]

The experts have not been able to establish how the Republic of Croatia assesses the implications of the judgment of the CJEU in the Gavanozov II case for its criminal procedure. This situation should be remedied in the opinion of the expert team (*see Recommendation No 8*). When they were interviewed by the evaluation team on the issue, representatives of the Croatian public prosecution service and judiciary stated that they did not encounter any issue related to the Gavanozov II judgment and saw little added value in creating a specific legal remedy for EIOs issued in the Republic of Croatia.

According to the written replies to the questionnaire, this being in line with Croatian law, there is no special legal remedy against evidentiary actions undertaken on the basis of domestic law. However, the legality of these actions can be challenged with a legal remedy against the decision to prosecute, respectively at the trial. By contrast, when the Republic of Croatia acts as the issuing authority the prosecutor shall have the right to file an appeal against the decision by which the court refuses to recognise and execute the EIO within three days under Article 42j(6) and Article 42m(1) of the Act on Judicial Cooperation.

To complete the picture, there is also a legal remedy in, amongst others EIO cases, for the parties and the third person who has acquired certain rights on the property subject to the EIO, in order to protect their legitimate interests. These persons have the right to appeal in accordance with domestic law (see Article 14(1) of the Act on Judicial Cooperation). Filing an appeal against a decision to recognise an EIO shall delay its execution until the appeal is closed, while an appeal against a decision recognizing a security order shall not stay its execution (see Article 14(2) of the Act on Judicial Cooperation).[28]

[27] See also on the subject of legal remedies, the EIO-LAPD report on Croatia, pp. 35, 37–39, Zagreb, October 2020.
[28] See *ibid.*, pp. 18–19.

17. TRANSFER OF EVIDENCE

Neither on the basis of the written replies to the questionnaire nor during the visit to Zagreb from 28–30 March 2023 have the experts encountered any indications to suggest that the transfer of evidence poses a technical problem in relation to the practical implementation of the Directive in the Republic of Croatia.

Nevertheless, in order to ensure swift and secure transmission of evidence the Republic of Croatia is encouraged to step up its efforts to implement the e-EDES (see Chapter 8 and *Recommendation No 5*).

18. OBLIGATION TO INFORM

By default, Member States should send Annex B systematically, upon receipt of an EIO (*see Recommendation No 21*). However, the Croatian courts as issuing authorities reported cases where they have not received the Annex B. In such cases, a reminder was sent, and communication was established between the competent authorities, so no additional action was necessary. Prosecutor's offices are acting in the same way. They will send a reminder either directly, or involve EJN/Eurojust if they do not receive Annex B. As the executing authority, Croatian authorities stated during the evaluation that they always send Annex B upon receipt of an EIO.

The Croatian practitioners are satisfied with the content of the Annex B, as it fits its purpose well.

19. COSTS

The Directive establishes the rule that the executing authority shall bear the costs 'related to the execution of the EIO', unless they are exceptionally high, in which case it may consult with the issuing authority 'on how the costs could be shared or the EIO modified'. For practical purposes, it would be advisable to conduct consultations on the costs and to reach an agreement before the execution of the EIO. The experts note that Article 42g of the Act on Judicial Cooperation does not reflect the main principle in Article 21(1) of the Directive that the costs shall be borne by the executing Member State. Instead, said Article 42g of the Act on Judicial Cooperation focuses on the consequences of the situation where no agreement can be reached regarding the costs as does Article 21(3) of the Directive. However, insofar as the experts have been able to establish, the partial implementation of Article 21 of the Directive does not seem to have caused any issues in practice.

The Croatian practitioners have not reported any difficulties while carrying out the consultation with the authorities on whether and how the costs related to the execution of an EIO could be shared, or the EIO should be modified. The current cost management criterion is satisfactory according to Croatian practitioners, because anything else would lead to a duplication of work regarding the collection of these costs between the Member States.

That said, the costs of DNA expertise, toxicological expertise of narcotic drugs on a larger scale, and expertise of business books can represent a disproportionate burden for the authority executing the evidentiary action, and in that case, it should be considered to share the costs. In principle, the costs of a mandatory defence counsel should not be considered as extremely high. In practice, the Republic of Croatia has borne such costs, even though such costs could, strictly speaking, be considered as extremely high in certain cases.

Croatian practitioners have not reported any cases where the execution of an EIO has been delayed or an EIO has not been executed due to exceptionally high costs.

20. COORDINATION OF THE EXECUTION OF DIFFERENT EIOS IN DIFFERENT MEMBER STATES AND/OR IN COMBINATION WITH OTHER INSTRUMENTS

Croatian practitioners encountered cases where the execution of an EIO had to be coordinated in several Member States, and cases where parallel proceedings were conducted in the Republic of Croatia and the issuing Member State. These are mainly cases of transnational organised crime, as well as cases of money laundering with the predicate offence committed abroad. In such cases, the support of Eurojust was requested, or the EJN, depending on the complexity of the case. EJN serves as a valuable resource primarily used for identifying competent authorities, accessing Annex B information, and obtaining additional details on the country's legal system. The EJN facilitates efficient communication and exchange of essential information. In other situations where more extensive support is needed, they resort to Eurojust.

21. SPECIFIC INVESTIGATIVE MEASURES

21.1. Temporary transfer

Like many other Member States, no cases were reported where an EIO has been issued for this investigative measure by the Croatian authorities. Therefore, also no issues were encountered in relation with the custody of the affected person during the temporary transfer.

For this specific investigative measure, the Act on Judicial Cooperation has four different Articles (Articles 42t-42z), covering four different situations. This legislative solution appears to be overly detailed and could be simplified.

As an issuing authority, under Article 42t of the Act on Judicial Cooperation, the Croatian authorities do not foresee any special procedure for the consent of the affected person, believing the consent is determined by the executing Member State in the process of executing the EIO.

Accordingly, as an executing authority, Article 42u of the Act on Judicial Cooperation has, in fact, provisions on the procedure for consent: upon receipt of an EIO requesting the temporary transfer of a person deprived of liberty in the Republic of Croatia, the judge of the competent court shall hear the person concerned as regards the circumstances of his or her consent to the temporary transfer and afterwards shall issue a decision on the temporary transfer, since the execution of an EIO may be refused if the suspected or accused person does not consent to the temporary transfer.

It also has provisions differentiating the procedure regarding serving custodial sentence and pre-trial detention; provisions as a transit Member State and safeguards concerning, age, mental and/or physical condition, in line with Article 22(3) of the Directive.

21.2. Hearing by videoconference

Hearing by videoconference is often used in both the investigative phase and trial phase by Croatian authorities, either as issuing and/or executing authority, saving time and costs.

For this investigative measure, as well as other audio-visual transmission means, Article 42ab(3) of the Act on Judicial Cooperation foresees additional non-recognition grounds, where the execution of EIO *may* be refused if either:

a) the suspected or accused person does not consent; or
b) the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the domestic law.

In accordance with Croatian law, it is not possible to issue/execute an EIO for the purpose of hearing the accused via videoconference at trial, nor to ensure the participation of the accused person throughout the main trial via videoconference, even if he or she consents. Therefore, similar EIOs would not be executed on the ground that they would be contrary to the fundamental principles of Croatian law.

The procedural status of the person to be heard could lead to some issues in practice. Croatian practitioners encountered a case in which the issuing authority did not take a decision in which capacity the person was to be heard by the Croatian authorities. During the hearing of a person via videoconference, in the capacity of a witness, the issuing authority started asking the person questions as he/she was in the position of the defendant. The competent CPO warned the issuing authority that such a line of questioning was against the fundamental principles of the legal order of the Republic of Croatia, as well as the fact that this person had the procedural rights under the law of both the issuing and executing Member State, in accordance with Article 24(2) point e) of the Directive. Thus, in practice, all EIOs issued for questioning the accused via video conference after indictment have been refused on that basis.

This also demonstrates the importance of the presence of a judicial authority during the hearing which is not always the case in some Member States.

EIOs issued by Croatian authorities for the purpose of interrogation via videoconference have never been rejected by reference to the fundamental principles of the law of the executing Member State.

Croatian authorities mentioned difficulties regarding the technical establishment of a video conference connection, and one particular situation where the competent CPO encountered technical difficulties, solving the problem by assigning the EIO to another non-locally competent CPO. During the visit, the evaluation team was informed that every CPO is now fully equipped with videoconferencing tools.

Additionally, the evaluation team was informed that – similarly to some other Member States– sometimes problems may arise from the incompatibility of the different technical systems or devices used by the Member States. One might add that even within one Member State, various authorities might face issues due to the incompatibility of the systems used for videoconferencing.

From the information the evaluation team was able to gather, no use of other telecommunication platforms (such as WhatsApp or Zoom) was made as an alternative to an appropriate videoconference or as a means to side-step the formal issuing of EIO´s, something which sometimes happens, in practice, in other Member States.

Nonetheless, the evaluation team was informed of one particular and very specific case in which a judge has succeeded in hearing a witness in another Member State even without issuing an EIO, based on another EIO issued for the hearing of his wife whom he accompanied during her testimony via audio-video link. As his wife stated that he knew more about certain facts needed for the case, the judge simply asked if she could ask him a few questions on the record without going through the whole process of issuing an EIO.

At first the authorities of the other Member State responded that they would need a new EIO for that, but after brief consultation, they allowed the witness to be heard to make the process more efficient[29]. The evaluation team considers this situation a good example of judicial pragmatism and problem solving on the spot, causing no harm to the fundamental rights of the person affected.

Essentially, and in broad terms, in the Republic of Croatia, in the investigative phase, it is the CPO's duty to issue and execute such EIO's, and in the trial phase this task is undertaken by the court.

As an executing Member State, Croatian practitioners encountered issues as to the place where the hearing by videoconference should take place. Namely, it has often to be decided whether the EIO should be executed by the court at the evidentiary hearing or by the CPO receiving the EIO, given the unclear provision in the Act on Judicial Cooperation and different court practices, according to prosecutors.

However, the judges informed the evaluation team during the on-the-spot visit that they consider the law to be clear on the competence. The lack of clarity stemmed from practical arrangements, in a time when not all CPOs were technically equipped, resorting to the court's equipment and their competence in those cases. At present, since every CPO is equipped with videoconferencing tools, from a Croatian's judge's perspective, this practice is no longer warranted and should therefore be discontinued. Regardless of this lack of common understanding, the representatives of the Ministry of Justice informed the evaluation team that a legislative amendment of the Act on Judicial Cooperation was underway and the competences for executing videoconferences would finally be well established in the law in order to avoid further confusions.

[29] See 'EIO- LAPD, European Investigation Order - legal analysis and practical dilemmas of international cooperation 2019–2021 National report on legal implementation and practical application of the EIO in Croatia', page 23.

Having this in mind, the evaluation team is of the opinion that a common legal understanding is indispensable to avoid the said misinterpretations and doubts which may lead to delays, and therefore Croatian law should clearly define the competences between courts and the prosecution for the execution of EIO´s seeking the investigative measure of hearing by videoconference (*see Recommendation No 3*).

Furthermore, it would be important to allow for the possibility for the accused to participate at the trial in another Member State via videoconference. The very question, as to whether this is allowed under the Directive, is the subject of a pending case in front of the CJEU (see case No C-285/23, *Linte*). The evaluation team recommends the Union legislator to revisit the question, in light of the outcome of the pending case, if appropriate *(see Recommendation No 24).*

21.3. Hearing by telephone conference

Croatian practitioners have not encountered any problems with formalities or procedures regarding the hearing of a person via telephone conference and Article 42ac of the Act on Judicial Cooperation is fully in line with Article 25 of the Directive.

As with other Member States, given the increasing growth of videoconference and other audio-visual platforms for that effect, the hearing by telephone conference is somewhat outdated, although, in practice, may have its interest and value if duly explored (for example as an alternative when a videoconference encounters technical difficulties).

21.4. Information on bank and other financial accounts and banking and other financial operations

It is a well-known fact that more and more investigations – from the simplest ones to the most complex ones – rely heavily on the gathering of banking information, therefore it has become one of the most extensively sought investigative measures.

Naturally, this investigative measure will generally be linked to other investigative measures and judicial cooperation instruments (such as, for example, Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders) constituting an additional burden to the investigations and here specifically to the executing authorities.

When issuing an EIO for banking information and its beneficiaries, many issuing authorities may ask a cascade of investigative measures in one standalone EIO instead of issuing a single EIO for each investigative measure, irrespective of the judicial authority which has the competence to issue or order that investigative measure.

Those cases, for example, can have the following requests for execution in one EIO:

a) information on bank account X (holder);
b) account opening information, bank statements and transactions in a given period;
c) freezing of amounts;
d) interrogation of the account holder;
e) information on further money transfers;
f) 'follow the money' – interrogating the ultimate receiver of a given transaction.

The evaluation team was informed by the interviewed Croatian prosecutors that they were against such cascading of EIOs. In their explanations, they stated that they are using the Asset Recovery Offices ('ARO') for initial information gathering and only then are they requesting a court order for banking information as an investigative measure, as Croatian prosecutors do not have the competence to order banking information. Moreover, some investigative measures are relying on different orders issued either by a prosecutor or a judge (see also Chapter 6.4).

On another point, Croatian authorities acting as executing authority consider that in the event of an EIO not containing the account number or containing an incorrect IBAN, an email from the issuing authority with the additional or correct information would suffice, and no new EIO would have to be issued.

The Croatian authorities – acting as executing authorities – reported no cases where the EIO has been issued to gather banking information through a search of the bank premises, therefore the application of Article 10(3) or (4) of the Directive has not been triggered.

21.5. Covert investigations

The Act on Judicial Cooperation covers covert investigations in Articles 42aj and 42ak .

Article 42ak(2) introduced the additional non-recognition ground foreseen in Article 29(3) point (b) of the Directive to the ones referred to in Article 42j in this matter and there may be a refusal of execution of an EIO when it was not possible to reach an agreement with the competent authority of the issuing State regarding the details of the use of covert investigators.

In accordance with Article 332(1) of the CPC on special evidentiary actions, 'If an inquiry cannot be conducted otherwise or where this would entail disproportionate difficulty, the judge of investigation may, upon a written request of the prosecutor which includes a statement of reasons, order by a written warrant which includes a statement of reasons issued against a person against whom there are grounds for suspicion that he committed or together with other persons participated in the commission of a criminal offence referred to in Article 334 of this Act, that the following special evidentiary actions temporarily restricting certain constitutional rights of citizens be taken:

g) surveillance and technical recording of telephone conversations and other means of remote communication;
h) interception, collecting and recording of computer data;
i) entry into premises for the purpose of conducting surveillance and making technical recordings of the premises;
j) covert tailing and technical recording of individuals and objects;

k) use of undercover investigators and confidants;
l) simulated sales and purchases of objects, simulated bribe-giving and simulated bribe-taking;
m) provision of simulated business services or conclusion of simulated legal transactions;
n) controlled transport and delivery of objects of a criminal offence.'

The evaluation team considers that the EIO has not been specifically designed or intended to request the support of foreign police officers in domestic investigations.

Croatian authorities have encountered cases where differences in national law complicated the execution of an EIO for covert investigations. The only challenge in practice was to find a way to proceed in cases where the undercover investigator started his activities on the territory of another Member State and continued in the territory of the Republic of Croatia. As it was explained, in such cases, the Minister of the Interior of the Republic of Croatia has given permission to a foreign police officer to act on Croatian territory in accordance with Article 22(3) of the Law on Police Affairs and Powers[30]. Consequently, with this approval, the foreign police officer acquires the position and authority of a domestic police officer in relation to which the judge of investigation issues an order in accordance with Article 332 of the CPC at the request of the CPO, which received the EIO for execution.

21.6. Interception of telecommunication

21.6.1. The legal framework of interception of telecommunication at Union level

There appear to be different views among the Member States on the interpretation of the notion of 'interception of telecommunication' under Articles 30 and 31 of the Directive, as there is no explicit definition of that term in the Directive. Even among different authorities and practitioners of the same Member State there are some different approaches and interpretations regarding the use of Annex C and the specific investigative measures falling under its scope.

[30] 'On the basis of the prior written approval of the Minister, a police officer of a foreign state or an international body may to perform certain police work on the territory of the Republic of Croatia under the conditions specified by this Law.'

The evaluation team is aware that some Member States expressly apply Articles 30 and 31 also in the case of GPS tracking, bugging of a car, installing spyware on a device to intercept conversation at the source and video/audio surveillance, thereby allowing also an ex-post notification of said measures via an Annex C where no technical assistance is needed from the other Member State. To the contrary, other Member States clearly do not, as is the case of the Republic of Croatia, and allow recourse to Annex C only in relation to wiretapping.

The differing interpretation of the Directive clearly poses a serious problem and can utterly hamper judicial cooperation in criminal matters as well as the admissibility of evidence, easily creating situations of delicate nature which must be avoided at all costs. In practice, it is indeed crucial to have the possibility for an ex-post notification via an Annex C (where technical assistance from the other Member State is not needed) also for similar measures, where – just like for wiretapping – very often it cannot be foreseen in advance that the target will cross the border to another Member State.

The existing state of affairs leads the evaluation team to believe that further clarification by the EU legislator on the concept of 'interception of telecommunication' under Articles 30 and 31 of the Directive is urgently needed and is of utmost importance to clarify whether it includes only wiretapping or also other similar investigative measures such as bugging of cars, GPS tracking or installing a spyware. If the reply is negative, it would therefore be all the more important to consider the amendment of the Directive in order to allow for ex-post notification via an Annex C also for other types of cross-border surveillance measures such as those mentioned above or introduce a new specific Annex D *(see Recommendation No 22*).

21.6.2. The legal framework of interception of telecommunication under Croatian law

Articles 30 and 31 of the Directive have been transposed into domestic legislation (see Article 42am of the Act on Judicial Cooperation, which refers to Article 42al of the Act on Judicial Cooperation). These articles are mentioning exclusively '*the interception of computer data, monitoring and technical recording of telephone conversations and other long-distance telecommunication and verification of the establishment of telecommunication contacts*'. Therefore, under Croatian law, interception of telecommunication within the meaning of Articles 30 and 31 of the Directive does not include

- the installation of a device for direct listening ('bugging'), considering that those cases fall within the scope of actions of technical recording of persons and objects;
- nor GPS tracking[31].

The underlying domestic legislation is Article 332[32] and 334 of the CPC, in accordance to which interception of telecommunication is a special evidentiary action and shall be ordered by a judge of investigation upon written request of the prosecutor. Article 334 of the CPC has a closed albeit extensive catalogue of offences which the use of this specific investigative measure is allowed for.

[31] However, we must underline that Croatian law authorises the said bugging and GPS tracking, but not as an interception of telecommunication.

[32] Article 332(1)of the CPC: 'If an inquiry cannot be conducted otherwise or where this would entail disproportionate difficulty, the judge of investigation may, upon a written request of the State Attorney which includes a statement of reasons, order by a written warrant which includes a statement of reasons issued against a person against whom there are grounds for suspicion that he committed or together with other persons participated in the commission of a criminal offence referred to in Article 334 of this Act, that the following special evidentiary actions temporarily restricting certain constitutional rights of citizens be taken:

a) surveillance and technical recording of telephone conversations and other means of remote communication;
b) interception, collecting and recording of computer data;
c) entry into premises for the purpose of conducting surveillance and making technical recordings of the premises;
d) covert tailing and technical recording of individuals and objects;
e) use of undercover investigators and confidants;
f) simulated sales and purchases of objects, simulated bribe-giving and simulated bribe-taking;
g) provision of simulated business services or conclusion of simulated legal transactions;
h) controlled transport and delivery of objects of a criminal offence.'

As issuing authority, the Croatian authorities have not encountered cases in which the executing authority refused to execute an EIO as the requested measure would not be available in a similar domestic case in the executing Member State.

The evaluation team was also informed that Croatian executing authorities are able to transmit the intercepted telecommunication immediately to the issuing Member State, producing the CDs and sending them after the approval of a prosecutor and a judge. Without the sufficient judicial validation, the intercept cannot be transmitted to the issuing authority. In cases where no technical assistance is needed, the competence for transmission falls upon the County Court in Zagreb.

21.6.3. The application of Article 31 of the Directive and Annex C

The evaluation team stresses that the whole purpose of Annex C is a procedural requirement giving body to a principle of respect for the sovereignty of the receiving Member State and should not be viewed as an alternative or a way of circumventing the issuance of Annex A. Moreover, the expert team is aware that some Member States use Annex A when other Member States use Annex C for the same situation and vice-versa. Croatian authorities stated that the information provided in Annex C was appropriate and sufficient for the Member State to authorise the use of the intercepted communications in relation to ordinary wiretapping.

According to the information provided by the Croatian authorities, as executing Member State, the CPO receives the notification via Annex C in cases falling under the scope of Article 31 of the Directive, which is then forwarded to the County Court in Zagreb, in accordance with Article 42an(3) of the Act on Judicial Cooperation. The County Court in Zagreb is obliged, without delay and at the latest within 96 hours after the receipt of the notification, to notify the competent authority of the Member State carrying out the surveillance:

o) that the surveillance may not be carried out or shall be terminated; and
p) that any material which was previously under surveillance while the subject of the surveillance was in the territory of the Republic of Croatia may not be used as evidence in criminal proceedings.

When deciding on this notification, the County Court in Zagreb determines whether the investigative measure requested could be carried out in a similar procedure in the Republic of Croatia, i.e., whether the conditions of the CPC are met.

If the County Court in Zagreb determines that the legal prerequisites for conducting an interception on Croatian territory are met, it does not submit any notification to the issuing Member State. This practice is in line with Article 31 of the Directive. However, it might be useful to have a means to ensure the legality of the measure conducted. Without any notification, the issuing Member State is in no position to know whether Annex C was duly received by the authorities of the notified Member State, and that the notified Member State considers all legal requirements fulfilled.

The evaluation team received differing information regarding the use of Annex C with Croatian authorities acting as issuing authorities as well. Although the interviewed prosecutors stated that the Croatian authorities did not use Annex C up to that point, the interviewed police authorities clearly stated that Annex C was already used, although occasionally. The evaluation team would like to underline the importance of issuing Annex C whenever a given case falls under its scope.

21.6.3.1. The installation of a direct listening device ('bugging')

Croatian authorities are of the opinion that Articles 30 and 31 of the Directive do not apply to GPS tracking or the installation of a direct listening device (bugged car).

In cases where the Croatian authorities are informed by the authorities of other Member States of a bugged car, or a car with a GPS tracking system travelling to the Republic of Croatia, Croatian authorities would not accept an ex-post notification via Annex C under Article 31 of the Directive stating that there are no legal provisions on that subject under Article 42an of the Act on Judicial Cooperation, even though they are aware that it is sometimes impossible to require prior authorisation in the form of an EIO (Annex A).

Regarding this specific question, the evaluation team was presented with different interpretations of the relevant legislation. According to police officials, the investigative measure exists as a special evidentiary measure and therefore it would not be mandatory to refuse on the basis of Article 42an(3) points (a) and (b) of the Act on Judicial Cooperation, whilst for prosecutors, it was a case for mandatory refusal since there has to be a clear legal base and without a specific legal provision the information gathered cannot be used as evidence.

21.7. Use of malware

The use of malware is a special investigative technique. In some Member States, this special investigative technique is foreseen in specific cybercrime legislation, in other in general criminal procedure rules. Furthermore, Articles 20 and 21 of the Council of Europe Convention on Cybercrime[33] ('Budapest Convention') as well as its explanatory report[34] do not exclude digital covert operations. It is to be noted though that the Republic of Croatia has signed and ratified the Budapest Convention.

This type of measure could be considered to fall under Article 28, as a real time gathering of evidence, or under Article 29 as covert investigation in an online setting, or even, Article 30, to be considered as a form of interception. Depending on the applicable provision, different procedures would apply with significant impact in the practical application. Therefore, the Union legislator is strongly recommended to clarify the legal regime applicable for the use of malware (*see Recommendation No 22*).

During the on-the-spot visit the evaluation team gathered different perspectives on the availability of this special investigative measure in the Croatian legal order.

[33] ETS No 185.
[34] See points number 215, 214 and 219, 220 of the explanatory report.

Answers provided by the Croatian authorities in the questionnaire mentioned that the installation of malware (trojan horse) was not covered by Article 42am and 42al of the Act on Judicial Cooperation since domestic legislation does not prescribe the possibility of using malicious software for the purpose of interception of communications.

Specific covert operations on the internet and online undercover work regarding electronic/digital devices, such as malware and trojan horse, could not be used even as a covert operation or within the special evidentiary measures of Article 332(1) number 1 (surveillance and technical recording of other means of remote communication), 2 (interception and recording of computer data) and 5 (use of undercover investigators) of the CPC, since they were not specifically foreseen in the Croatian law (CPC or the Electronic Communications Act[35]) as specific special investigative measure.

The prosecutors and judges stated during the visit that the use of malware or trojan horses does not exist as an investigative measure in the CPC and were not favourable of extensive interpretation of the provisions on investigative measures. However, judges were unanimous on considering that national law should explicitly allow that possibility through a detailed provision that is lacking at the moment.

Police authorities, however, informed the evaluation team that they had already had cases with online undercover officers in judicial cooperation cases and were of the opinion that the installation of malware/trojan horse would be a possibility, however, technically and in practice it would pose considerable difficulties. According to prosecutors, although they did not have any knowledge of specific cases, the installation of malware or a trojan horse would also be considered as a viable investigative technique.

[35] Zakon o elektroničkim komunikacijama - Official Gazette 73/08, 90/11, 133/12, 80/13, 71/14, 72/17.

According to the above-mentioned EIO-LAPD report[36], under Croatian law, the use of a trojan horse as a special investigative technique is considered inexistent and has clear implications on judicial cooperation in criminal matters.

It is a well-known fact that traditional investigation methods or techniques – even the ones once considered most intrusive, such as wiretapping – at least when suspects are minimally aware and cautious, using only encrypted devices and other modern conversation and communication tools and having almost unlimited resources to allocate to that field of work, are not providing any operational evidence or results and a solution has to be found.

21.8. DNA Samples and Dactyloscopic data

Croatia transposed the Prüm Decision[37]. Article 327 of the CPC provides for the legal base for the collection of samples of biological material and molecular genetic analysis of those samples.

In some Member States, the transfer of biological/cellular material to the issuing authority is expressly forbidden and, as an alternative, the executing authority collects and examines that cellular material from a suspect and afterwards supplies the DNA profile obtained to the issuing authority.

The evaluation team was informed that in accordance with the relevant domestic legislation[38], Croatian authorities are able to transfer biological material to the issuing authority and would not refuse the execution of an EIO issued for those purposes.

[36] See pp. 27–28.

[37] Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

[38] Article 211 of the CPC and Law on Biometric Data Processing (Zakon o obradi biometrijskih podataka - Official Gazette 127/19)

Croatian authorities also informed the evaluation team they are able to freely collect fingerprints of a suspect as an investigative measure when executing an EIO.

21.9. Controlled deliveries

Controlled deliveries could be described as the investigative tool or technique allowing illicit or suspect consignments of drugs, or substances substituted for them, to enter, cross or exit the territory of one or more countries. This is conducted with the knowledge and under the supervision of the competent authorities of the involved countries, with a view to identifying persons involved in the commission of offences, their specific roles and *modus operandi*.

The controlled transport and delivery of objects of a criminal offence is one of the special evidentiary actions prescribed in Article 332 of the CPC.

Article 42ah (1) (b) of the Act[39] on Judicial Cooperation allows the issuing of an EIO in order to obtain controlled deliveries on the territory of the executing Member State, in line with Article 28 of the Directive.

Article 12c(3) point (c) of the Act on Judicial Cooperation, regarding Eurojust´s national member, states 'The national member may, at the request of national members from other Member States: … request the competent State Attorney of the Republic of Croatia to make a request to the investigating judge to conduct a special evidentiary action involving the controlled transport and delivery of objects related to a criminal offence for the purpose of enforcing a coordinated controlled delivery'.

[39] 'Issuing a European Investigation Order for the purpose of carrying out an evidentiary action implying the gathering of evidence in real time, continuously and over a certain period of time'.

The evaluation team was informed that several requests in the format of Annex C seeking authorisation for controlled deliveries were sent to the Croatian authorities, in which the prosecutors tried to apply Article 31 of the Directive. These cases were refused by the Croatian courts. The rationale behind this refusal was the lack of legal provisions on the controlled delivery in transit in Croatian territory[40]**.** However, if an EIO would be received for execution in the format of Annex A for that same purpose, it would be accepted and executed.

However, if Annex A was issued for controlled delivery and the final delivery happened in the Republic of Croatia, the Croatian authorities would deny the execution of the EIO, believing there is a lacuna in the Croatian law in this matter. However, the measure would be possible within the framework of police cooperation. The information provided for in the Fiches Belges on the EJN website[41] is in line with the gathered information[42].

The lack of sufficient internal legal architecture may pose practical complications and challenges which may be difficult to overcome especially in complex cross-border investigations, demanding close coordination and harmonised actions. The existence of differing (or even absence of) legal regimes calls for special efforts on behalf of the national authorities in order to tackle this problem and provide a legal basis for the availability of as many investigative measures as possible, or at least the ones specially foreseen on the EIO Directive, as is the case with controlled deliveries.

The accession of the Republic of Croatia to the Schengen Area turns this into a more pressing matter and calls for a legislative upgrade, allowing effective judicial measures and not only administrative/police proceedings.

[40] On the basis of an Annex A the controlled delivery could be ordered on Croatian territory and executed by Croatian police, but not authorised, as the authorisation is not regulated by law. It has to be noted that an amendment to the Act on Judicial Cooperation is currently being legislated, affecting the authorisation of controlled deliveries.
[41] https://www.ejn-crimjust.europa.eu/ejn2021/FichesBelgesDetail/EN/A.73/432/-1#section3.
[42] This investigative action is not regulated by the Croatian Act on mutual legal assistance in criminal matters. The Republic of Croatia has declared that it shall not accept the application of the Article 19 of the Second Additional Protocol to The European Convention on mutual legal assistance in criminal matters signed in 2001.

Accordingly, given the current state of affairs regarding this investigative measure, the evaluation team considers it of the utmost importance for Croatia to legislate and set up a legal framework regulating controlled deliveries, either as a transit country or at the endpoint of the delivery, allowing them in the widest extension possible, in order to guarantee the best investigative results and smooth cooperation between Member States *(see Recommendation No 3)*.

22. STATISTICS

The Croatian prosecution service only has data on the number of issued and executed EIOs. At the same time, there is no information on the number of EIOs rejected, or the postponement of the execution of the EIO. The data below contains statistical data for the period 2017–2022, provided by the prosecution service[43].

	2017	2018	2019	2020	2021	2022
Outgoing EIOs	15	111	222	216	270	286
Incoming EIOs	13	248	361	432	411	472

In the period 2017–2021, the number of EIOs with the Republic of Croatia as executing Member State is still significantly higher than the number of EIOs issued by the authorities of the Republic of Croatia. This phenomenon is a consequence of the absence of cases with an international element, the structure of criminality in the Republic of Croatia, as well as the relatively small number of inhabitants of the Republic of Croatia.

There is an increasing trend in the numbers of EIOs issued for the purpose of conducting special evidentiary actions under Article 332 of the CPC, such as secret monitoring and technical recording of persons or objects; supervised transportation and delivery of objects of a criminal offence; surveillance and technical recording of telephone conversations. As a result of the reduced scope of travel due to the pandemic, there has been an increase in the number of EIOs issued for the hearing of a witness through videoconference.

A significant increase in the number of EIOs issued refers to EIOs issued in cases under municipal jurisdiction, which increase is due to an increase in the number of criminal offenses of fraud committed through computer systems (interception of electronic communication, use of social networks for the purpose of contacting potential victims etc.) during the COVID-19 pandemic.

[43] For the year 2022, no statistical data has been collected yet for the purpose of creating the annual report of the State Attorney's Office.

Statistics provided by county courts for the period of 2017-2021:

Incoming EIOs	Outgoing EIOs	EIOs refused
213	38	7

The results show that courts receive and issue significantly fewer EIOs than prosecutor's offices, which is due to the nature of the Croatian CPC, where the significant part of competence in this matter falls upon the prosecution.

After the evaluation visit, Eurojust provided statistics extracted from the Eurojust Case Management System in relation to cases dealt with by Eurojust. It includes information on: (i) the total number of EIO related cases at Eurojust; (ii) the number of bilateral and multilateral cases involving the Croatian Desk at Eurojust; and (iii) the number of EIO related cases in which the Croatian Desk was either requesting or requested.

EIO All Eurojust	2017	2018	2019	2020	2021	2022	Total
Bilateral cases	51	561	988	1295	1900	2305	**7100**
Multilateral cases	37	231	337	462	414	401	**1882**
Total cases	**88**	**792**	**1325**	**1757**	**2314**	**2706**	**8982**

EIO Croatia	2017	2018	2019	2020	2021	2022	Total
Bilateral cases	1	13	40	35	40	46	**175**
Multilateral cases	0	11	19	19	28	16	**93**
Total cases	**1**	**24**	**59**	**54**	**68**	**62**	**268**

EIO Croatia	2017	2018	2019	2020	2021	2022	Total
Requesting cases	0	6	21	14	22	28	**91**
Requested cases	1	18	38	40	46	34	**177**
Total cases	**1**	**24**	**59**	**54**	**68**	**62**	**268**

23. TRAINING

The Judicial Academy conducts professional training on EIO for its target groups consisting of judges, prosecutors and advisors in judicial bodies. Quality control of the created educational material, as well as the work plan of professional development, is carried out by the Program Council of the Judicial Academy as an expert body of the Academy. The quality of the education provided is also carried out through the evaluation of workshops conducted independently by the Evaluation Department and the training of leaders and mentors at the Judicial Academy led by an adult education specialist.

Judiciary training covers a wide range of topics, with approximately 90 areas and over 400 activities addressed. The training extends to court advisors and staff as well, with a special program tailored to their needs. The training sessions primarily consist of workshops, designed to foster a practical understanding of the subject matter. To ensure relevance and applicability, the trainers themselves are practitioners with first-hand experience in the field. These training workshops usually last for a day, but depending on the topic, longer sessions may be arranged, particularly when involving experts from abroad.

While cooperation in criminal matters is not part of the obligatory initial training, separate trainings are conducted specifically for judges and prosecutors. They will also introduce joint workshops for both judges and prosecutors. There are also trainings related to key judgments concerning the European Court of Human Rights. Additionally, a new platform is being developed, offering each participant access to manuals and training materials. This platform aims to enhance awareness of recent jurisprudence. To further align national case law, a database has been created by the Supreme Court, exclusively accessible to judges. This database contains key information on national case law, streamlining judicial decision-making processes. The goal is to promote consistency and coherence within the legal system.

The table below provides for an overview on the trainings organised on the topic of EIO.

Year	Type	Target Audience	Number of Participants
2018	workshop	deputy prosecutors, advisors	71
2019	workshop	judges, court advisors	52
2019	workshop	deputy prosecutors, advisors	95
2019	seminar	judges and deputy municipal prosecutors	5
2020	workshop	judges, court advisors	8
2020	workshop	deputy prosecutors, advisors	14
2020	online seminar	Deputy County Prosecutor from Dubrovnik	1
2021	workshop	judges, court advisors	28
2021	workshop	deputy prosecutors, advisors	44
2021	Training of Trainers (TOT)	Judge of the High Criminal Court, Deputy County Prosecutor (Zagreb)	2
2022	-	-	-
2023	workshop	judges, court advisors	40
2023	workshop	deputy prosecutors, advisors	57

In 2022, the European Judicial Training Network ('EJTN') organised an advanced training on the topic 'European Investigation Order in practice', which was attended by the Deputy County Prosecutor in Zagreb in Vienna.

It should be underlined that the EIO is also a subject of education in the field of a certain type of crime. For example, workshops on the topic of criminal prosecution of money laundering also include the topic of judicial cooperation, given that in a large number of money laundering cases, the predicate offense was committed abroad, so obtaining evidence requires the issuance of an EIO. The EIO was also the topic of the 2018 Expert Meeting of the Public Prosecutor's Office.

To improve the efficacy of judicial cooperation in criminal matters, the evaluators recommend that Croatia incorporate this crucial aspect into the initial training of judges and prosecutors. In addition, every four years, all legal professionals should be required to participate in mandatory training. This strategy will ensure that legal professionals are up-to-date on the most recent developments and best practices in cross-border cooperation, fostering a more effective and consistent approach to judicial collaboration within the European Union (s*ee Recommendation No 9*).

Recognising the significance of court and prosecution staff in the process of judicial cooperation in criminal matters, the evaluators recommend that the Republic of Croatia implement specialised training for these employees. This specialised training will equip them with the knowledge and skills necessary to effectively assist judges and prosecutors with cross-border cases. Croatia can enhance the overall efficacy and effectiveness of the judiciary in combating transnational criminal activities by providing comprehensive training (*see Recommendation No 10*).

Evaluators commend the Republic of Croatia for organising seminars on judicial cooperation in criminal matters through the Ministry of Justice. These seminars have proven to be beneficial learning opportunities for legal professionals, equipping them with practical insights and enhancing their field-specific expertise. This demonstrates the dedication to fostering sustained professional development and cooperation among legal professionals in the European Union. (*see Best practice No 4*).

To further enhance knowledge and proficiency in applying the EIO, evaluators recommend to the EJTN to increase the number of EIO-related trainings. The simulations should provide participants with hands-on experience in executing EIOs effectively. Collaboration with national training programmes could provide a unique opportunity to expand the reach and influence of such training initiatives, thereby fostering greater expertise and cooperation among judicial practitioners (s*ee Recommendation No 25*).

In the view of the evaluators a best practice is the implementation of a common training programme for judges and prosecutors in Judicial Cooperation in criminal matters (*see Best practice No 5).* The Croatian Republic has taken a progressive step towards promoting a unified approach to managing cross-border cases by consolidating the training for these two integral components of the legal system. This best practice improves collaboration between judges and prosecutors, facilitates communication, and thus strengthens the response to transnational criminal activities.

To ensure that lawyers have a comprehensive understanding of the topic of judicial cooperation in criminal matters, evaluators recommend to the Republic of Croatia to provide more specific training. This training should include essential elements, such as the EIO, so that defence attorneys can navigate cross-border cases effectively (*see Recommendation No 11*).

24. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

24.1. Recommendations

Regarding the practical implementation and operation of the Directive, the team of experts involved in the assessment in the Republic of Croatia was able to review the system satisfactorily.

The evaluation team saw it fit to make several suggestions for the attention of the Croatian authorities. Furthermore, based on the various examples of good practice, related recommendations are being put forward to the EU, its institutions, as well as to the EJTN. The Republic of Croatia should conduct an 18-month follow-up to the recommendations referred to below after this report has been agreed by COPEN.

24.1.1. Recommendations to the Republic of Croatia

Recommendation No 1: Croatian authorities should interpret their national legislation limiting the scope of the EIO only to evidentiary actions more flexibly and in conformity with EU law and the autonomous notion of 'investigative measure'. Should such an interpretation not be possible, the transposing legislation should be modified by eliminating the reference to 'evidentiary action' when defining the scope of an EIO and replacing it with the broader wording 'investigative measures' used in Article 3 of the Directive (see Chapter 3).

Recommendation No 2: the Republic of Croatia should establish a network of prosecutors and judges specialised in judicial cooperation in criminal matters in each country court/regional prosecutor's office (see Chapter 4.1).

Recommendation No 3: the Croatian legislator should

- designate USKOK as an executing authority for cases falling within its material competence, especially in cases requiring coordination (see Chapter 4.1.1);
- consider the amendment of the Act on Judicial Cooperation to include the possibility of executing EIOs issued for evidence gathering purposes regardless under which phase this would fall in the Croatian CPC (see Chapter 5);
- bring the Act on Judicial Cooperation in line with the Directive, making the grounds for non-execution optional (see Chapter 13);
- consider the amendment of Act on Judicial Cooperation in order to clarify which authority and in what cases has competence to execute EIOs for the purpose of hearings by videoconference and provide for technical equipment (Chapter 21.2);
- set up a legal framework regulating controlled deliveries (see Chapter 21.9).

Recommendation No 4: the Republic of Croatia should add information in the Fiches Belges regarding cross-border surveillance (see Chapter 5.2).

Recommendation No 5: the Republic of Croatia should swiftly advance with the necessary steps for effectively implementing the e-EDES and connecting all competent national authorities (see Chapter 8).

Recommendation No 6: Croatian authorities should consider taking an explicit decision on the recognition of an EIO as well as on non-recognition or non-execution, or at the very least indicating the grounds for refusal applied in the latter case (see Chapter 9.1).

Recommendation No 7: Croatian authorities should avoid interpreting the notion of basic fundamental principles of the domestic legal order in a broad sense, as it were covering every single procedural aspect of Croatian legislation, which might result in, as a rule, not complying with most of the formalities requested by the issuing Member States (see Chapter 9.2).

Recommendation No 8: Croatian authorities should clarify the situation regarding Article 14 of the Directive in Croatia following the judgment of the CJEU in the Gavanozov II case (see Chapter 16).

Recommendation No 9: the Republic of Croatia should make judicial cooperation in criminal matters an integral part of initial training and provide for periodic mandatory training (see Chapter 23).

Recommendation No 10: the Republic of Croatia should provide for training on judicial cooperation in criminal matters for the court and prosecution staff (see Chapter 23).

Recommendation No 11: the Republic of Croatia should provide more specific training for lawyers on the topic of judicial cooperation in criminal matters, including EIO (see Chapter 23).

24.1.2. Recommendations to the other Member States

Recommendation No 12: Issuing authorities should use short and simple sentences and at the same time avoid copying the text of the domestic order when issuing an EIO (see Chapter 6.1).

Recommendation No 13: All Member States should consider formally accepting EIOs in English, at least in urgent cases (see Chapter 6.2).

Recommendation No 14: Issuing authorities should seek to ensure the quality of translation (see Chapter 6.2).

Recommendation No 15: Member States should seek to avoid issuing unnecessarily broad EIOs, so as to limit the burden put on the executing authority (see Chapter 6.3).

Recommendation No 16: Member States should consider granting the national members of Eurojust the power foreseen under Article 8(3)b and (4) of the Eurojust Regulation in urgent cases (see Chapter 6.4).

Recommendation No 17: Member States are encouraged to explore the possibilities of e-EDES (see Chapter 8).

Recommendation No 18: Member States, when executing an EIO, should make every effort to comply with procedural formalities requested by the issuing Member State (see Chapter 9.2).

Recommendation No 19: In case of formalities and procedures expressly requested in the EIO, issuing authorities should consider attaching a letter of rights or clearly state in the EIO the list of rights of the person concerned, linked to their procedural status, covering cases in which that status could shift from witness to suspect/defendant (see Chapter 9.2).

Recommendation No 20: Issuing authorities, in case of an EIO related to the hearing of persons, should attach a comprehensive list of questions to be asked (see Chapter 9.2).

Recommendation No 21: Member States should send Annex B systematically upon receipt of an EIO (see Chapter 18).

24.1.3. Recommendations to the European Union and its institutions

Recommendation No 22: the Union legislator is invited to consider the amendment to the Directive in respect of the following key issues:

- expressly allowing the victim to request the issuing of an EIO (see Chapter 4.4);
- clarifying whether the rule of speciality applies (see Chapter 11);
- to clarify whether the notion of 'interception of telecommunication' under Art. 30 and 31 covers also other surveillance measures such as bugging of cars, GPS tracking and installing spywares; and, in the negative, to consider the amendment of the Directive to introduce special provisions regulating also said measures. This could include also the possibility of using an Annex C where no technical assistance is needed from the other Member State or introducing a specific Annex D (see Chapter 21.6.1);
- clarifying the legal regime applicable to the use of malware/trojan horse (see Chapter 21.7).

Recommendation No 23: the Commission is invited to clarify the application of the Directive in relation to Article 40 of the CISA in respect of cross-border surveillance and propose an amendment to the Directive in that sense, where appropriate (see Chapter 5.2).

Recommendation No 24: the Union legislator is invited to revisit the question of the participation of the accused person at the trial via videoconference from another Member State, in light of the outcome of the case currently pending before the CJEU, if appropriate (see Chapter 21.2).

24.1.4. Recommendations to the EJTN

Recommendation No 25: The EJTN should increase the number of trainings related to EIO, including practical simulation, perhaps in the framework of a partnership with the national training projects (see Chapter 23).

24.2. Best practices

This section will include a list of best practices to be examined by other Member States.

Croatia is to be commended for:

1. consolidating all instruments for judicial cooperation in criminal matters in one legislative act (see Chapter 3);
2. allowing for victims and civil parties to request the issuing of an EIO (see Chapter 4.4)
3. accepting EIOs in English in urgent cases, even if reciprocity does not apply (see Chapter 6.2);
4. the workshops organised by the Ministry of Justice on judicial cooperation in criminal matters (see Chapter 23);
5. introducing the common training of judges and prosecutors in judicial cooperation in criminal matters (see Chapter 23).

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

Ministry of Justice and Public Administration
Grada Vukovara Street 49

28th March, 2023	
9:30–11:00	Welcome speeches and presentations - representatives of Ministry of Justice and Public Administration - representatives of Judicial Academy
11:00–11:15	Coffee break
11:15–12:45	Presentation by the representatives of the State Attorney's Office
12:45–13:45	Lunch break
13:45–15:15	Q&A with the representatives of State Attorney's Office
15:15–15:30	Coffee break
15:30–16:30	Q&A with the representatives of the Prosecutor's Office

29th March, 2023	
9:30–11:00	Meeting with the representatives of the Ministry of Interior
11:00–11:15	Coffee break
11:15 to 12:45	Q&A with representatives of the Prosecutor's Office
12:45–13:45	Lunch break
13:45–15:15	Meeting with judges
15:15–15:30	Coffee break
15:30–16:30	Meeting with the representatives of the Bar Association

30th March, 2023	
9:30–12:00	Wrap-up meeting, presentation of the preliminary findings

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYMS AND ABBREVIATIONS	FULL TERM
Act on Judicial Cooperation	Act on Judicial Cooperation in Criminal Matters with European Union Member States
Budapest Convention	Council of Europe Convention on Cybercrime
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CISA	Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders
CJEU	Court of Justice of the European Union
CPC	Criminal Procedure Code
CPO	county prosecutor's offices
Directive	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters
e-EDES	e-Evidence Digital Exchange System
EIO	European Investigation Order
EJN	European Judicial Network
EJN Atlas	Judicial Atlas of the European Judicial Network
EJTN	European Judicial Training Network
Eurojust	European Union Agency for Criminal Justice Cooperation
Eurojust Regulation'	Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 2002/187/JHA

JIT	joint investigation team
Joint Action	Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime
MLA	mutual legal assistance
USKOK	Office for the Suppression of Corruption and Organised Crime