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TREATIES BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF CROATIA ON EXTRADITION AND MUTUAL LEGAL ASSISTANCE

JUNE 23, 2022.—Ordered to be printed

Mr. MENENDEZ, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 116–2]

The Committee on Foreign Relations, to which was referred the Agreement between the Government of the United States of America and the Government of the Republic of Croatia comprising the Instrument as contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union, signed June 25, 2003, as to the Application of the Treaty on Extradition signed 25 October 1901 (the "U.S.-Croatia Extradition Agreement"), and the Agreement between the Government of the United States of America and the Government of the Republic of Croatia comprising the Instrument as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington on June 25, 2003 (the "U.S.-Croatia Mutual Legal Assistance Agreement"), both signed at Washington on December 10, 2019 (Treaty Doc. 116–2), having considered the same, reports favorably thereon with one declaration with respect to each, as indicated in the resolutions of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolutions of advice and consent.

CONTENTS

		Page
I.	Purpose	2
II.	Background	2
	(A) The U.S.-Croatia Extradition Agreement	2
	(B) The U.S.-Croatia Mutual Legal Assistance Agreement	3
III.	Entry into Force and Termination	4
IV.	Committee Action	4
V.	Committee Recommendation and Comments	4
VI.	Explanation of the U.S.-Croatia Extradition Agreement	4
VII.	Explanation of the U.S.-Croatia Mutual Legal Assistance Agreement	9
VIII.	Text of Resolution of Advice and Consent to Ratification	14
	(A) The U.S.-Croatia Extradition Agreement	14
	(B) The U.S.-Croatia Mutual Legal Assistance Agreement	14

I. PURPOSE

The purpose of the U.S.-Croatia Extradition Agreement is to modernize in important respects the Treaty between the United States of America and the Kingdom of Serbia for the Extradition of Fugitives from Justice, signed October 25, 1901, which is currently in force between the United States of America and the Republic of Croatia. The purpose of the U.S.-Croatia Mutual Legal Assistance Agreement is to formalize and strengthen the institutional framework for legal assistance between the United States of America and the Republic of Croatia in criminal matters.

II. BACKGROUND

A. U.S.-CROATIA EXTRADITION AGREEMENT

The United States is currently party to more than 100 bilateral extradition treaties, including a treaty with the Kingdom of Serbia for the Extradition of Fugitives from Justice, which was signed on October 25, 1901, and entered into force on June 12, 1901 (hereafter the "1901 treaty"). The 1901 treaty applies to the Republic of Croatia as a successor state to the former Socialist Federal Republic of Yugoslavia.

The U.S.-Croatia Extradition Agreement serves to implement, as between the two Parties, the Agreement on Extradition between the United States of America and the European Union ("the U.S.-EU Extradition Agreement"), which was signed on June 25, 2003 and entered into force on February 1, 2010. Application of the U.S.-EU Extradition Agreement to the 1901 treaty, as reflected in the U.S.-Croatia Extradition Agreement, meaningfully updates both the procedural and substantive aspects of the extradition relationship between the United States and the Republic of Croatia.

The U.S.-Croatia Extradition Agreement is designed to modernize the 1901 treaty. Most significantly, it replaces the outdated list of extraditable offenses with the modern "dual criminality" approach, thereby enabling coverage of newer offenses, such as cyber-related crimes, environmental offenses, and money laundering. In addition, it includes several provisions updating and streamlining procedural requirements for preparing and transmitting extradition documents.

(B) THE U.S.-CROATIA MUTUAL LEGAL ASSISTANCE AGREEMENT

Mutual Legal Assistance Treaties ("MLATs") are international agreements that establish a formal, streamlined process by which governments may gather information and evidence in other countries for use in criminal investigations and prosecutions. The U.S.-Croatia Mutual Legal Assistance Agreement is designed to strengthen the institutional framework for legal assistance between the United States of America and the Republic of Croatia in criminal matters. In order for the United States to successfully prosecute criminal activity that is transnational in scope, it is often necessary to obtain evidence or testimony from a witness in another country. While U.S. federal courts may issue subpoenas to U.S. nationals overseas, they lack the authority to subpoena foreign nationals found in other countries or the authority to subpoena evidence in a foreign country. Additionally, effectuating service of a subpoena to U.S. persons abroad may be difficult.

In the absence of an applicable international agreement, the customary method for obtaining evidence or testimony in another country is via a "letter rogatory," which tends to be an unreliable and time-consuming process. It generally involves a court in one country sending a formal communication to a government authority in another country, requesting certain evidence or the testimony of a person within the latter's jurisdiction, for use in a pending action. The State Department advises that the "letter-rogatory" process can often take a year or more and, unless undertaken pursuant to an international agreement, compliance is a matter of judicial discretion. Furthermore, the scope of foreign judicial assistance might also be limited by domestic information-sharing laws, such as bank and business secrecy laws, or be confined to evidence relating to pending cases rather than preliminary, administrative, or grand jury investigations conducted prior to the filing of formal charges. Execution of "letters rogatory" is usually carried out under the judicial norms of the responding country. However, responding country norms may be insufficiently compatible with U.S. law such that the resulting evidence is rendered inadmissible in a U.S. court. MLATs are designed to overcome these and similar problems.

In view of the Republic of Croatia's accession to the EU on July 1, 2013, the U.S.-Croatia Mutual Legal Assistance Agreement serves to implement, as between the two Parties, the Agreement on Mutual Legal Assistance between the United States of America and the European Union, signed on June 25, 2003 ("the U.S.-EU Mutual Legal Assistance Agreement"), and which entered into force on February 1, 2010. Consistent with the U.S.-EU Mutual Legal Assistance Agreement, the U.S.-Croatia Mutual Legal Assistance Agreement addresses identification of bank information, joint investigative teams, video-conferencing, expedited transmission of requests, assistance to administrative authorities, use limitations, confidentiality, and grounds for refusal. This approach is consistent with that taken with respect to other EU Member States, e.g., Bulgaria, Denmark, Finland, Malta, Portugal, Slovak Republic, and Slovenia.

III. Entry into Force and Termination

Article 5, in both the U.S.-Croatia Extradition Agreement and the U.S.-Croatia Mutual Legal Assistance Agreement, contains final clauses addressing entry into force and termination. Under Article 5(1), each Agreement is subject to the completion of the countries' respective, applicable, internal procedures for entry into force, and will enter into force upon the completion of an exchange of notifications, upon the date of receipt of the latter notification. Under Article 5(2), each Agreement is terminated in the event of the respective termination of the U.S.-EU Extradition Agreement or the U.S.-EU Mutual Legal Assistance Agreement. It further notes that the Parties may alternatively agree to continue to apply the provisions of the U.S.-Croatia Extradition Agreement and the U.S.-Croatia Mutual Legal Assistance Agreement, in whole or in part.

IV. Committee Action

The Committee on Foreign Relations reviewed both the U.S.-Croatia Extradition Agreement and the U.S.-Croatia Mutual Legal Assistance Agreement (together, the "Treaties") at a hearing on April 6, 2022, at which representatives of the Departments of State and Justice testified. On May 4, 2022, the committee considered the Treaties and ordered them favorably by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the Treaties subject to the declaration that they are self-executing.

V. Committee Recommendation and Comments

The committee recommends favorably the Treaties with the Republic of Croatia. The U.S.-Croatia Extradition Agreement modernizes a treaty that is over a century old and provides a more flexible "dual criminality" provision that will incorporate a broader range of criminal offenses than is currently covered. In addition, the U.S.-Croatia Extradition Agreement will facilitate the ability of the United States to prosecute more effectively, through new provisions related to requests from more than one State, simplified extradition, and temporary surrender.

The committee believes the U.S.-Croatia Mutual Legal Assistance Agreement, which would enhance law enforcement cooperation between the United States and the Republic of Croatia, would further U.S. efforts in fighting terrorism and transnational crime, while still comporting with existing U.S. legal requirements and practice.

VI. Explanation of the U.S.-Croatia Extradition Agreement

What follows is an article-by-article description of the provisions of the U.S.-Croatia Extradition Agreement, including the Annex, prepared by the Departments of State and Justice.

Article 1 of the U.S.-Croatia Extradition Agreement acknowledges that the U.S.-EU Extradition Agreement is applied in relation to the 1901 Extradition Treaty and specifies the articles of the U.S.-EU Extradition Agreement applicable between the United

States and Croatia. The specified articles of the U.S.-EU Extradition Agreement are:

(a) Article 4, governing the scope of the extraditable offenses;

(b) Articles 5(1) and 7(1), governing the mode of transmission of the extradition request and supporting documents, and providing for an alternative method for transmission of the request for extradition and supporting documents following provisional arrest;

(c) Article 5(2), governing the requirements concerning certification, authentication or legalization of the extradition request and supporting documents;

(d) Article 6, authorizing an alternative channel of transmission of requests for provisional arrest;

(e) Article 8, governing the channel to be used for submitting supplementary information;

(f) Article 9, governing the temporary surrender of a person being proceeded against or serving a sentence in the requested state;

(g) Article 10, governing the decision on requests made by several states for the extradition or surrender of the same person;

(h) Article 11, governing the use of simplified extradition procedures;

(i) Article 12, governing requests for transit of persons in custody;

(j) Article 13, governing extradition with respect to conduct punishable by death in the requesting State; and,

(k) Article 14, governing consultations where the requesting state contemplates the submission of particularly sensitive information in support of a request for extradition.

Article 2 establishes that the Annex reflects the integrated text of the 1901 Extradition Treaty and the provisions of the U.S.-EU Extradition Agreement that apply between the two countries, and confirms that the Annex is an integral part of the U.S.-Croatia Extradition Agreement that applies upon the Agreement's entry into force. Article 2 further provides for minor numbering and terminological modifications in the Annex outside the scope of the provisions identified in Article 1, none of which reflect substantive changes to the 1901 Extradition Treaty, and defines "high contracting parties," as used in the 1901 Extradition Treaty, to mean the Governments of the United States of America and the Republic of Croatia.

Article 3 specifies that the U.S.-Croatia Extradition Agreement applies to offenses committed prior to and following entry into force.

Article 4 provides that the U.S.-Croatia Extradition Agreement does not apply to requests for extradition made prior to its entry into force, except for certain enumerated provisions. In accordance with Article 16 of the U.S.-EU Extradition Agreement, certain articles of the Annex, including the object and purpose (Article I), extraditable offenses (Article II), and temporary surrender (Article X

bis) provisions shall apply to extradition requests predating the U.S.-Croatia Extradition Agreement's entry into force.

Article 5 contains final clauses addressing the U.S.-Croatia Extradition Agreement's entry into force and termination. Article 5(1) provides that the U.S.-Croatia Extradition Agreement is subject to the completion of the countries' respective, applicable, internal procedures for entry into force, and will enter into force upon the completion of an exchange of notifications, upon the date of receipt of the latter notification. Article 5(2) provides that the U.S.-Croatia Extradition Agreement shall be terminated in the event that the U.S.-EU Extradition Agreement is terminated, in which case the 1901 Extradition Treaty would be applied. It further notes that the Parties may in the alternative agree to continue to apply the provisions of the U.S. Croatia Extradition Agreement, in whole or in part.

Pursuant to Articles 1 and 2 of the U.S.-Croatia Extradition Agreement, the Annex reflects the integrated text of the 1901 Extradition Treaty and the provisions derived from the U.S.-EU Extradition Agreement that are to be applied to the 1901 Extradition Treaty ("the Integrated Treaty Text"). The following is an article-by-article description of the provisions reflected in the Annex. In addition to the modifications required by the U.S.-EU Extradition Agreement, the Integrated Treaty Text is updated throughout to refer directly to the Republic of Croatia, refer to "State" or "States" rather than "country" or "countries," respectively, and add captions and enumerated paragraphs for ease of reference.

Article I is modified, consistent with Article 4 of the U.S.-EU Extradition Agreement, to reflect—together with Article II(1)—the basic obligation for each Party to extradite to the other persons who are sought for prosecution or for imposition or service of a sentence with respect to an extraditable offense, provided there is sufficient evidence under the laws of the requested State.

Article II, which is taken from Article 4 of the U.S.-EU Agreement, provides for a "dual criminality" approach to extraditable offenses. Article II(1) defines an offense as extraditable if the conduct on which the offense is based is punishable under the laws in both States by deprivation of liberty for a period of more than one year or by a more severe penalty. The approach taken in the Integrated Treaty Text with respect to extraditable offenses is consistent with the modern "dual criminality" approach, rather than the old "list" approach, and is one of the key benefits of integrating the texts. Use of a "dual criminality" clause, rather than the categories of offenses listed in the 1901 Extradition Treaty, obviates the need to renegotiate or supplement the 1901 Extradition Treaty as additional offenses become punishable under the laws of both States. Use of the dual criminality standard also ensures a comprehensive coverage of criminal conduct for which extradition might be sought. Article II(1) further defines an extraditable offense to include an attempt or a conspiracy to commit, or participation in the commission of, an extraditable offense. The Parties intended to include, under the broad description of "participation," the offenses of aiding, abetting, counseling or procuring the commission of an offense, as well as being an accessory to a request.

Article II(2) directs that if extradition is granted for an extraditable offense, it must also be granted for any other offense speci-

fied in the request that is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article II(3) establishes that an offense is an extraditable offense regardless of whether: (a) the laws in the requesting and requested State place the offense in the same category or use the same terminology in defining the offense; (b) the offense is one for which U.S. federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of asserting federal jurisdiction; or, (c) the laws of the requesting and requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities, in criminal cases related to such matters.

Article II(4) provides that, with regard to offenses committed outside the territory of the requesting State, extradition shall be granted if the laws of the requested State provide for the punishment of such conduct committed outside its territory in similar circumstances. If the laws of the requested State do not so provide, the executive authority of the requested State may, at its discretion, grant extradition provided that all other applicable requirements for extradition are met.

Article III expands and updates the procedures and required documents for extradition Article III(1), taken from Articles 5(1) and 7(1) of the U.S.-EU Extradition Agreement, requires transmission of extradition requests through the diplomatic channel, allowing that if the person sought is held under provisional arrest this requirement may be met by submitting the request to the embassy of the requested State located in the requesting State. It further specifies that in such cases, the date of delivery to the embassy is the date of receipt for purposes of satisfying the time limit established in Article IV.

Article III(2) preserves original language from the 1901 Extradition Treaty.

Article III(3), taken from Article 5(2) of the U.S.-EU Extradition Agreement, provides that documents bearing the seal of the ministry of justice or ministry or department responsible for foreign affairs of the requesting State shall be admissible in extradition proceedings in the requested State without further certification, authentication, or legalization. The article also defines "ministry of justice" as the Department of Justice for the United States and as the Ministry of Justice for the Republic of Croatia, respectively.

Article III(4) preserves original language from the 1901 Extradition Treaty.

Article III *bis,* taken from Article 8 of the U.S.-EU Extradition Agreement, allows the requested State to require from the requesting State supplementary information within a reasonable period of time if the requested State considers the original request not to include sufficient information. It further provides that such requests may be made and satisfied directly between the respective ministries of justice.

Article III *ter,* taken from Article 14 of the U.S.-EU Extradition Agreement, provides for consultations between the Parties in cases where the requesting State is considering submitting sensitive in-

formation as part of an extradition request, to determine to what extent the information can be protected by the requested State. If the requested State cannot protect the information as sought, the requesting State may nevertheless determine to include the information in the request.

Article IV(1), taken from Article 6 of the U.S.-EU Extradition Agreement, allows for provisional arrest requests to be made directly between the respective ministries of justice, or by using the facilities of the International Criminal Police Organization (INTERPOL), as an alternative to using the diplomatic channel.

Articles IV(2), V, VI, VI, and VIII preserve original language from the 1901 Extradition Treaty.

Article VIII *bis,* taken from Article 13 of the U.S,-EU Extradition Agreement, provides that where extradition is sought for an offense that is punishable by death under the laws of the requesting State but not under the laws of the requested State, the requested State may grant extradition subject to the condition that the death penalty, if imposed, shall not be carried out. If the requesting State does not accept such conditions, the request for extradition may be denied

Article IX preserves original language from the 1901 Extradition Treaty.

Article X, taken from Article 10 of the U.S.-EU Extradition Agreement, regards decisions on multiple requests for the surrender of the same person. Article X(1) establishes that, where the requested State receives requests from the requesting State and one or more additional States for the extradition of the same person, the executive authority of the requested State shall determine to which State, if any, the person will be surrendered. Article X(2) elaborates that if the Republic of Croatia receives an extradition request from the United States and a surrender request pursuant to a European arrest warrant for the same person, the Minister of Justice of the Republic of Croatia shall determine to which State, if any, the person will be surrendered. Article X(3) sets forth a nonexhaustive list of factors that the requested State will consider in determining to which State a person will be surrendered, according to the provisions of Article X(1) and (2).

Article X *bis,* taken from Article 9 of the U.S.-EU Extradition Agreement, allows for temporary surrender for purposes of prosecution in the requesting State, of a person who is being proceeded against or serving a sentence in the requested State. Its second paragraph provides further that a person so surrendered will be kept in custody by the requesting State and returned to the requested State following the completion of proceedings in the requesting State, according to conditions mutually agreed between the Parties. It also allows that time spent in custody of the requesting State may be deducted from the time remaining to be served in the requested State.

Article X *ter,* taken from Article 11 of the U.S.-EU Extradition Agreement, allows for simplified extradition, consistent with the principles and procedures of the legal system of the requested State, in cases where the person sought has consented to surrender, which consent may also include waiver of protection of the rule of specialty. In such situations, the requested State shall sur-

render the person to the requesting State as expeditiously as possible.

Article X *quater,* taken from Article 12 of the U.S.-EU Extradition Agreement, concerns requests for transit of persons in custody. Article X quater(1) provides that the Parties may authorize transit through their respective territory of a person surrendered to the other Party by a third state, or by the other Party to a third state. Article X quater(2) specifies that transit requests shall be made through the diplomatic channel, or directly between the United States Department of Justice and the Ministry of Justice of the Republic of Croatia. It further allows that INTERPOL facilities may be used. Finally, it specifies the substantive content of a transit request, and that a person in transit must be detained during the transit period.

Article X *quater*(3) provides that a transit request is not required for air transit where no landing is scheduled in the territory of the transited State. It allows for the transited state to require a transit request in the case of an unscheduled landing, and provides that all necessary measures will be taken to prevent the person in custody from absconding until transit is effected, so long as the transit request is received within 96 hours of the unscheduled landing.

Article XI preserves original language from the 1901 Extradition Treaty, with minor revisions to the punctuation of the first sentence.

Article XII provides for the 1901 Extradition Treaty to remain in force for six months following notice of termination from either Party.

VII. Explanation of the U.S.-Croatia Mutual Legal Assistance Agreement

What follows is an article-by-article description of the provisions of the U.S.-Croatia Mutual Legal Assistance Treaty prepared by the Departments of State and Justice.

Article 1 acknowledges that the U.S.-EU Mutual Legal Assistance Agreement is applied between the United States of America and Croatia, and identifies those articles of the U.S.-EU Mutual Legal Assistance Agreement establishing the substantive terms of the agreement. The identified articles of the U.S.-EU Mutual Legal Assistance Agreement are:

(a) Article 4, governing the identification of financial accounts and transactions;

(b) Article 5, governing the formation and activities of joint investigative teams;

(c) Article 6, governing the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States;

(d) Article 7, governing the use of expedited means of communication;

(e) Article 8, governing the providing of mutual legal assistance to administrative authorities:

(f) Article 9, governing the limitation on use of information or evidence provided to the requesting State, and the

conditioning or refusal of assistance on data protection grounds;

(g) Article 10, governing the circumstances under which a requesting State may seek the confidentiality of its request; and

(h) Article 13, governing the invocation by the requested State of grounds for refusal.

Article 2 establishes that the Annex is an integral part of the U.S.-Croatia Mutual Legal Assistance Agreement and reflects the provisions of the U.S.-EU Mutual Legal Assistance Agreement applied between the United States of America and the Republic of Croatia upon the entry into force of the U.S.-Croatia Mutual Legal Assistance Agreement.

Article 3 specifies that the U.S.-Croatia Mutual Legal Assistance Agreement applies to offenses committed prior to and following entry into force.

Article 4 provides that the U.S.-Croatia Mutual Legal Assistance Agreement does not apply to requests made prior to its entry into force, save for certain limited exceptions. In accordance with Article 12 of the U.S.-EU Mutual Legal Assistance Agreement, provisions related to video conferencing (Annex, Article 3) and the expedited transmission of requests (Annex, Article 4) shall apply to requests made prior to the U.S.-Croatia Mutual Legal Assistance Agreement's entry into force.

Article 5 contains final clauses addressing the U.S.-Croatia Mutual Legal Assistance Agreement's entry into force and termination. Article 5(1) provides that the U.S.-Croatia Mutual Legal Assistance Agreement is subject to the completion of the countries' respective, applicable, internal procedures for entry into force and will enter into force upon the completion of an exchange of notifications, upon the date of receipt of the latter notification. Article 5(2) provides that the U.S.-Croatia Mutual Legal Assistance Agreement shall be terminated in the event that the U.S.-EU Mutual Legal Assistance Agreement is terminated, provided however that, in the alternative, the Parties may agree to continue to apply the provisions of the U.S.-Croatia Mutual Legal Assistance Agreement, in whole or in part.

As provided in Article 2, the Annex reflects the provisions of the U.S.-EU Mutual Legal Assistance Treaty applied between the United States of America and the Republic of Croatia. The following is an article-by-article description of these provisions.

Article 1, taken from Article 4 of the U.S.-EU Mutual Legal Assistance Agreement, regards the identification of bank information. Article 1(1) provides that, upon request, the requested State shall promptly ascertain whether banks in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of one or more bank accounts. The requested State must also promptly communicate its findings to the requesting State. Article 1(1) goes on to extend the same obligations to identification of information regarding persons convicted or otherwise involved in a criminal offense, information in the possession of non-bank financial institutions, or financial transactions unrelated to accounts.

Article 1(2) describes the information that must be contained in requests for such information as may be requested under the preceding paragraph. Article 1(3) identifies for each Party the channels of transmission for requests under this Article, which may be modified only by exchange of diplomatic notes between the United States and the European Union. For the United States, requests shall be transmitted by the attaché responsible for the Republic of Croatia of the Drug Enforcement Administration and the Bureau of Immigration and Customs Enforcement, for matters under their respective jurisdictions, and the Federal Bureau of Investigation, for all other matters. For the Republic of Croatia, requests shall be transmitted by the Ministry of Justice.

Article 1(4) limits the scope of criminal activity in relation to which the Parties will provide assistance under this Article to money laundering or terrorist activity punishable under the laws of both the requesting and requested States, as well as any additional criminal activity as one Party may subsequently notify to the other Party. U.S. negotiators verified that under Croatian law assistance will be available for a wide range of conduct associated with terrorism (which includes the conduct criminalized in international counterterrorism conventions to which they are party) and money laundering with respect to an extremely broad range of predicate offenses. Article 1(5) provides that requests under this Article may not be denied on the grounds of bank secrecy. Article 1(6) provides that the requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

Article 2, taken from Article 5 of the U.S.-EU Mutual Legal Assistance Agreement, regards the establishment and operation of joint investigative teams. Article 2(1) allows for joint investigative teams to be established and operated in the respective territories of the United States of America and the Republic of Croatia to facilitate criminal investigations or prosecutions involving the United States and at least one Member State of the European Union. Article 2(2) provides that the operational procedures for the joint investigative team will be agreed between the competent authorities of the respective States concerned, as determined by those States. Article 2(3) provides for direct communication among the identified competent authorities, except where otherwise agreed among the concerned States in light of a need for more central coordination. This approach facilitates speed, efficiency and clarity by providing in most cases for direct communications among the affected law enforcement components, rather than through a mutual legal assistance request transmitted through a central authority, as would otherwise generally take place.

Article 2(4) establishes that where a joint investigative team needs investigative measures to be taken in one of the constituent States, a team member from that State may request such measures from its own competent authorities without requiring a mutual legal assistance request from the other constituent States. The legal standard for obtaining the measure is the applicable domestic standard in the state where the measure is to be carried out. Thus, where an investigative measure is to be carried out in the United States, for example, a U.S. team member could do so by invoking

existing domestic investigative authority, and would share resulting information or evidence seized pursuant to such an action with the foreign authorities. A formal mutual legal assistance request would not be required. In a case in which there is no domestic U.S. jurisdiction and consequently a compulsory measure cannot be carried out based on domestic authority, the provisions of 18 U.S.C. Section 3512 may furnish a separate legal basis for carrying out such a measure.

Article 3, taken from Article 6 of the U.S.-EU Mutual Legal Assistance Agreement, concerns the use of video conferencing. Article 3(1) establishes that video transmission technology shall be available between the United States of America and the Republic of Croatia for the testimony of a witness or expert located in the requested State, for use in a proceeding for which mutual legal assistance is available. It further provides that unless modified by this article, the procedure for taking such testimony will follow the laws of the requested State. Article 3(2) provides that the requesting State will bear the cost of establishing and operating the video transmission, unless otherwise agreed, and that other costs will be assigned as agreed by the Parties. Article 3(3) allows for consultations between the Parties to resolve legal, technical, or logistical issues.

Article 3(4) provides that, without prejudice to jurisdiction under the laws of the requesting State, the making an intentionally false statement or other misconduct by the witness or expert in the course of the video testimony is punishable in the requested State in the same manner as if it occurred in the course of its domestic proceedings. This is already the case where the United States has been requested to facilitate the taking of video testimony from a witness or expert located in the United States on behalf of a foreign State, since the proceeding to execute the request is a U.S. proceeding and therefore penalties under U.S. law for perjury, obstruction of justice, or contempt of court are applicable. Article 3(5) notes that this Article is without prejudice to other available legal means for obtaining testimony in the requested State. Article 3(6) allows that the requested State may make video conferencing available for purposes other than those specified in Article 3(1), including for purposes of identification of persons or objects, and taking of investigative statements.

Article 4, taken from Article 7 of the U.S.-EU Mutual Legal Assistance Agreement, allows requests and related communications to be made by expedited means, with subsequent formal confirmation if required by the requested State. The requested State may also respond using expedited means.

Article 5, taken from Article 8 of the U.S.-EU Mutual Legal Assistance Agreement, regards assistance to administrative authorities. Article 5(1) provides that mutual legal assistance will be afforded to national administrative authorities investigating conduct pursuant to a specific administrative or regulatory authority and with a view to a criminal prosecution or referral for criminal prosecution or investigation. If the administrative authority anticipates that no prosecution or referral will take place, assistance is not available. It also allows for, but does not require, assistance to be afforded to other administrative authorities under similar circumstances Article 5(2) provides that requests for assistance under

this Article will be transmitted between the U.S. Department of Justice and the Ministry of Justice of the Republic of Croatia, unless otherwise agreed

Article 6, taken from Article 9 of the U.S.-EU Mutual Legal Assistance Agreement, regards limitations on use to protect personal and other data. Article 6(1) permits the requesting State to use evidence or information it has obtained from the requested State for its criminal investigations and proceedings, for preventing an immediate and serious threat to its public security, for non-criminal judicial or administrative proceedings directly related to its criminal investigations, for non-criminal judicial or administrative proceedings directly related to criminal investigation or proceedings or for which assistance was provided under Article 5, and for any other purpose if the information or evidence was made public within the framework of the proceedings for which it was transmitted or pursuant to the above permissible uses. Other uses of the evidence or information require the prior consent of the requested State.

Article 6(2)(a) specifies that the article does not preclude the requested State from imposing additional conditions where the particular request for assistance could not be granted in the absence of such conditions. Where such additional conditions are imposed, the requested State may require the requesting State to give information on the use made of the evidence or information. Article 6(2)(b) provides that generic restrictions with respect to the legal standards in the requesting State for processing personal data may not be imposed by the requested State as a condition under paragraph 2(a) to providing evidence or information. This provision is further elaborated upon in the explanatory note to the U.S.-EU Mutual Legal Assistance Agreement(regarding Article 9(2)(b) of that Agreement), which specifies that the fact that the requesting and requested States have different systems of protecting the privacy of data does not give rise to a ground for refusal of assistance and may not as such give rise to additional conditions under Article 6(2)(a). Such refusal of assistance could only arise in exceptional cases in which, upon balancing the important interests involved in the particular case, furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the "'essential interests" grounds for refusal contained in Article 8. Article 6(3) provides that where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek additional conditions in a particular case, it may consult with the requesting State to determine the extent to which the evidence or information can be protected.

Article 7, taken from Article 10 of the U.S.-EU Mutual Legal Assistance Agreement, requires the requested State, if asked, to use its best efforts to keep confidential a request and its contents, and to inform the requesting State if the request cannot be executed without breaching confidentiality.

Article 8, taken from Article 13 of the U.S.-EU Mutual Legal Assistance Agreement confirms that the U.S.-Croatia Mutual Legal Assistance Agreement's provisions do not preclude the assertion of a ground for refusal based on applicable, legal principles, such as sovereignty, security, ordre public or other essential interests, ex-

cept where such ground for refusal is precluded by Articles 1(5) (bank secrecy) and 6(2)(b) (generic restrictions relating to personal data) of the U.S.-Croatia Mutual Legal Assistance Agreement.

VIII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

(A) THE U.S.-CROATIA EXTRADITION AGREEMENT

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Agreement between the Government of the United States of America and the Government of the Republic of Croatia comprising the instrument as contemplated by Article 3(2) of the Agreement on Extradition between the United States of America and the European Union, signed June 25, 2003, as to the Application of the Treaty on Extradition signed on October 25, 1901 (the "U.S.-Croatia Extradition Agreement"), signed at Washington on December 10, 2019, (Treaty Doc. 116–2), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration: The U.S.-Croatia Extradition Agreement is self-executing.

(B) THE U.S.-CROATIA MUTUAL LEGAL ASSISTANCE AGREEMENT

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Agreement between the Government of the United States of America and the Government of the Republic of Croatia comprising the instrument as contemplated by Article 3(3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed at Washington on June 25, 2003 (the "U.S.-Croatia Mutual Legal Assistance Agreement"), signed at Washington on December 10, 2019, (Treaty Doc. 116–2), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration: The U.S.-Croatia Mutual Legal Assistance Agreement is self-executing.

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