



Department of Justice

STATEMENT OF
VAUGHN A. ARY
DIRECTOR
OFFICE OF INTERNATIONAL AFFAIRS
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

AT A HEARING CONCERNING
TREATIES

PRESENTED

APRIL 6, 2022

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Mr. Chairman and members of the Committee, I am pleased to appear before you today to present the views of the Department of Justice on the extradition and mutual legal assistance treaties between the United States and the Republic of Croatia. These treaties directly advance the interests of the United States in fighting terrorism and transnational crime and were negotiated jointly by the Departments of State and Justice. Accordingly, the Department of Justice joins the Department of State in urging the Committee to report favorably to the Senate and recommend its advice and consent to ratification of these treaties.

The Departments of Justice and State have prepared and submitted to the Committee detailed analyses of these treaties in the Letter of Submittal. The Department of State has elaborated further on the provisions of the treaties that improve upon the existing extradition treaty framework currently in force between the United States and Croatia. I will address why the treaties are important for U.S. authorities engaged in the investigation and prosecution of terrorism and other serious crime.

The U.S.-Croatia Extradition Agreement

The United States and Croatia currently operate under the 1901 extradition treaty between the United States and the Kingdom of Serbia (the 1901 treaty). Croatia is a successor state to that antiquated treaty. This treaty does not adequately meet the law enforcement challenges that we face in the 21st century. For example, the 1901 treaty applies a “list” approach to offenses for which extradition may be granted, with the list having been established more than a century ago.

In 2003, the United States and the European Union (EU) signed the U.S./EU Extradition Agreement and the U.S./EU Mutual Legal Assistance Agreement. These agreements were designed to modernize and streamline the extradition and mutual legal assistance relationship between the United States and individual EU Member States. The Senate gave advice and consent to ratification of those agreements in 2008 and they entered into force in 2010. The United States and the Member States of the EU have updated their extradition and mutual legal assistance relationships to reflect the obligations undertaken between the United States and the European Union. Croatia joined the European Union in 2013 and is the only EU Member State with which the United States has not yet implemented the modern provisions of the U.S./EU Extradition and Mutual Legal Assistance Agreements. The treaties with Croatia now before this Committee accomplish that goal. The new extradition treaty with Croatia replaces a number of provisions in the 1901 treaty to expand the scope of offenses, streamline procedures and facilitate broader cooperation in extradition matters.

The new extradition treaty with Croatia replaces the old list of extraditable offenses with a modern “dual criminality” approach that expands the scope of criminal conduct that will be subject to extradition. This dual criminality approach makes subject to extradition conduct that is punishable under the laws of both countries by deprivation of liberty by more than one year or for a more severe penalty. Application of the dual criminality standard will now bring within the scope of offenses covered by the new extradition treaty conduct constituting terrorism, cybercrime, child pornography, money laundering and other offenses. This expanded reach is critical to effective law enforcement in 2022 and beyond. Moreover, this improvement will ensure that, in the future, extradition will be possible with respect to the broadest possible range of serious offenses, without the need to update treaties repeatedly as new forms of conduct are criminalized.

Other aspects of the new extradition treaty will facilitate the ability of the United States to prosecute offenders effectively. These include the new provisions on requests from more than one state, temporary surrender, and simplified extradition. These modern provisions will expand the reach of the United States to extradite and prosecute offenders in a timely fashion. The provision regarding requests from more than one state will allow the treaty partners to apply fair criteria when deciding to surrender a person sought in extradition by more than one country. This provision, originally negotiated with the EU in the U.S./EU Extradition Agreement, was intended to position the United States on equal footing with EU Member States that may be using the EU Arrest Warrant as the mechanism for extradition among EU countries. In a world where transnational crime is prevalent and multiple countries may target the same actors, this provision is intended to ensure that the United States is not

adversely impacted when competing for the extradition of the same person. Similarly, the temporary transfer provision of the new treaty would allow for the transfer for prosecution of a person who is also being proceeded against, or is serving a sentence, in Croatia. This modern mechanism allows for an expeditious resolution of criminal charges before significant delays cause either prejudice to defendants, or prosecution evidence to become stale. The simplified extradition provision allows for persons sought in extradition to consent to their surrender and transfer to the requesting country as expeditiously as possible. This is another way that the new treaty will facilitate the prosecution of offenders.

Finally, the new treaty imports from the U.S./EU Extradition Agreement other provisions intended to make the extradition process work more expeditiously. As my State Department colleague has noted, these include provisions on the authentication and transmission of extradition documents and provisional arrest requests, providing supplemental information, the submission of sensitive information and the transit of persons in custody. All of these provisions will improve the everyday handling of extradition request between the United States and Croatia.

As noted previously, because these provisions in the new extradition treaty with Croatia originate in the U.S./EU Extradition Agreement, they are not novel for the United States. In fact, such provisions are already found in our extradition treaties with other EU Member States. Moreover, those provisions from the 1901 extradition treaty with Croatia that are left undisturbed in this new treaty already are in force and simply maintain the status quo. We expect that the inclusion of the U.S./EU provisions in the new extradition treaty with

Croatia will yield the intended benefits that we have already experienced with other EU countries.

The U.S.-Croatia Mutual Legal Assistance Agreement

Although the United States and Croatia are not parties to a mutual legal assistance treaty (MLAT), they do have an active and cooperative relationship in the area of mutual legal assistance in criminal matters. The Department of Justice believes that the MLAT with Croatia will further strengthen that relationship.

Like the extradition treaty, the MLAT with Croatia has its origin in the U.S./EU Mutual Legal Assistance Agreement. Unlike the extradition treaty, however, the MLAT with Croatia does not revise a previous text. Rather, the MLAT with Croatia applies only the provisions of the U.S./EU Mutual Legal Assistance Agreement. In this regard, the Croatian treaty is not unique. The United States concluded similar MLATs with several other EU Member States, specifically, Bulgaria, Denmark, Finland, Malta, Portugal, the Slovak Republic, and Slovenia.

The MLAT with Croatia will augment the tools available to U.S. authorities investigating and prosecuting modern crime. The MLAT with Croatia authorizes the identification of bank information, including accounts and transactions, relating to persons suspected of or charged with a criminal offense; the formation of joint investigative teams; the use of video conferencing technology to take testimony; the expedited transmission of requests for assistance; and assistance to administrative authorities conducting investigations with a view to criminal prosecution or referral of the conduct to criminal investigation or prosecuting authorities. All of these provisions will facilitate criminal investigations and prosecutions. In addition, the MLAT contains provisions on limitations on use to protect personal and other data, protecting

confidentiality, and grounds for refusal of assistance. Among all of these, the provision on the grounds for refusal is the only one that does not originate with the U.S./EU Mutual Legal Assistance Agreement. This provision is critical to permit the requested state to decline to assist in appropriate circumstances. The provision adopted in the Croatian MLAT includes an essential interest denial, a standard basis for denial in all the MLATs of the United States. In this way, too, the MLAT with Croatia comports with existing U.S. legal requirements and practice.

Conclusion

The Department of Justice appreciates the Committee's support in our efforts to strengthen the network of treaties that assist us in combatting crime. The modern provisions in these new treaties with Croatia will allow us to advance the protection of our citizens and hold accountable those who commit crime. Accordingly, we join the State Department in urging the prompt and favorable consideration of these law enforcement treaties.