


Maribor, 17 November 2011, Cross-border civil proceedings in the EU



## CROATIA ON THE WAY TO AN EUROPEAN CIVIL PROCEDURE LAW

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### General points: EU and Croatia



**Avis** : 20 April 2004

**Accession Negotiations** (2005-2011)

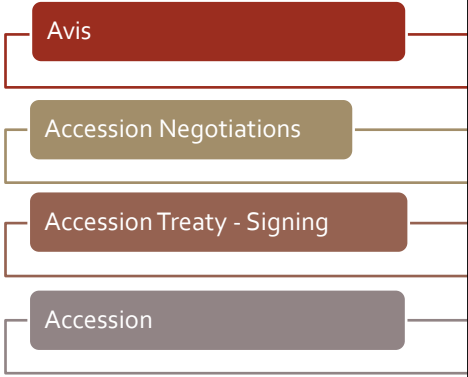
- ✓ 33+2 Chapters
- ✓ Closure: 30 June 2011
- ✓ Last closed: chapter 23 (Judiciary)

**Signing of the Accession Treaty**

- ✓ foreseeable: 9 December 2011

**Accession**

- ✓ foreseeable: 1 July 2013
- ✓ 28th member country of the EU



**Article 48 ECT (incorporated in 4th of Reform Treaty)**

Missions in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include:

- the system for cross-border service of judicial and extrajudicial documents,
- cooperation in the taking of evidence,
- recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases,
- by promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

... if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

**Judicial cooperation**

**Service of documents**

**Taking of evidence**

**Recognition and enforcement**

**Proper functioning of the EU market**

**Cross border implications**

**EUROPEAN PROCEDURAL LAW?**

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**Conflict of laws Jurisdiction**

**Promoting the compatibility of the rules on civil procedure**

**EUROPEAN PROCEDURAL LAW?**

## III Implementing EU Civil Procedural Law

### Harmonisation? Law or Procedure?

“As a rule, the law of civil procedure was and still is considered to be closely connected to the forum and the forum state with its own cultural and traditional specific aspects, and therefore not fit for harmonisation.”

Mirjam Freudenthal

*The Future of European Civil Procedure, 2003*

How to implement EU Law?

How to create EU Civil Procedure?

## III Methods of “harmonisation” in Croatia

- The European spell
  - ‘usklađivanje’ as a legislative panacea
  - shortcuts in political processes
  - urgent proceedings in the Parliament (Sabor)
  - only one ‘reading’
  - consultations in Brussels, rather than at home
- Quantitative approach
  - the more, the better
  - need to satisfy formal requirements, quality and substance less important
  - domestic legislation as a matter of foreign policy



## ||| Total makeover of [procedural] legislation



2008

**Legal aid**  
**Courts**  
**Lawyers**  
**Enforcement**  
**Litigation**  
**Anti-discrimination**

Redni broj	ZAKONODAVNE MJERE	SJEDNICE HRVATSKOGA SABORA I. KVARTAL
1.	Zakon o ostvarivanju prava na besplatnu pravnu pomoć	
2.	Zakon o izmjenama i dopunama Zakona o područjima i sjedištima sudova	
3.	Zakon o izmjenama i dopunama Zakona o odvjetništvu	
4.	Zakon o izmjenama i dopunama Zakona o pučkom pravobranitelju	
30.	Zakon o izmjenama i dopunama Zakona o sudovima	
31.	Zakon o izmjenama i dopunama Ovršnog zakona	
32.	Zakon o parničnom postupku	
33.	Zakon o vježbeništvu i pravosudnom ispitu	
73.	Zakon o suzbijanju diskriminacije	
95.	Zakon o općem upravnom postupku	
113.	Zakon o potvrđivanju Konvencije Vijeća Europe o kontaktima s djecom	
114.	Zakon o potvrđivanju Haške konvencije o nadležnosti, mjerodavnom pravu, priznanju, izvršenju i suradnji u vezi s roditeljskom odgovornošću i mjerama za zaštitu djece iz 1996.	

## ||| Total makeover of [procedural] legislation



2011

**Mediation**  
**Notaries**  
**Judges**  
**Evidence**  
**Jurisdiction**

Redni broj	ZAKONODAVNE MJERE	SJEDNICE HRVATSKOGA SABORA I. KVARTAL
1.	Zakon o izmjenama i dopunama Zakona o zaštiti tržišnog natjecanja	
2.	Zakon o izmjenama Zakona o elektroničkoj trgovini	
12.	Zakon o izmjenama i dopunama Zakona o izrečju	
24.	Zakon o izmjenama i dopunama Zakona o sudovima	
25.	Zakon o izmjenama i dopunama Zakona o Državnom sudbenom vijeću	
26.	Zakon o izmjenama i dopunama Zakona o Državnom odvjetništvu	
27.	Zakon o izmjenama i dopunama Zakona o vježbeništvu u pravosudnim tijelima i pravosudnom ispitu	
28.	Zakon o izmjenama i dopunama Zakona o odvjetništvu	
29.	Zakon o upravnim sporovima	
30.	Zakon o potvrđivanju Konvencije o izvođenju dokaza u građanskim ili trgovačkim predmetima	
31.	Zakon o izmjenama i dopunama Kaznenog zakona	
34.	Zakon o izmjenama i dopunama Zakona o javnom tužiteljstvu	
36.	Zakon o potvrđivanju Haške konvencije o nadležnosti, mjerodavnom pravu, priznanju, izvršenju i suradnji na području roditeljske odgovornosti i mjerama za zaštitu djece	

## Methodology: some examples

Coming into effect

Typical formula:

\* *"parts xyz will come into effect on the day of Croatian entry into EU"* \*

Innovative new approach:

\* *"provisions on audio recording will become effective when the Minister of Justice so declares, based on the finding of the court president that the conditions for recording are ripe in a particular court"*.

### Code of Civil Procedure

- Amendments 2008:
  - Part IV: European civil proceedings ("*Europski parnični postupci*")
    - service of process (507.a...)
    - evidence (507.d...)
    - payment orders (507.i...)
    - small claims (507.o...)
- Amendments 2011:
  - audio recording of the court hearings (126.a-126.c)
  - collective redress (associational claims)
  - successive remittals



**EVALUATION**  
Croatia & EU civil procedure

## How important is the EU law of civil procedure for national procedural law?

### PRACTICAL USE

- “The proof of the pudding is in the eating”
  - Is the pudding eaten? (*S. Kramer*)
  - modest use of the EOP, EEO etc. in the advanced European jurisdictions

### LAW, DOCTRINE, INTEGRATION

- Europeanisation of civil procedure?
  - little common grounds
  - still – strict language requirements
  - many national peculiarities
- Achievements
  - attention paid to civil procedure
  - rise of comparative legal research
  - progress at the legislative level
  - collection of information, accessibility, Judicial Atlas



## Croatian situation in civil procedure: What can/would (not) be learned from European law?

### Legislative implementation of the rules of ECP

- artificial inserts into individual acts
- not taken seriously at the moment
- emerging double standards, odd rules
- problematic practical relevance
- opting for the most conservative national(ist) approach (language, methods of communication etc.)

The role: ticket for joining the EU

### The hope: spillover effect, creeping harmonisation

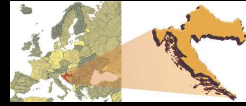
- exposure to international environment, window to (some) new concepts
- duty to inform and report
- tensions between parochial rules and certain practices of European procedure
- eye-opening encounters with approaches that may question local procedural prejudices
- potential to embrace new approaches:

**Small claims:**  
definitions,  
procedural style,  
lacking appeal,  
direct  
enforceability

**Payment orders:**  
modern types,  
use of the IT,  
automated systems  
use of forms  
direct  
communication

Yet - effective harmonisation of civil procedure in Europe may be found elsewhere:

- ❖ right to a fair trial and ECtHR case law;
- ❖ international efforts to secure rule of law and effectiveness of legal protection;
- ❖ collection of comparative data on functioning and efficiency of justice systems;
- ❖ comparative research, legal transplants;
- ❖ competition among legal systems;
- ❖ practice of international arbitration and international tribunals.



**Thank you!**

