

# Recommendations for Increasing the Efficiency of the Court Register

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American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

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# Introduction

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In Croatian legislation, the court register is defined as a public book containing data and documents on entities which must be entered in the register by law<sup>1</sup>. More broadly, the court register system is a complex information system that connects all commercial courts through a broadband telecommunications connection<sup>2</sup>.

This means that the court register system is directly linked to:

- the central PIN (Personal Identification Number) system,
- the Financial Agency register of annual financial statements,
- the Official Gazette of the Republic of Croatia,
- the e-Tvrtka system,
- the eSpis system and
- the free legal aid system.

In Croatian legislation, the court register is primarily governed by a separate law: the Court Register Act<sup>3</sup> and numerous other regulations and by-laws.

Since its adoption in 1995, the Court Register Act has been amended nine times. With these amendments, solutions have been incorporated into the act where entry into the register has been harmonized with the *Acquis Communautaire* and with other laws passed or amended after its adoption.

Adaptation to the *Acquis Communautaire* was used to introduce decisions to the Act to improve the register system and create conditions for electronic communication between the court register and other information systems. A legal framework was created for filing electronic applications, for online establishment of limited liability companies through the e-Tvrtka system, and for the public disclosure of data on financial documents.

Although the above mentioned are positive improvements, the experience of business community representatives points to a number of elements in the operations of the court register that, to this day, do not function optimally in terms of speed and efficiency. Therefore, with this position paper, AmCham seeks to address these issues and provide specific suggestions for improving the efficiency of the court register.

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<sup>1</sup> <https://pravosudje.gov.hr/pravosudni-sustav-11207/ministarstvo-pravosudja-11355/informacijski-sustavi-u-pravosudnim-tjelima/sudski-registar/11714>

<sup>2</sup> <https://pravosudje.gov.hr/pravosudni-sustav-11207/ministarstvo-pravosudja-11355/informacijski-sustavi-u-pravosudnim-tjelima/sudski-registar/11714>

<sup>3</sup> Official Gazette, *Court Register Act* (OG 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15). Zagreb: Official Gazette. Available at: <https://www.zakon.hr/z/271/Zakon-o-sudskom-registru>

# The Court Register Act

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Since its adoption in 1995, the Court Register Act has undergone a series of amendments. Amendments in 2013, 2014, and 2015 have made significant legislative interventions that should contribute to the further improvement of the court register system and to further speed up the entry process. Due to the complexity of the matter regulated by new legislation, its full application must be ensured.

Amendments to the Act of 2013<sup>4</sup>, aligned with the relevant EU directives and in line with the practice of the Central European legal circle, the authorization to make decisions independently in simple register cases has been transferred to court counselors and authorized register officers. Nonetheless, register judges are still authorized to deal with complex register cases. In addition, register judges are authorized to resolve appeals against decisions of court counselors and authorized officers. The second-instance court decides on appeals against registry judge decisions. Furthermore, the possibility of the general referencing of a group of activities was made available in order to ensure the visibility of the activities performed by subjects of registration and to simplify the registration of activities prescribed by law. New decisions also stipulate that entry into the register is carried out electronically without the need for a decision.

With the 2014 Act on Amendments to the Court Register Act<sup>5</sup>, Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC<sup>6</sup> was transposed into Croatian legislation, by which the Republic of Croatia has effectively undertaken the obligation to further improve the register system in terms of cross-border linkage with other registers through the European central register system. Other amendments that should be mentioned include the organization of the relationship between the Court Register Act and the Companies Act regarding the publication of entries and the moment when entries are deemed to have been made.

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<sup>4</sup> Official Gazette, *Act on Amendments to the Court Register Act*, (OG 148/2013). Zagreb: Official Gazette. Available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_148\\_3145.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_148_3145.html)

<sup>5</sup> Official Gazette, *Act on Amendments to the Court Register Act* (OG 93/2014). Zagreb: Official Gazette. Available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2014\\_07\\_93\\_1878.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2014_07_93_1878.html)

<sup>6</sup> The Official Journal of the European Union, *Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC in regard to the interconnection of central, commercial and companies registers*. Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32012L0017>

Finally, the amendments to the Act of 2015<sup>7</sup> resulted in a reduction of the liquidation cost for j.d.o.o. and d.o.o. (simple limited liability companies and limited liability companies), as well as other entries in the court register. These amendments stipulate that data on register entry and data on subject termination, upon the validity of the decision on entry, are published without delay on the website on which the register is located and public access to registered data on natural persons in the register is introduced according to their PINs. This makes visible the following: the list of entry subjects, period, the capacity of the persons entered into the register, and the data on these persons that has been deleted.

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<sup>7</sup> Official Gazette, *Act on Amendments to the Court Register Act* (OG 110/2015). Zagreb: Official Gazette. Available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/full/2015\\_10\\_110\\_2132.html](https://narodne-novine.nn.hr/clanci/sluzbeni/full/2015_10_110_2132.html)

Upon entry into force of the Ordinance on the manner of entry in the court register<sup>8</sup> in February 2012, electronic establishment of a limited liability company with monetary share capital was enabled through the e-Tvrtka service. A limited liability company can be established in any notary public or HITRO.HR<sup>9</sup> office in the Republic of Croatia.

For now, it is possible to set up a limited liability company and register a sole proprietorship at FINA HITRO.HR counters. The idea is that in the future, most of the obligations that the public now settles with the state administration should be taken over by FINA, which would enable time saving and make it quicker to obtain the necessary permits, statements, registrations, and the like.

Activities that can be carried out in cooperation with HITRO.HR offices when establishing a limited liability company are as follows:

- check whether there is a company with the same or a similar name,
- complete an application (certified by a notary public),
- send a request to a competent commercial court electronically (e-Tvrtka) or hand over paper documents if the conditions for electronic submission are not met,
- collect the Decision on Founding and the Certificate of PIN of a newly established company from a HITRO.HR office, if the documentation sent electronically is correct and complete,
- download the RPS form required for obtaining the Notification of Classification of a Business Entity in accordance with the National Classification of Activities of the Central Bureau of Statistics (allocation of the company number and the code for its main business activity),
- obtain information from the Croatian Bureau of Statistics electronically, within one business day, upon receiving the Founding Decision,
- collect the Decision on Entry in the Court Register and Notification of Classification of a Business Entity by National Classification of Activities with a registered company number,
- arrange stamp production at a HITRO.HR counter, if needed for business activities.

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<sup>8</sup> Official Gazette, Ordinance on the manner of entry in the court register (OG 22/2012). Zagreb: Official Gazette. Available at: [https://narodne-novine.nn.hr/clanci/sluzbeni/2012\\_02\\_22\\_591.html](https://narodne-novine.nn.hr/clanci/sluzbeni/2012_02_22_591.html)

<sup>9</sup> HITRO.HR is a service of the Government of the Republic of Croatia intended for quick communication between citizens and business entities and the state administration, <http://www.hitro.hr/Default.aspx>

# Problems and illogical situations in practice

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Although the court register system is regulated in detail, not only by legislation but also by by-laws, and although the obligations of public sector bodies and the deadlines in which those bodies have to fulfill their obligations are precisely prescribed, in practice there are often situations that are not in accordance with the said regulations.

Below we will demonstrate some of the situations and problems that business entities encounter when doing business with the court register.

## ***Complex registration and liquidation processes and failure to respect deadlines***

In order to establish a limited liability company (d.o.o.), first the company name must be reserved through the HITRO.HR service. The reservation of the name is done electronically, but in order to implement the company name reservation, it is necessary to go to HITRO.HR in person. From this, it is clear that despite its name, this is not an electronic service.

The legal deadline for name-checking is 3 days. A company name may only be in one of the EU languages or the Latin language and it is necessary to submit a scanned image of the cover of the dictionary of the language from which the word comes along with the definition of that word. A fee is payable for each reservation. However, in practice, a company name check often lasts for more than 7 days. Since situations in which a company name is denied are frequent and it is necessary to re-request a name check, it is clear that this step alone may take up to two weeks for a founder.

Once the company name has been approved, all necessary documentation is submitted to a notary public. The notary public sends the documentation to the court electronically. The legal deadline for delivery of the decision is 24 hours. The court issues a decision within the statutory deadline very rarely and situations in which the court refuses the entry proposition due to certain errors are frequent. For example, the court rejects the business activities of a company, although similar or identical activities are performed by other companies. If the court incorrectly enters the company data in its decision, it is necessary to submit a request for the correction of the decision. Most often, it is necessary to wait for the corrected decision for up to 10 business days.

In the next step after submitting the documentation for registration, it is necessary to fill out the RPS-1 form at the Croatian Bureau of Statistics, since it is not possible to open a bank account without a certificate from the Bureau.

It is clear from the aforementioned that the process of starting a company, although significantly improved over the last few years, is still complex.

The same can be said about the liquidation process which, despite recent improvements, still takes too long. For example, although the number of mandatory attempts to contact creditors has decreased from three to one, the liquidation process still lasts at least one year, while good practices of neighboring countries such as Slovenia and Serbia prove that this deadline can be shortened to six months.

In addition, procedures involving the court register (establishment and other procedures) often include documentation that does not contain the data that is actually used in the process and can often impose considerable administrative (in terms of the time needed to obtain them) and financial burdens. Also, although the deadlines for different segments of the procedure are clearly prescribed, in practice this is often very different. Finally, and perhaps most evidently, in the example of the electronic reservation of a company name, which is “electronic” only partly and still requires the party to visit a FINA office in person, there is still plenty of room for improvement in terms of the actual transition to electronic establishment of companies, which would save time both for the applicant and for document processing officers.

## ***Inconsistencies between the practices of court registers and officers***

### *Different practices of court registers*

Within the system of court registers, business entities often encounter inconsistent practices.

For example, when there are two applications for a change in data on a member of a company with active extracts of the companies submitted, one court register requires the delivery of a historical extract from the court register and a supplement to the application, while the other court register will act upon the active extract if it can establish the identity of a member of the company using that extract.

In addition to any application for a change in the court register, evidence of payment of court fees is also required. It is a common practice to file a copy of the document proving the payment of fees with the application. However, there is a



well-known case where the court register in Rijeka concluded that it is not sufficient to submit such a copy and that it is necessary to obtain a special certificate from the bank that the money was actually transferred to the state account, thus further extending the procedure.

### *Lack of consistency in procedure between officers within the same register*

Different interpretation of regulations occurs at the officer level as well. Officers within the same register often in practice put emphasis on the importance of different documents.

In the situation where only one company director's address is changed, the power of attorney for all the directors must be attached. If a company has three foreign directors, this means that it is required to obtain and notarize the power of attorney for each. In one example of an implementation of this type of change, we received information from the court register head that this is not necessary, that the court register retrieves the data from the PIN system and that it is sufficient to change the address with the Tax Administration and write a letter to the register in order to inform it thereof. However, the records department of that register did not want to receive the prepared letter, explaining that the address of a company member can be changed solely through regular application procedure. The requested (advisory) opinion of the judge in this case confirmed that the company member address must be changed through regular application procedure. In accordance with the aforementioned, three power of attorneys (notarized and apostilled) were obtained and an official application was filed with the court register. The entire procedure took about two weeks. However, on the date of the application submission it was noticed that the address of the director had already been changed. It turned out that, as part of another procedure in the register for the same company, the court automatically aligned the data from the register with data from the PIN system. The last submitted request was a letter for the withdrawal of the application. The lack of consistency in opinions and practices of officers within the same register resulted in a long and complicated procedure that could have been avoided from the beginning.

The lack of consistency in officers' practices is evident in other cases as well. In one procedure for the revocation of a company's director, the application stated "deleted" next to the data from the court register for the director in question, since there was a request to delete the data of that person. Based on the aforementioned, a decision was issued and confirmed by a judge. The same procedure was repeated in the same register for the revocation of a director for another company, but in this case the officer refused to draft a decision, stating that the application must also include the date on which the revoked director

ceased to be the director. The application was not returned for a correction, but a new application was required to be submitted, which also implied payment for a new signature notarization.

These examples illustrate only in part the lack of consistency of practices within the same court register.

### *Lack of consistency in the case of obvious errors*

Problems can also occur if the court application or other documents delivered to the court register have obvious typos. Due to the lack of consistency in practice, it is not certain whether applications would be carried out despite errors, whether a required supplement or correction to the application would be required, or whether it would be rejected.

In one example in practice, before submitting multiple court applications, the data of the director were first changed with the Tax Administration. The Tax Administration, by mistake, entered incorrect personal data about the director in the system by mistyping one letter. Despite the fact that the court applications contained accurate data, the court officers did not check which piece of information was accurate nor warned of the inconsistencies, but instead made decisions using the data from the Tax Administration system. As these data were incorrect, it was necessary first to request a change of data in the Tax Administration system and then request changes to the court registry decision, which again resulted in a considerable extension of the proceedings.

### *Complex and inconsistent data change procedure*

In order to change the data entered in the court register, it is necessary to go through a highly formalized and administratively extensive procedure of applying for changes. Intended changes are submitted to the court register using a standardized form and, together with the court application, it is necessary to submit documents proving that the change has already occurred. In practice, there are numerous problems in data modification.

For example, if the personal data of a company member or director are changed, a new director is appointed, or if the ownership structure of the company changes in any way, it is first necessary to make changes to the data in the Tax Administration. If foreigners are concerned, it is first necessary to authorize representatives with a separate power of attorney to take these actions. After the data is changed with the Tax Administration, it is necessary to file a court application with the court register. Along with the application, all required documents must be submitted:

- the power of attorney for all persons authorized to represent the company, certified by a notary public,
- an extract from the court register of a company member, with a certified translation,
- proof of payment of court fees,
- the decision on the appointment of a company director, with a certified translation,
- a statement on the acceptance of appointment of a management board member, with a certified translation,
- a record of the signature of a management board member, with a certified translation,
- a list of company members,
- a list of authorized representatives.

The speed of solving a particular case, given the inadequate consistency in procedure, depends to a large extent on the court officer who receives the case. For example, in the available example from practice, the request for a change of data on a company management board member was denied because the Statement of acceptance of the appointment of the person in question was dated earlier than the Appointment Decision itself, despite the fact that nowhere in the regulations does it state that this is a reason for rejection.

In the second example of the appointment of a company director, during the procedure it was established that a member of the company changed some data (registration number and address). As the proceedings were already initiated, an extract from the court register for a member of the company that had already been obtained was attached to the application. It was an active extract (therefore, it did not contain old data). The register assessed the situation as problematic because the company from the extract (with the changed address and registration number) and the company registered in the court register as a member of the company could not be linked. However, in the end, the decision was nevertheless made, as it was evident that the Tax Administration accepted the change of these data in the PIN system. This again points to inconsistency in procedure.

#### *Insufficiently clear and inconsistent business activity application process*

When applying and registering activities, there is no clear guidance on the expected format of the application, and often the application is rejected because of the terminology used does not comply with the expectations of a particular register, while experience has shown that the same terminology is acceptable with another register.

## ***Disconnect within the system in practice***

The cause of the problems related to the work of the court register is often a lack of aligned practices related to the implementation of changes which, due to the connection of the court register system with other systems, and especially the Tax Administration system, could be implemented automatically, as they often are in practice. Namely, the court register system usually does not register such changes automatically, but only through its own actions. An example is a change of the address at which a business entity is registered by the City of Zagreb decision, where the change of address of a business entity does not happen automatically, but in some cases requires a complex procedure of amending the statute.

At the same time, the change is sometimes carried out automatically, without providing any information to the party in advance, which causes a waste of resources (time, financial, and human) in order to submit unnecessary requests to the register by companies. Other difficulties may also arise from such proceedings. In our example, a change in the personal data of company directors for several companies was required, along with other changes. According to the typical procedure, personal data were first changed with the Tax Administration, and then the application for the change of personal data in the court register was submitted. Before the court officers managed to process applications, the court register system was updated with changes from the Tax Administration system which automatically changed the data. Seeing that changes to the court register system had already been carried out, some of the officers required modification of court applications to exclude the request for a change to the data of the director from the application, while others ignored that part of the application and carried out the remaining required changes, which once again testifies to the inconsistency of practices.

## ***Other problems related to court register procedures***

### ***Inadequate working hours with clients***

One of the frequent complaints of the business community about the work of the court register is the limited working hours with clients that often stands in the way of fast and efficient inquiry response and problem solving. For example, the Commercial Court in Zagreb and the Commercial Court in Zagreb – Permanent attendance in Karlovac receive clients only on Tuesdays and Thursdays in the period from 8 am to 12 pm and answer telephone calls between 1 and 2 pm.

### ***Deadlines for issuing special certificates/approvals that are too long***

A company that wants to use the words Hrvatska/Croatia and such, needs to obtain a permit issued by the Ministry of the Interior. Although this is quite understandable, the process of obtaining such approval usually takes too long.

## Recommendations for changes

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In view of all of the above, we can state that the procedure of founding a company, as well as other proceedings before the court register, may take several weeks and are administratively demanding. In order to speed up and facilitate interaction with the court register, we will provide suggestions for changes below.

### ***Improve the e-Tvrtka service and implement further digitization of the register***

As the first and most important step in accelerating and facilitating business activities with the court register, we propose to improve the e-Tvrtka service that should serve as a central platform or web application for communication and work with court registers. The prerequisites for digitization were created by the Government *Regulation on amendments to the Regulation on the determination of activities under Articles 4.a and 4.c of the Financial Agency Act of 2 August 2018*,<sup>10</sup> and the implementation of such a system should be actively pursued.

Enabling real “electronic” communication with the court register, where all documentation delivery and communication would take place electronically, would avoid unnecessary time spent on submitting documents to court registers, enabling immediate and simpler communication and the ability of all parties to act, and would speed up the administrative processing of requests.

### ***“Decentralize” the processing of cases received***

In addition, the system could be organized in such a way that all court registers in the Republic of Croatia process applications and that the burden on court registers is evenly distributed. This would speed up the procedure with the overloaded court registers and where applications are not immediately processed upon submission, but it is necessary to wait for the resolution of a large number of previously filed applications.

### ***Define the requirements for establishing a company more clearly***

When establishing a company, there are numerous obstacles preventing the fast and efficient implementation of establishment and registration, which can often be reduced to a common denominator of insufficiently transparent and clear procedures and criteria. Consequently, we consider it necessary to define more

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<sup>10</sup> OG 71/2018

clearly the relevant parameters or requirements in the registration process. This includes, among other things, the parameters for rejecting a company name – which would prevent an application (which is also an example from practice) for a company name to be rejected and then on the second attempt accepted in the same registry – and the company business activity registration parameters.

### ***Unify and improve the practices of court registers***

Clearer parameters and practice standardization would achieve faster results when communicating with the court register.

Consequently, we suggest that “minor” changes in the register, such as changes to personal information of company members or management board members, are executed automatically, following the change of data in the Tax Administration. The Tax Administration already automatically informs court registers of such changes, but practice is not standardized, and changes are sometimes automatically implemented and sometimes not. This would avoid the need to deliver the same information to two different addresses, which would automatically speed up the change process.

### ***Simplify procedures in cases where inaccuracies in the documentation are caused by obvious errors***

In the case of minor errors in the applications that are a result of evident spelling mistakes, it would be of benefit if such mistakes were to be resolved in a less formal way, i.e. by only inviting the applicant to make a statement on the correct data, e.g. via a simple letter. This would avoid delays in the procedure as the applicant would not have to seek physical return of the application, make a correction and re-submit, i.e. there would be no need to submit a new application because applications are often denied due to such minor omissions.

### ***Reduce additional administrative burden on businesses entities***

In order to further reduce the burden on businesses entities, consideration should be given to the possibility of further reducing the administrative burden. This may include, for example, in the process of application and other processes, omitting the documentation and/or certification that is not relevant in terms of content for the procedure in question. Specifically, we can propose the introduction of a relevant list at the Ministry of Economy, Entrepreneurship and Crafts, which would include countries from which, when delivering documentation, documents do not need to be verified with an apostille. This primarily applies to the United States of America, which is not a signatory of the Hague Convention on Abolishing the Requirement of Legalization for Foreign Public Documents.

### ***Make the role of notary public optional***

With the assumption of digitization or the introduction of a completely electronic registration process of new legal entities and the resulting simplification, it is necessary to redefine the role of the notary public in this process. We suggest that the role of notary public be made optional, i.e. that the notary public participates in the registration process only if a party explicitly requests it. In addition, we suggest that attorneys may have the same role in the registration process.

# Key advantages of implementing proposed amendments

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## ***Improving competitiveness***

According to the World Bank *Doing Business*<sup>11</sup> report for 2018, Croatia ranked 51st out of 190 countries whose socioeconomic climate was assessed in the report, and according to the same report for 2019, it ranked 58th. In this assessment, Croatia records one of the worst results in the *Starting a business category*. The ineffective and slow work of the courts and related public authority bodies is one of the biggest objections of the World Bank and creates an atmosphere of investor distrust in the efficient and rapid launch of their business.

Accelerating and maximizing efficiency in establishing companies and starting businesses would improve Croatia's competitiveness on the aforementioned list, particularly in the problematic *Starting a Business* category.

## ***Relieving the pressure on the courts***

The court register of the Commercial Court in Zagreb is heavily burdened, but this does not apply to court registers of other courts in Croatia. By introducing electronic business operations and more even allocation of cases to registers, the most burdened court registers in Croatia would be relieved of the pressure and their overall efficiency would increase.

## ***Restoring the confidence of the public in the judicial and legislative system***

Natural and legal persons are also involved in the work of court registers, whereby natural persons who try to profitably work and operate on the open market of Croatia and the European Union are often predominant. However, many people do not have the ability nor the means to hire professional help, and they do not have the expertise that would enable them to efficiently and quickly resolve register cases. By introducing electronic business with court registers and clear standards for managing register cases, the protection of rights would be brought to a noticeably higher level.

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<sup>11</sup> The International Bank for Reconstruction and Development/The World Bank (2018 and 2019), *Doing Business 2018* and *Doing Business 2019*. Available at: <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf>; [http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report\\_web-version.pdf](http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf)



This would increase the level of confidence of the public in the judicial and legislative systems, while at the same time minimizing the risk of unfounded long and costly management of such proceedings.

### ***Approaching the standards of implementation of the more developed European Union countries***

One of the most frequent criticisms from European Union institutions directed at Croatia refer to its justice system. Croatia is often compared to other countries of the European Union and has been invited for many years to reinforce its engagement in solving the problem of its slow and inefficient courts.

The report of the World Bank and data from the *European Justice* website used to draft this document clearly shows that the way court register cases are regulated in Croatia does not differ significantly from the models and principles that are applied in other Member States of the European Union. However, the implementation of those rules in practice is not satisfactory. Therefore, the recommendations of AmCham from this document are aimed primarily at practical improvements.

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