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WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**Phase 1 Evaluation of Croatia**

**Final Report**

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## A. IMPLEMENTATION OF THE CONVENTION

### Formal issues

1. On 9 October 2017, Croatia formally applied to the OECD Secretary-General to become a full participant in the OECD Working Group on Bribery in International Business Transactions (Working Group) and to accede to the [Convention on Combating Bribery of Foreign Public Officials in International Business Transactions \(Convention\)](#). Croatia joined the Working Group on 30 October 2023. It deposited its instrument of accession to the Convention with the OECD on 22 November 2023 and will become a Party to the Convention on 21 January 2024. Croatia also adhered to the 2021 [Revised Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions \(Anti-Bribery Recommendation\)](#).

### Convention and Croatian legal system

2. Depending on the nature and content of an international treaty, concluding a treaty is within the competence of the Croatian Parliament, the President of the Republic or the Government of the Republic of Croatia ([Constitution](#) Art. 132). Parliament must ratify treaties that (among other things) require the adoption of or amendments to laws; are of a political nature; or give rise to financial commitments (Constitution Art. 133). The Convention was ratified by Parliament via the Act on confirmation of the Convention on 27 October 2023 and published in the [Official Gazette](#) NN-MU 10/2023 on 7 November 2023. Once entered into force in Croatia, the Convention becomes “a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law” (Constitution Art. 134).

#### 1. Article 1: Offence of bribery of foreign public officials

3. Convention Art. 1 sets out the required elements of a foreign bribery offence. Additional guidance is in Convention Commentaries 3-19 and Anti-Bribery Recommendation Annex I.A.

4. Croatia’s Criminal Act (CA) Art. 294 criminalises active bribery. Arts. 294(1)-(2) establish separate offences covering bribery for an official (i) to act contrary to his/her responsibilities and (ii) to perform his/her responsibilities. Art. 294(3) extends these provisions to bribery of a “foreign public official”:

#### **Article 294 Giving a Bribe**

(1) Whoever offers, gives or promises a bribe intended to that or another person to an official or responsible person in order that he or she perform, within or beyond the limits of his or her authority, an official or other act which he or she should not perform, or fail to perform an official or other act which he or she should perform, or whoever intermediates in such an act of bribery of an official or responsible person shall be punished by imprisonment from one to eight years.

(2) Whoever offers, gives or promises a bribe intended to that or another person to an official or responsible person in order that he or she perform, within or beyond the limits of his or her authority, an official or other act which he or she should perform, or fail to perform an official or other act which he or she should not perform, or whoever

intermediates in such an act of bribery of an official or responsible person shall be punished by imprisonment from six months to five years.

(3) In cases of commission of a criminal offense referred to in paragraphs 1 or 2 of this Article, when a bribe is offered, given or promised to an official person, an official person shall also encompass a foreign public official. A foreign public official is an appointed or elected holder of a legislative, executive, administrative or judicial duty or office of the European Union or a foreign country, as well as a person exercising or who is expressly or actually entrusted with exercising a public function for the European Union or a foreign country, including for a legal person constituted under public law to carry out tasks in public interest or for a business entity over which a foreign country exercises a direct or indirect dominant influence, and an official of public international organization or any person authorized by such an organization to act in the name and on behalf of that organization. A foreign country includes all levels of government of that country or of an organized foreign area.

5. A separate provision, CA Art. 339, deals with bribery of legislators, including members of a legislative or representative body of a foreign country or public international organisation:

#### **Article 339 Bribery of Representatives**

(1) Whoever, as a member of the Croatian Parliament, European Parliament, legislative or representative body of a foreign country or public international organization or councilor of a representative body of a unit of local or regional self-government solicits or accepts a bribe or accepts an offer or a promise of a bribe for himself or herself or another in order to vote in a certain manner in the legislative or representative body, shall be punished by imprisonment from one to eight years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever offers, promises or gives a bribe intended to that or another person to a member of the Croatian Parliament, European Parliament, legislative or representative body of a foreign country or public international organization or councillor of a representative body of a unit of local or regional self-government so that the latter would vote in a certain manner in the legislative or representative body or whoever intermediates in such an act of bribery.

(3) A foreign country referred to in paragraphs 1 and 2 of this Article includes all levels of government of that country or of an organized foreign area.

### **1.1 The elements of the offence**

#### **1.1.1. Any person**

6. Convention Art. 1(1) requires a foreign bribery offence to apply to “any person”. The offence in CA Art. 294 applies to “whoever” commits bribery.

#### **1.1.2. Intentionally**

7. Convention Art. 1(1) covers foreign bribery committed “intentionally”. Crimes, including the foreign bribery offence in CA Art. 294, may be committed with direct or indirect intent (CA Art. 28). An individual has direct intent when he/she is aware of the material elements of the criminal offence, and wants or is sure of the elements’ realisation. Indirect intent exists when an individual is aware that he/she is capable of realising the material elements of the offence, and accedes to their realisation. Croatia states that under indirect intent (or “*dolus eventualis*”), the perpetrator’s acceptance of the criminal offence can take different forms, such as “reconciliation with the consequences” and “not opposing to the consequences”. In that

regard, it could be similar to recklessness. However, the notions of “recklessness” or “wilful blindness” do not exist in the Croatian legal system.

### 1.1.3. To offer, promise or give

8. CA Art. 294 mirrors Convention Art. 1(1) by covering someone who “offers, promises or gives” a bribe. Croatia states that an offer occurs when an individual indicates a readiness to provide a bribe. A promise results when an individual commits to giving or agrees to provide a bribe at any moment. Giving is the transfer of a bribe. Croatia further explains that the offence is complete when the perpetrator undertakes any of these alternative actions.

### 1.1.4. Any undue pecuniary or other advantage

9. Convention Art. 1(1) requires the foreign bribery offence to cover the giving, etc. of “any undue pecuniary or other advantage”. CA Art. 87(24) defines a bribe as “any undue reward, gift or other property or non-property benefit, regardless of value”. “Property” covers “property of any kind, regardless of whether it is tangible or intangible, movable or immovable, or legal documents or instruments proving the right to or interest in such property” (CA Art. 87(23)). Both pecuniary and non-pecuniary bribes are therefore covered. Croatia adds that the term “undue” refers to “something that the recipient is not lawfully entitled to accept or receive irrespective of the value.

### 1.1.5. Directly or through intermediaries

10. Convention Art. 1(1) requires the foreign bribery offence to cover the giving, etc. of a bribe to a foreign public official, “whether directly or through intermediaries”. CA Art. 294 applies to “whoever offers, gives or promises a bribe” without specifying expressly whether the briber performs this act him/herself directly or indirectly via an intermediary. The provision explicitly provides for the liability of an intermediary by stating that “whoever mediates in such bribery” is subject to the same punishment. Furthermore, CA Art. 36 provides that liability as co-perpetrators arises if several persons commit an offence based on a joint decision, and each participates or significantly contributes to the commission of the offence. These provisions suggest that bribery committed both directly and through intermediaries is covered, despite the fact that CA Art. 294 does not state this explicitly.

11. CA Art. 36(1) also provides that a person who commits an offence “through another person” shall be liable as a principal. Croatia, however, explains that this provision only covers situations in which the person is “a bare tool in the hands of the main, indirect perpetrator who actually exercises the authority over the offence”. This would apply, for example, if the main perpetrator uses another person by applying force towards him/her, uses a child who is not criminally liable, or uses the mistake of another person. In Croatia’s Phase 2 evaluation, the Working Group will examine case law examples of bribery through an intermediary and will analyse whether the existing provisions are sufficient to cover foreign bribery committed through intermediaries.

### 1.1.6. To a foreign public official

12. Convention Art. 1(4)(a) defines a “foreign public official”:

Article 1(4)(a) “foreign public official” means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation.

13. CA Art. 294(3) defines a “foreign public official” for the foreign bribery offence:

(3) [...] A foreign public official is an appointed or elected holder of a legislative, executive, administrative or judicial duty or office of the European Union or a foreign country, as well as a person exercising or who is expressly or actually entrusted with

exercising a public function for the European Union or a foreign country, including for a legal person constituted under public law to carry out tasks in public interest or for a business entity over which a foreign country exercises a direct or indirect dominant influence, and an official of public international organization or any person authorized by such an organization to act in the name and on behalf of that organization. A foreign country includes all levels of government of that country or of an organized foreign area.

(1) Holders of legislative, administrative, or judicial office

14. Croatia's definition of "foreign public official" in CA Art. 294(3) covers "an appointed or elected holder of a legislative, executive, administrative or judicial duty or office of the European Union or a foreign country". In addition, as mentioned above (see para. 5), CA Art. 339 establishes a separate offence of "bribery of representatives", which include "members of a legislative or representative body of a foreign country or public international organization". Croatia explains that the criminal offence in CA Art. 339 covers actions which cannot be subsumed under CA Art. 294 because a representative's act of voting is not an "official act" under the latter offence.

(2) Persons exercising a public function and employees of foreign state-owned or state-controlled enterprises

15. Convention Art. 1(4) requires the definition of a foreign public official to include "any person exercising a public function for a foreign country, including for a public agency or public enterprise". A "public function" includes any activity in the public interest, delegated by a foreign country, such as the performance of a task delegated by it in connection with public procurement." (Convention Commentary 12). A "public enterprise" is "any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence" (Commentary 14). A "public enterprise" is essentially a state-owned or controlled enterprise (SOE).

16. Croatia's definition of "foreign public official" in CA Art. 294(3) includes "a person exercising or who is expressly or actually entrusted with exercising a public function for the European Union or a foreign country, including for a legal person constituted under public law to carry out tasks in public interest or for a business entity over which a foreign country exercises a direct or indirect dominant influence". This open definition means that the provision could potentially cover a person entrusted with exercising a public function in another type of entity (e.g. a private law entity entrusted with a function in the public interest).

(3) Officials and agents of a public international organisation

17. Convention Art. 1(4)(a) states that a "foreign public official" includes "any official or agent of a public international organisation". A "public international organisation" includes "any international organisation formed by states, governments, or other public international organisations, whatever the form of organisation and scope of competence, including, for example, a regional economic integration organisation such as the European Communities" (Commentary 17).

18. Croatia's definition of "foreign public official" in CA Art. 294(3) also covers "an official of public international organization or any person authorized by such an organization to act in the name and on behalf of that organization".

(4) Meaning of a "foreign country"

19. Convention Art. 1(1) prohibits the bribery of officials of "a foreign country". The term includes "all levels and subdivisions of government, from national to local" (Art. 1(4)(b)). The concept "is not limited to states, but includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory" (Commentary 18). Croatia's CA Arts. 294(3) and 339(3) provide that a "foreign country includes all levels of government of that country or of an organised foreign area".

(5) Autonomous definition of a foreign public official

20. Commentary 3 of the Convention states that the definition of a “foreign public official” must be “autonomous”. Proof of the law of the country of the foreign public official should not be required. Croatia states that the definition of a foreign official in CA Art. 294(3) meets this requirement. According to Croatia, this definition is functional: it is sufficient that the person concerned exercise one of the functions listed in CA Art. 294(3). Supporting case law or jurisprudence is not provided.

**1.1.7. For that official or a third party**

21. Convention Art. 1(1) requires the coverage of bribes paid to an official “or for a third party”. CA Art. 294 and Art. 339 cover bribes intended for an official “or another person”.

**1.1.8. Act or refrain from acting in relation to the performance of official duties**

22. Convention Art. 1(1) covers bribery “in order that the official act or refrain from acting in relation to the performance of official duties”. CA Art. 294(1) covers bribery in order that an official act or omit to act when he/she should not. Art. 294(2) covers bribery to induce an official to act or omit to act when he/she should. In either case, it is an offence regardless of whether the official’s acts or omissions are “within or beyond the limits of his or her authority”. Art. 339(2) covers bribery of a representative “so that the latter would vote in a certain manner in the legislative or representative body”.

**1.1.9. To obtain or retain business or other improper advantage in the conduct of international business**

23. Convention Art. 1(1) prohibits the bribery of a foreign public official “to obtain or retain business or other improper advantage in the conduct of international business”. CA Art. 294 does not have a similar limitation. The offence is thus broader than Convention Art. 1(1).

**1.2 Complicity, attempt, and conspiracy**

24. Convention Art. 1(2) states that “each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence”.

25. The general part of the Criminal Act addresses complicity. Liability as co-perpetrators arises if several persons commit an offence based on a joint decision, and each participates or significantly contributes to the offence’s commission (CA Art. 36, see para. 10). Croatia states that CC Art. 36 “also covers authorisation to commit an offence. Based on the theory of authority over the offence, the perpetrator of the criminal offence is a person who, according to the meaning of his/her contribution, controls the course of the criminal act.” Under CA Art. 37(1), a person who intentionally incites another to commit an offence is punishable as a perpetrator. A person who intentionally assists another to commit an offence is liable under CA Art. 38 but may be punished “more leniently” than the perpetrator.

26. Convention Art. 1(2) states that “attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a [domestic] public official.” In Croatia, the crimes of attempt and conspiracy apply equally to foreign and domestic bribery (CA Arts. 34 and 327).

**1.3 Defences**

27. CA Art. 294(4) sets out “effective regret” to foreign (and domestic) bribery.

(4) The perpetrator of the criminal offence referred to in paragraph 1 or 2 of this Article who gives a bribe at the request of an official or responsible person and reports the offence before it is discovered or before he or she finds out that the offence has been discovered may have his or her punishment remitted.

28. Crucially, the provision is discretionary. A briber who pays a bribe in response to the official's request "may be released from punishment". He/she must report the crime before its discovery by law enforcement, or before learning of its discovery by the authorities (i.e., the person is not aware that the crime is already known to the authorities). The offender escapes punishment but is nevertheless prosecuted and convicted. The verdict, including the decision on the exemption from punishment, is registered in the convict's criminal record (see Act on Legal Consequences of Conviction, Criminal Records and Rehabilitation, Art. 6(b)). Confiscation shall be imposed when applicable (CA Arts. 5 and 77-78; see para. 60). The briber may also receive more lenient sanctions in lieu of a full release from punishment (CA Art. 50(2)). Croatia states that, in applying these provisions, the court considers the circumstances and impact of the offence, and the offender's personal circumstances.

29. Croatia states that its foreign bribery offence prohibits "small facilitation payments". CA Art. 87(24) defines a bribe as any undue reward, gift or benefit "regardless of value". This overrides a defence of an "insignificant crime" in CA Art. 33. In its Phase 2 evaluation, the Working Group will examine case-law examples involving small bribes.

30. Convention Commentary 7 states that foreign bribery is an offence irrespective of, *inter alia*, the alleged necessity of the payment to obtain or retain business. Croatia's defence of necessity does not apply to foreign bribery. It is limited to situations where the commission of an offence is necessary to "repel a simultaneous or imminent unlawful attack from oneself or another" (CA Art. 21(2)).

## 2. Article 2: Responsibility of legal persons

31. Convention Art. 2 requires each Party to "take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official". Additional guidance is in Convention Commentary 20 and Anti-Bribery Recommendation Annex I.B and I.C.

32. In Croatia, corporate liability for criminal offences is set out in the Act on the Responsibility of Legal Persons for Criminal Offences (Corporate Liability Law, CLL). The CLL provides for criminal responsibility of legal entities for any criminal offence – including foreign bribery – under Croatian law (CLL Art. 3(3)).

### 2.1 Legal entities subject to liability

33. The CLL applies to any entity that possesses legal personality under Croatian law. Croatia explains that the rules defining which entities have legal personality are in separate laws, such as the Companies Act, Act on Political Parties, Associations Act, and Institutions Act. The CLL also expressly covers foreign entities that are considered as legal persons under Croatian law (CLL Art. 1(2)). A foreign entity is a legal person "which is validly incorporated under the law of the country in which it has its registered office" outside Croatia (Companies Act Art. 611). Croatia explains that the CLL shall apply to any foreign entity that has the status of legal person according to Croatian law, regardless of whether this entity has legal personality in the foreign country. The CLL does not apply to the Republic of Croatia, and units of local and regional self-government when acting in the exercise of their public authority (CLL Art. 6). It covers state-owned and/or controlled enterprises, according to Croatia.

### 2.2 Standard of liability

34. The conditions for triggering the criminal liability of legal entities are set out in CLL Art. 3.

#### **Article 3 The basis of liability of legal persons**

(1) A legal person shall be punished for the criminal offence of a responsible person if it violates a duty of a legal person or with which the legal person has achieved or should have achieved an advantage for itself or another.

(2) Under the conditions referred to in paragraph 1 of this Article, a legal person shall be punished for the criminal offence of a responsible person entrusted with the

performance of activities in the field of activity of a legal person, also where the commission of the criminal offence was made possible by the lack of supervision or control by a responsible person who manages the affairs of a legal person.

(3) Under the conditions referred to in paragraphs 1 and 2 of this Article, a legal person shall be punished for criminal offences prescribed by the Criminal Act and other laws in which criminal offences are prescribed.

### 2.2.1. Level of authority of the natural person perpetrator

35. Anti-Bribery Recommendation Annex I.B.3 requires systems for corporate liability to take one of the following approaches:

a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or

b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered:

- A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official;
- A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and
- A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.

36. In Croatia, corporate liability is triggered by the criminal offence of “a responsible person” of the legal person (CLL Art. 3(1)-(2)). A “responsible person” is “a natural person who manages the affairs of a legal person or is at any level entrusted with the performance of activities in the field of activity of a legal person” (CLL Art. 4).

37. Foreign bribery committed by a senior corporate officer thus results in corporate liability under the CLL. The definition of a “responsible person” covers an individual “who manages the affairs of a legal person”, which corresponds to a person with the highest-level managerial authority within the meaning of the Anti-Bribery Recommendation. A senior corporate officer who bribes a foreign official commits the foreign bribery offence under CA Art. 294. A senior corporate officer who authorises or directs a lower-level person to bribe a foreign official is guilty of complicity or incitement under CA Art. 36 or 37 (see para. 25). Both cases trigger corporate liability under CLL Art. 3.

38. The CLL also provides for corporate liability for a lower-level person within the entity committing foreign bribery. The definition of “responsible person” includes an individual who is “at any level” entrusted with the performance of the legal entity’s activities. In addition, senior management’s failure to prevent an offence appears to be covered as well. Under CLL Art. 3(2), “a legal person shall be punished for the criminal offence of a responsible person [...] also where the commission of the criminal offence was made possible by the lack of supervision or control by a responsible person who manages the affairs of a legal person”. Croatia states that liability for lack of supervision can also be established in case of failure to implement adequate internal controls, ethics and compliance programmes or measures. The Working Group will analyse the application of this provision as case law and practice develop.

### 2.2.2. Conditions for attributing liability to the legal person

39. A legal person can be held liable for a criminal offence committed by a responsible person if (i) the offence “violates a duty of a legal person” or (ii) “the legal person has achieved or should have achieved an advantage for itself or another” with such offence (CLL Art. 3(1)). Croatia states that these two conditions are not cumulative, i.e. liability results if only one of these is proven.

40. Bribery would generally not lead to liability under the first branch of Art. 3(1), i.e. as a violation of a “duty of the legal person”. Croatia states that “duties” are linked to the purpose for creating the legal person and are explicitly stated in the legal person’s foundational constitutive documents. Croatia further explains that such “duties” can also be stipulated by other private agreements, such as internal rules and regulations enacted in accordance with the legal person’s foundational documents. Not all criminal offences would therefore result in the breach of a “duty of the legal person”.

41. Bribery could, however, trigger liability based on the second condition in CLL Art. 3(1), i.e. if “the legal person has achieved or should have achieved an advantage for itself or another”. This formulation appears to include any criminal offence that was intended to benefit the legal entity in question, or another person or entity. The courts’ interpretation of this provisions should be followed up as case law develops.

### 2.3 Liability for intermediaries and related entities

42. Anti-Bribery Recommendation Annex I.C requires liability against a legal person that uses intermediaries, including related legal persons, to commit foreign bribery on its behalf.

43. Croatia states that legal persons can be liable for using an intermediary such as an agent or contractor to bribe foreign public officials. A person in a company who uses an intermediary to commit foreign bribery is liable for the offence as a principal or co-perpetrator (see para. 25). The company is also liable if the person who uses the intermediary is a “responsible person” in the company (para. 36) or if the act resulted from a responsible person’s insufficient supervision or control (para. 38), assuming other requirements in the CLL are met.

44. Croatia states that a company can be liable for foreign bribery committed by a “branch”. According to Companies Act Art. 7(3), a branch is not considered a separate legal person. By operating the branch’s activities, the parent company acquires rights and obligations. The parent is thus liable for a criminal offence committed by the branch if the conditions prescribed by the CLL are met. Croatia did not explain how CLL rules would apply to bribery committed through a subsidiary, which is a separate legal person from its parent company, or by another related legal person, however. Croatia’s Phase 2 evaluation should therefore further explore whether and how a company can be liable for foreign bribery committed by a subsidiary or another related legal person.

### 2.4 Autonomous liability of legal persons

45. Anti-Bribery Recommendation Annex I.B.2 states that corporate liability should not be restricted to cases where the natural person who perpetrated the offence is prosecuted or convicted.

46. In Croatia, CLL Art. 5(1) states that corporate liability “shall be based on the fault of the responsible person.” CLL Art. 5(2) adds that liability also arises “even in the case when the existence of legal or actual obstacles to determining the responsibility of the responsible person is established”. Croatia explains that “legal obstacles” are determined by legal provisions and include immunity, amnesty and *ne bis in idem*. “Actual obstacles” are those that exist in reality, such as when the natural person has absconded, or is abroad, dead, incapacitated or impossible to identify. The responsible person and the legal person are subject to a single proceeding (Art. 23(1)). If proceedings cannot be conducted against the responsible person, then they shall be conducted only against the legal person (CLL Art. 23(2)). Croatia explains that the court must nevertheless “determine the illegal act”.

## 2.5 Successor liability

47. Pursuant to Anti-Bribery Recommendation Annex I.B.5, countries should “ensure that legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity”.

48. In Croatia, CLL Art. 7 provides for successor liability. If a legal person ceases to exist “before the criminal proceedings have ended” or “after the final completion of the criminal proceedings”, then sanctions or other measures can be imposed on the entity’s “general legal successor”. Croatia explains that a “general legal successor” is an entity resulting from forms of corporate reorganisation governed by the Companies Act. Croatia further states that the “policy aim of this provision is to prevent evading the criminal liability of a legal person by changing its legal status after the commission of criminal offence”. This suggests that CLL Art. 7 applies also in the case a legal person ceases to exist before criminal proceedings have even started. This point should be followed up in Croatia’s Phase 2 evaluation.

## 2.6 Effective regret for legal persons

49. Effective regret applies to legal persons. “A legal person who reported the criminal offence of a responsible person before its discovery or before learning that the offence has been discovered, may be released from punishment” (CLL Art. 12a). As with natural persons, the release from punishment is a discretionary decision of the court. Croatia states that CA Art. 50(2) (by reason of CLL Art. 2) also applies to allow a court to impose a more lenient punishment as an alternative to a release from punishment.

## 3. Article 3: Sanctions

50. Convention Art. 3 requires countries to impose “effective, proportionate and dissuasive” sanctions against natural and legal persons for foreign bribery. Countries must also confiscate the bribe and the proceeds of foreign bribery, and consider additional civil or administrative sanctions.

### 3.1 Principal penalties for bribery of a domestic and foreign public official

#### 3.1.1. Penalties for natural persons

51. Foreign and domestic bribery are punishable under CA Art. 294 by one to eight years’ imprisonment for bribery in breach of duty, and six months to five years for bribery to perform one’s duty. Bribery of representatives (CA Art. 339) is also punishable by one to eight years’ imprisonment. CA Art. 47 provides for aggravating and mitigating factors for sentencing. The court must consider all relevant circumstances, and especially the degree of endangerment or violation of a legally protected good; motive for committing the crime; degree of violation of the perpetrator’s duties; manner of the offence’s commission and consequences of the crime; the perpetrator’s personal and financial circumstances, and behaviour after the crime; and the relationship with the victim and the efforts to compensate the damage. Also available are “security measures” requiring the offender to eliminate the circumstances that would enable a new offence (CA Chapter V). These include a ban from engaging in an activity (Art. 71).

52. Fines are also available against natural persons. A fine can be imposed as an ancillary penalty under CA Art. 40(2) and (5) for “offences committed out of greed.” Croatia states that foreign and domestic bribery is not always motivated by greed, but this is possible and often in fact the case. Under CA Art. 42, the maximum for “offences committed out of greed” is 1 000 daily units. A daily unit is between EUR 5 and 2 500. The maximum available fine for foreign and domestic bribery is therefore EUR 2.5 million. Croatia explains that the number of daily units is determined based on the sentencing factors in CA Art. 47, except for the perpetrator’s financial circumstances. The daily unit’s amount depends on the perpetrator’s income and property as well as the average cost of supporting the perpetrator and his/her family (CA Art. 42(4)).

53. A sentence may also be converted into community service (CA Art. 55) or a conditional (i.e. suspended) sentence (CA Arts. 56-58). An imprisonment sentence under one year and a fine of less than

360 daily units can be changed to community service, unless the offender has a prior custodial sentence longer than six months. A sentence for foreign bribery would thus qualify if it is reduced to below the one-year minimum due to mitigating factors in CA Arts. 48-49. An imprisonment sentence of not more than one year or a fine can be converted to a conditional sentence for one to five years. A fine or imprisonment between one and three years can also be partially turned into a conditional sentence. In deciding whether to suspend a sentence, the court considers factors such as the circumstances of the offence, and the offender's personality, antecedents, family circumstances, criminal history, post-offence behaviour, and likelihood of re-offending. Croatia states that, when imprisonment is replaced by community service or a conditional sentence, the court may also impose a fine as an ancillary punishment.<sup>1</sup>

### 3.1.2. Penalties for legal persons

54. The sanctions available against legal persons are fines and dissolution of the entity (CLL Art. 8). Under CLL Art. 10(2), legal persons are subject to a fine of EUR 10 000 to 15 million for foreign bribery. If the sentencing court decides that a fine in this range would not achieve "the purpose of punishment", then the legal person could instead be fined up to 10% of its turnover in the business year preceding sentencing (CLL Art. 10(5)). If a legal person is convicted of two or more concurrent offences, the resulting fines cannot exceed the sum of the individual fines or the maximum legal measure of the fine (CLL Art. 11). A fine of less than EUR 20 000 may be suspended for one to three years and cancelled if the legal person does not re-offend during this period (CLL Art. 13). Suspension applies to the whole and not part of the fine. A legal person may also be dissolved if the purpose of its establishment or its predominant activity is to commit offences (CLL Art. 12). A fine may be imposed in addition to dissolution.

55. CLL Arts. 16-18 allow for additional "security measures" to be imposed against legal persons for one to three years. A legal person may be banned from performing certain activities or transactions, for example in case of repeat offences. A legal person may also be banned from acquiring permits, authorisations, concessions or subsidies issued by state bodies or local and regional self-government units, as well as from doing business with entities financed by state or local budgets. However, a ban may be imposed only if the permit, authorisation etc. could be "an incentive to [commit a] criminal offence" (CLL Arts. 17(1) and 18(1)). This arises only if there is a danger that the legal person re-offends, according to Croatia. Additional administrative sanctions are considered in Section A.3.4.

## 3.2 Penalties and mutual legal assistance / penalties and extradition

56. Convention Art. 3(1) states that "the range of penalties [for foreign bribery] [...] shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition."

57. As mentioned at para. 51, bribery to breach official duties is punishable in Croatia by imprisonment of one to eight years, and by six months to five years for bribery to perform one's duty. The Mutual Legal Assistance in Criminal Matters Act (MLACMA) does not limit the seeking of MLA to offences with a particular level of penalties. Extradition is available for offences punishable by "prison or security measure implying deprivation of liberty for the longest period of at least one year or by application of a more severe penalty" (MLACMA Art. 34).

## 3.3 Seizure and confiscation

58. Convention Art. 3 requires countries to seize and confiscate the bribe and the proceeds of foreign bribery, or property the value of which corresponds to such proceeds. Alternatively, countries should impose monetary sanctions of comparable effect.

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<sup>1</sup> Supreme Court Legal Opinion (13 Dec. 2021), Su-IV-4/2021-1.

### 3.3.1. Seizure

59. Criminal Procedure Act (CPA) Art. 556a provides for the seizure of “objects which were intended or used for the commission of a criminal offence or which arose from its commission”. The prosecutor may seek “insurance by any temporary measure” to preserve the proceeds of crime (CPA Art. 557a). Measures include freezing of bank accounts; seizure of cash and securities; and prohibition of the transfer of real property or real property rights. A temporary measure may last for a maximum of two years before the filing of the indictment (i.e. even before the court confirms the indictment), scheduling of a trial based on a private lawsuit, or motion for confiscation proceedings. A judge considers every three months whether to extend the measures. After the indictment is filed, a temporary measure may be maintained throughout the proceedings, up to sixty days from the notification to the State Attorney of the finality of the decision by which the pecuniary advantage is confiscated (CPA Art. 557e(1)-(3)).

### 3.3.2. Confiscation

60. CA Art. 5 states that “no one may retain the proceeds of an illegal act”. Under CA Art. 77, a “property gain” must be confiscated upon a court decision that an unlawful act has been committed. If the gain cannot be confiscated, then the court orders the perpetrator to pay an equivalent monetary amount. Croatia refers to “extended confiscation” (CC Art. 78) which is required by European legislation but not the Convention. CA Art. 79 further allows the confiscation of objects and means arising from the commission of a criminal offence, or that are intended or used to commit an offence. These provisions also apply to legal persons (CLL Art. 19).

## 3.4 Additional civil and administrative sanctions

61. Convention Art. 3(4) requires countries to consider imposing additional civil or administrative sanctions for foreign bribery. Anti-Bribery Recommendation XXIV asks countries to suspend or debar enterprises that have committed foreign bribery from competition for public advantages and contracts. Procurement sanctions that are applied for domestic bribery should be applied equally for foreign bribery.

62. Croatia provides for mandatory debarment for certain crimes, including bribery, under the [Public Procurement Act](#) (PPA). Debarment rules apply to an “economic operator”, which is “a natural or legal person, including a branch, or a public body or community of those persons or bodies, including any temporary association thereof, which offers on the market the execution of works or work, the supply of goods, or the provision of services” (PPA, Art. 3(5)). Debarment applies to an economic operator established in Croatia or its representative who is a Croatian national who has been convicted of bribery in Croatia (PPA Art. 251(1)(1)(b)). The same applies if an economic operator established in a foreign country or its representative who is non-Croatian is convicted of bribery in Croatia or in a court of the foreign country (PPA Art. 251(1)(2)). However, debarment results only from convictions of bribery under CA Art. 294, not bribery of representatives under CA Art. 339. Debarment is for five years unless a final judgment specifies otherwise (Art. 255(6)).

63. Notwithstanding these provisions, an economic operator can avoid debarment by proving its “reliability” (PPA Arts. 255(1)-(3)). Reliability can be demonstrated by: (i) paying or taking appropriate measures to pay compensation for the damages caused by the criminal offence; (ii) actively cooperating with the competent investigating authorities to fully clarify the facts and circumstances relating to the offence; (iii) adopting appropriate technical, organisational, and personnel measures to prevent further offences. The measures taken by the economic operator shall be assessed taking into account the seriousness and specific circumstances of the offence, and the decision shall be motivated.

## 4. Article 4: Jurisdiction

### 4.1 Territorial jurisdiction over natural persons

64. Convention Art. 4(1) requires each Party to establish jurisdiction for the foreign bribery offence when it is committed “in whole or in part in its territory.” Commentary 25 clarifies that “an extensive physical connection to the bribery act is not required.”

65. Croatia’s criminal legislation applies to anyone who commits a criminal offence in its territory (CA Art. 10). An offence is committed at the place where the perpetrator or an accomplice acted or was obliged to act (CA Art. 9(1) and (2)). In the case of foreign bribery, Croatia states that “the place where the criminal offence was committed [is] the place where the perpetrator promised or offered a bribe.” Croatia states that “it is not necessary that the whole offence or even a major part of it is committed in the Republic of Croatia to establish Croatian jurisdiction; even the smallest part of the offence would be sufficient”. The territorial nexus required in foreign bribery cases should be followed up in Croatia’s Phase 2 evaluation, including by considering case law.

66. An additional basis of jurisdiction for offences with consequences in Croatia is inapplicable to foreign bribery. Under CA Art. 9(1) and (2), where an offence’s consequence is one of its constituent elements, then the offence occurs at the place where the consequence has occurred or was intended to occur, whether in whole or in part. However, this provision does not apply to foreign bribery. According to Croatian authorities, “the criminal offence of bribery is completed by the very act of promising a bribe, that is, offering a bribe, so the consequence itself is not a feature of the criminal offence.”

### 4.2 Nationality jurisdiction over natural persons

67. Convention Art. 4(2) requires that, where a Party has jurisdiction to prosecute its nationals for offences committed abroad, it shall “take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.” Commentary 26 states that dual criminality is deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute.

68. CA Art. 14(1) provides jurisdiction over extraterritorial offences (including foreign bribery) committed by Croatian citizens and residents. The provision applies even if a perpetrator acquires Croatian nationality after committing the offence (Art. 14(2)). Two conditions must be met. First, the perpetrator must be in Croatian territory (Art. 18(7)). Second, the conduct underlying the offence must be punishable under the law of the state in which it was committed (dual criminality; Art. 14(1)). Croatia states that this requirement is met if “the offence, considered as the same factual substrate, is also punishable in the country where it has been committed.” Croatia further refers to CA Art. 16 which provides jurisdiction over extraterritorial offences that Croatia is “obliged to punish under an international agreement”. Dual criminality is not required. However, the provision only applies to individuals found in Croatia (CA Art. 18(7)). The Working Group will follow up this issue in Croatia’s Phase 2 evaluation.

### 4.3 Jurisdiction over legal persons

69. Croatia’s rules on jurisdiction over legal persons for foreign bribery raise some questions. As mentioned at para. 33, the CLL applies to any entity that possesses legal personality under Croatian law. The only exceptions are the Republic of Croatia, and units of local and regional self-government when acting in the exercise of their public authority (CLL Art. 6). The CLL also expressly covers “foreign entities that are considered as legal persons under Croatian law” (CLL Art. 1(2)). Croatia explains that the rules on considering legal entities as legal persons are prescribed in separate legal acts (such as Act on Political Parties, Companies Act, Institutions Act) and that a foreign legal person is a legal person “which has a seat” outside Croatia (Companies Act Art. 611; see para. 33), and qualifies as a legal person under Croatian law, even if it does not qualify as such under its domestic law.

70. According to Croatia, its jurisdiction over natural persons also extends to the relevant legal person by virtue of CLL Art. 2. Croatia states that “the liability of legal person is based on the guilt of responsible person. So if the Republic of Croatia exercises jurisdiction over responsible person within the meaning of Article 4 of the CLL, it would also have jurisdiction over the legal person”. Croatia further explains that “due to derived subjective criminal liability of legal persons, the application of jurisdiction over the responsible person (established by the CA) would trigger the application of jurisdiction over the legal person based on the subsidiary application of the CA.” Croatia’s Phase 2 evaluation should examine whether and how the concepts of territorial and nationality jurisdiction apply to legal persons. In the foreign bribery context, of particular relevance are issues such as corporate liability for extraterritorial foreign bribery, and the rules for determining the nationality of a legal person.

#### 4.4 Consultation procedures

71. When more than one Party has jurisdiction over an alleged offence described in the Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution (Convention Art. 4(3)).

72. Croatia states that its authorities may spontaneously transmit information that may assist foreign authorities in initiating or conducting investigations or proceedings, or in seeking MLA.<sup>2</sup> Where there are parallel proceedings in another EU country, Croatian authorities must consult with their foreign counterparts directly.<sup>3</sup> Proceedings may be transferred between states if necessary.<sup>4</sup>

#### 4.5 Reviewing of basis for jurisdiction

73. Convention Art. 4(4) requires each Party to review whether its current basis for jurisdiction is effective in the fight against foreign bribery and, if it is not, to take remedial steps. Croatia states that its relevant laws are clear, and the current basis for jurisdiction has not posed any challenges in practice in pending or completed cases with a foreign element. This proves the effectiveness of the legal framework in place, states Croatia.

### 5. Article 5: Enforcement

74. Convention Art. 5 states that “foreign bribery investigations and prosecutions must be subject to the applicable rules and principles in each Party.” Furthermore, competent authorities shall seriously investigate complaints of foreign bribery, and adequate resources shall be provided to permit effective prosecution of such crimes (Commentary 27 and Anti-Bribery Recommendation VI-VII). This section considers Croatia’s core legal provisions implementing Convention Art. 5. Croatia’s Phase 2 evaluation will examine the application of these provisions in practice, and also consider other issues such as delay in proceedings, resources, and foreign bribery enforcement actions.

#### 5.1 Rules and principles on investigations and prosecutions

75. The State Attorney’s Office, the investigator and the police are responsible for independently and impartially investigating criminal offences for which proceedings are initiated *ex officio* (Criminal Procedure Act (CPA) Art. 9(2)). For corruption offences (including foreign bribery), the Office for the Suppression of Corruption and Organised Crime (USKOK) of the State Attorney’s Office has exclusive jurisdiction (USKOK Act Art. 21). USKOK prosecutors are responsible for various steps in a criminal proceeding such as detecting, investigating and prosecuting offences; deciding on charges; suspension or termination of prosecution; negotiating plea agreements; and conducting a case in court (CPA Art. 38). The National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK) supports USKOK’s investigations. A pretrial investigation judge hears pretrial applications, such as for investigative measures

<sup>2</sup> Mutual Legal Assistance in Criminal Matters Act, Art. 18(1).

<sup>3</sup> Judicial Co-operation in Criminal Matters with the Member States of the European Union Act, Arts. 12i-12j.

<sup>4</sup> Mutual Legal Assistance in Criminal Matters Act, Chapter IV.

that require judicial authorisation. The County Courts hear USKOK cases in the first instance (USKOK Act Art. 31).

76. The Criminal Procedure Act (CPA) sets out the rules for foreign bribery investigations and prosecutions. Proceedings against legal persons are subject to the CPA and supplemented by the Corporate Liability Law (CLL Art. 2). The USKOK Act provides additional rules for corruption cases. The main stages of a criminal proceeding are the pretrial investigation, pretrial hearing, trial, and appeal.

77. The state attorney (i.e. prosecutor) decides whether to open a pre-trial investigation for foreign bribery. The principle of “mandatory prosecution” applies with some qualifications. The prosecutor must open a pre-trial investigation if there is a “reasonable suspicion” that a criminal offence prosecutable *ex officio* has been committed (CPA Art. 2(3)). The pre-trial investigation is preceded by an inquiry stage, which is conducted when the evidentiary threshold for opening a pre-trial investigation is not yet met. The prosecutor may dismiss the matter if this threshold is not met or if other grounds exist, such as where the report of the crime is not credible (CPA Art. 206(1)). For offences punishable with a fine or imprisonment up to 5 years, the prosecutor may also decline or terminate prosecution because of “expediency”, i.e. if a defendant is likely to be acquitted or is extradited for another criminal offence, is serving a sentence for another offence, or is charged with other offences (CPA Art. 206c). Corporate proceedings may be declined if the defendant has insufficient means to cover the costs of the proceedings (CLL Art. 24). A refusal to open a pretrial investigation cannot be appealed (CPA Art 206(2)).

78. A pretrial investigation is subject to time limits, the adequacy of which in practice will be examined in Croatia’s Phase 2 evaluation. Pretrial investigations must be completed within six months (CPA Art. 229). A prosecutor may extend this time by six additional months by providing justified reasons to a senior prosecutor. The Chief State Attorney may exceptionally extend the period by another six months. Upon the expiry of the time limit, a defendant may file a complaint with the pretrial investigation judge who may set a new deadline for completing the investigation.

79. When the pretrial investigation is completed and yields sufficient evidence of a crime, then the prosecutor seeks an indictment from a competent court within one month. A senior prosecutor may extend the period by up to two months (CPA Art. 230). If the court confirms the indictment, then the matter proceeds to trial (Art. 367). Alternatively, the prosecutor, pretrial investigation judge or court may suspend or terminate the proceedings if there is insufficient evidence, among other grounds (Arts. 224, 226, 355 and 380).

80. Croatia’s Phase 2 evaluation will also examine the application of non-trial resolutions in practice. The prosecutor and the defendant may enter into a plea agreement before the indictment court (CPA Arts. 360-363). The agreement must contain a description of the offence, the defendant’s statement on admission of guilt, and the agreed type and extent of punishment. The court can reject the agreement only if it is not in accordance with the sentencing prescribed by law or the agreement is otherwise illegal. If it accepts the agreement, then it publishes a judgment explaining the agreement on which the judgment was passed. The facts in the agreement underlying the judgment generally cannot be appealed (CPA Arts. 364 and 464(7)). The Chief State Attorney may also waive criminal prosecution if the defendant’s testimony helps detect an organised crime, and if this would be proportionate to the gravity of the offence committed (CPA Art. 206e). Non-trial resolutions also apply to legal persons, according to Croatia.

## **5.2 National economic interest, potential effect upon relations with another state, and identity of the natural or legal person involved**

81. Convention Art. 5 also requires each Party to ensure that foreign bribery investigations and prosecutions are not influenced by “considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved”. Commentary 27 further requires that decisions in investigations and prosecutions be based on professional motives and not be influenced by political considerations.

82. Croatia states that the factors prohibited by Convention Art. 5 would not influence foreign bribery investigations and prosecutions. The initiation of criminal prosecution by a prosecutor is subject to the principle of mandatory prosecution (see para. 77). Furthermore, Croatia's legal system has several formal guarantees of judicial and prosecutorial independence. The Constitution and statute provide for the autonomy and independence of the judiciary and prosecutor's office.<sup>5</sup> Deputy State Attorneys are independent in their work (State Attorney's Office Act Art. 5-6). Influence and coercion of State Attorneys and Deputy State Attorneys are prohibited (CA Art. 312).

## 6. Article 6: Statute of limitations

83. Convention Art. 6 requires that any statute of limitations applicable to the foreign bribery offence shall allow an adequate period of time for the investigation and prosecution of this offence.

84. In Croatia, the statute of limitations for foreign bribery depends on the category applicable to the offence (CA Art. 81). The limitation period is 20 years for bribery in breach of duty (CA Art. 294(1)) and bribery of representatives (CA Art. 339). It is 15 years for bribery to perform one's duty (CA Art. 294(2)). The same limitation periods apply to prosecutions of legal persons (CLL Art. 21a). The time begins to run when the offence is committed (CA Art. 82). The limitation period is extended by two years if a first instance judgement is rendered before the expiry of the statute of limitations. The consequence of an act of foreign bribery is not an element of the offence (see para. 66) and hence does not affect the statute of limitations.

85. There are limited grounds for suspending or interrupting the statute of limitations. The limitation period does not run when "criminal prosecution cannot be undertaken or cannot be continued" (CA Art. 82(2)), or if a preliminary ruling has been requested from the Court of Justice of the European Union (CPA Art. 18a). Outstanding mutual legal assistance requests do not suspend the limitation period, however.

## 7. Article 7: Money laundering

### 7.1 Money laundering offence

86. Under Convention Art. 7, "each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred".

87. Croatia's money laundering offence is in CA Art. 265. The criminalisation of money laundering is based on an "all-crimes approach": all criminal offences generating proceeds can be predicate offences, thus including foreign bribery. The provision contains four offences covering any individual who:

- "Invests, takes over, converts, transfers or exchanges" the pecuniary gains of a criminal offence. The purpose of such action is to "conceal or falsely represent their illegal origin", or to help the perpetrator of the offence to avoid prosecution or confiscation of the gains (Art. 265(1));
- "Conceals or falsely portrays the true nature, source, place, disposal, transfer and existence of rights or ownership over" the pecuniary gains of a criminal offence (Art. 265(2));
- "Acquires, possesses or uses" the pecuniary gains of a criminal offence "committed by another person" (Art. 265(3)); and
- Instructs, advises, eliminates barriers, or otherwise facilitates one of the offences above (Art. 265(4)).

88. Self-laundering (i.e. when the same person commits the predicate offence and launders the proceeds) is covered. The only exception is the offence under CA Art. 265(3), which targets the laundering

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<sup>5</sup> Constitution Arts. 115 and 121a; State Attorney's Office Act Art. 3; Courts Act Art. 2.

of the proceeds of a criminal offence “committed by another person”.<sup>6</sup> Croatia also reports that a conviction for the predicate offence is not a prerequisite for a conviction for money laundering.

89. Concerning the *mens rea*, the general provisions of the Criminal Act provide that money laundering may be committed with direct or indirect intent.<sup>7</sup> An individual has *direct intent* when he/she is aware of the material elements of the offence and wants or is sure of the elements’ realisation. *Indirect intent* arises when a person can realise the material elements of the offence and accedes to their realisation. The money laundering offences under CA Art. 265(1) and (2) can also be committed if an individual is *negligent* in ascertaining whether the pecuniary gains in question had been acquired through a criminal offence (CA Art. 265(6)).

90. Croatia’s money laundering offence requires dual criminality and is therefore inconsistent with the Convention. CA Art. 265(7) applies when a predicate offence is “committed in a foreign state” and the proceeds of the offence are then laundered in Croatia. But the act of laundering is punishable in Croatia only if the predicate offence “is a criminal offence according to the law of the state in which it was committed.” This requirement is met if the proceeds-generating conduct is a crime in the place where it occurs, even if the name of the offence in question is different than in Croatia. Nevertheless, such a requirement is contrary to Convention Art. 7, which prescribes that foreign bribery should be a predicate offence of money laundering “regardless of the place where the bribery occurred”. In past evaluations of other countries, the Working Group has recommended that similar provisions be repealed.<sup>8</sup>

91. Regarding sanctions, natural persons are punishable for money laundering by imprisonment of six months to five years (CA Art. 265(1)-(4)). The maximum penalty is increased to one to eight years’ imprisonment if an aggravating factor applies, i.e. if an offence under Art. 265(1) or (2) is committed in financial or other business operations; the perpetrator “is in business of money laundering”; or if the gains of an offence under Art. 265(1)-(3) are of great value. Money laundering committed negligently under CA Art. 265(1) or (2) is punishable by three years’ imprisonment. A maximum fine of EUR 2.5 million can be imposed as an ancillary penalty if any of these offences are “committed out of greed” (CA Art. 40(2) and (5)). Proceeds, objects, and means derived from (or intended to/used for) money laundering shall be confiscated and the rights declared null and void (CA Art. 265(9)). An offender who “contributes significantly to the detection” of the predicate criminal offense may be exempted from punishment (CA Art. 265(8)).

92. The maximum sanctions against legal persons for money laundering are the same as those for foreign bribery (CLL Art. 10, see para. 54). Legal persons may be fined EUR 10 000 to 15 million. If this fine would not achieve “the purpose of punishment”, the entity can be fined up to 10% of its turnover in the business year preceding sentencing. The maximum fine for negligent money laundering is EUR 10 million. A legal person may also be dissolved if the purpose of its establishment or its predominant activity is to commit offences (CLL Art. 12).

## 8. Article 8: Accounting and auditing

### 8.1 Accounting and auditing requirements

93. Pursuant to Convention Art. 8, “each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use

<sup>6</sup> See also Moneyval (2019), [Exit Follow-up Report Submitted to Moneyval](#), p. 10.

<sup>7</sup> CA Art. 28 (see para. 7). See also Moneyval (2019), [Exit Follow-up Report Submitted to Moneyval](#), p. 10.

<sup>8</sup> [Phase 3 Ireland](#), paras. 99-102 and recommendation 6(a); [Phase 3 New Zealand](#), paras. 74-77 and recommendation 9(a).

of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery". Parties shall also provide "effective, proportionate and dissuasive civil, administrative or criminal penalties" in relation to such omissions and falsifications.

94. Accounting requirements in Croatia are mainly set out in the Accounting Act, which also transposes EU legislation. The Act regulates, among other things, the accounting and classification of "entrepreneurs", bookkeeping documents and financial records, inventory of assets and liabilities, application of financial reporting standards and the body in charge of the adoption of such standards, annual accounts and consolidation of annual accounts (financial statements), including their audit, contents and publication, as well as supervision activities (Art. 1).

95. The Accounting Act applies to "entrepreneurs", which are companies and Croatian branches of foreign companies as defined by Croatian regulations governing companies; business units of foreign entrepreneurs who are not subject to accounting requirements in their country or are corporate income taxpayers under Croatian regulations; and credit unions (Art. 4). The Act also applies to legal and natural persons who are liable for "profit tax" for their entire activity under tax regulations (apart from the provisions on consolidation and audit of financial statements, annual report, and public disclosure). A separate law regulates non-profit entities.

96. Pursuant to Accounting Act Art. 17, entrepreneurs are obliged to prepare their annual financial statements in accordance with the Croatian Financial Reporting Standards (HSFI) as adopted by the Croatian Committee on Financial Reporting Standards. "Major entrepreneurs" and "public interest entities" (which include large companies, listed companies, and financial institutions) must follow the International Financial Reporting Standards (IFRS). The Ministry of Finance, Croatian National Bank, and Croatian Financial Services Supervisory Agency issue additional accounting regulations for entities in their regulatory areas. Croatia explains that the Tax Administration of the Ministry of Finance is responsible for supervising compliance with the Accounting Act and other relevant regulations. The Croatian National Bank and Financial Services Supervisory Agency also perform supervision in their areas of competence.

97. Two Criminal Act offences cover false accounting:

- CA Art. 248 covers (a) a failure to keep commercial or business records required by law; (b) keeping such records in a manner that makes difficult the rendering of the transparency of business dealings or financial situation; and (c) destroying, concealing or damaging such records or documents, or rendering them unusable.
- CA Art. 279(1) covers a public official or responsible person who (a) enters false information or fails to enter important information into an official or business document, record or file, or (b) certifies or enables to be certified an official or business document etc. with such information. CA Art. 279(2) covers the use by anyone of such a document etc. as if it was true. A "responsible person" is a person who manages the affairs of a legal entity, or is entrusted with the performance of a legal entity's activities (CA Art. 87(6)).

98. In terms of sanctions, natural persons are punishable by imprisonment of up to three years under CA Art. 248, and six months to five years under CA Art. 279. A fine up to EUR 2.5 million may be imposed for offences "committed out of greed" (CA Arts. 40(2)&(5) and 42). Legal persons can be fined up to EUR 10 million or EUR 15 million, respectively. If such a fine is inadequate, the legal person may instead be fined up to 10% of its turnover in the business year preceding sentencing (CLL Art. 10).

99. Croatia refers to additional provisions applicable to false accounting that are of lesser importance:

- The Accounting Act sets out a range of record keeping requirements. However, breach of these provisions results only in a maximum fine of EUR 13 270 for an entrepreneur and EUR 2 650 for its responsible person (Art. 42(1)(1)(2)).
- Additional record keeping requirements are found in the General Tax Law Arts. 66(1) and 192, and Corporate Income Tax Arts. 5(6) and 38(1)(1)(2). But these provisions only cover false accounting with tax consequences. A breach of these provisions also only results in limited fines.

- Companies Act Art. 625 prohibits the “incorrect presentation of assets” (i.e. company information), such as to a company’s assembly. The offence therefore does not concern the maintenance of accounting records *per se*. It also only applies to board members and liquidators.

## 8.2 External auditing and internal company controls

100. According to Anti-Bribery Recommendation XXIII, countries should “take the steps necessary, taking into account where appropriate the individual circumstances of a company, including its size, type, legal structure and geographical and industrial sector of operation, so that laws, rules or practices with respect to accounting requirements, external audits, and internal controls, ethics and compliance are in line with the [principles set out in the Recommendation] and are fully used in order to prevent and detect bribery of foreign public officials in international business”.

101. The Accounting Act imposes obligations to audit annual financial statements and consolidated financial statements. Pursuant to Art. 20, the following entities are subject to annual external auditing: (i) “public interest entities” as defined in Art. 3 (which include listed companies and financial institutions), (ii) large- and medium-sized entrepreneurs; (iii) parent companies of large- and medium-sized groups; (iv) joint stock companies, limited partnerships, and limited liability companies the individual or consolidated data of which, in the year preceding the audit, exceed at least two of the following three criteria: total assets of EUR 1 990 842, profits of EUR 3 981 684, and at least 25 employees on average; (v) entrepreneurs that have applied for listing their securities on a regulated market; and (vi) entrepreneurs that have participated in mergers, acquisitions or divisions as acquirers, and newly established companies. Public-interest entities are also obliged to have an internal audit committee, which may be an independent board, or a committee of the supervisory board or management board (Art. 65).

102. The audit of annual financial statements and reports is performed in accordance with the Accounting Act and Audit Act. The Audit Act regulates all questions relating to the performance of auditing services, including obligations to act according to the fundamental principles of professional ethics and skepticism (Art. 47), and independence (Art. 48). Audit reports must be prepared in accordance with the International Standards on Auditing (ISA). They must indicate (among other things) whether the statutory auditor has identified significant misstatements in the management report, with a description of their nature (Art. 58). The ISAs include the detection and reporting of material misstatements in a company’s financial statements that are caused by fraud (ISA 240) or non-compliance with laws (ISA 250).

103. The Working Group will analyse in Croatia’s Phase 2 evaluation the detection and reporting through external auditing and internal company controls.

## 9. Article 9: Mutual legal assistance

### 9.1 Laws, treaties and arrangements enabling mutual legal assistance

104. Convention Art. 9(1) requires countries to provide prompt and effective legal assistance for the purpose of criminal investigations and proceedings of offences within the scope of the Convention, and for non-criminal proceedings within the scope of the Convention brought by a Party against a legal person.

#### 9.1.1. Criminal matters

105. Croatia is party to the following multilateral treaties that provide for MLA in foreign bribery cases: the European Convention on Mutual Assistance in Criminal Matters and additional protocols; Council of Europe Criminal Law Convention on Corruption; United Nations Convention against Corruption (UNCAC); and United Nations Convention against Transnational Organized Crime (UNTOC). Croatia also has several bilateral MLA treaties, including those to which the former Yugoslavia was party. MLA with EU countries is governed by the Judicial Co-operation in Criminal Matters Act with the Member States of the European Union. Croatia implemented the European Investigation Order in 2017. The Mutual Legal Assistance in Criminal Matters Act (MLACMA) provides for non-treaty-based MLA. Available assistance includes search

and seizure, freezing and confiscation, taking of evidence, provision of data and documentation, document service, transfer of proceedings, and judgment execution. Reciprocity is required for non-treaty-based assistance (Art. 17), except for the service of documents.

106. MLACMA Art. 6 sets out the authorities and channels for communicating MLA requests. The Ministry of Justice and Public Administration (MOJ) is the central authority for sending and receiving requests. Urgent requests may be communicated through Interpol. The MOJ sends and receives requests through the diplomatic channel unless a treaty provides otherwise. Croatian judicial authorities may exceptionally send requests directly to foreign authorities where explicitly permitted by treaty or the MLACMA. In such cases, a copy of the request is provided to the MOJ.

### 9.1.2. Non-criminal matters

107. Croatia states that Convention Art. 9(1) constitutes a sufficient legal basis to provide MLA for non-criminal proceedings brought by foreign authorities against a legal person for foreign bribery. As mentioned in para. 2, the Convention is part of Croatia's internal legal order and has primacy over domestic law.

## 9.2 Dual criminality for mutual legal assistance and other grounds for refusal

108. Convention Art. 9(2) states that, where a Party makes MLA conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of the Convention.

109. Croatia requires dual criminality for MLA, with some exceptions for MLA with EU countries, even though the MLACMA does not so require expressly. Croatia explains that it provides assistance if "both countries criminalise the conduct underlying the offence, regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology".

110. MLACMA Arts. 12-13 set out other grounds for refusal. MLA may be denied for a political offence, a fiscal offence or an insignificant criminal offence. It may also be refused if a request would prejudice the sovereignty, security, legal order or other essential interests of Croatia. Requests must be refused if the absolute statute of limitations has expired, or if criminal proceedings are pending in Croatia against the prosecuted person for the same criminal offence.

111. *Ne bis in idem* is also a mandatory ground for refusal (MLACMA Art. 13), although the definition of this concept may be overbroad. A request is refused if the accused has been acquitted in Croatia for the same offence on substantive legal grounds; if he/she was released from punishment; or if a sanction was executed or may not be executed pursuant to the requesting state's law. However, MLA is also denied if "proceedings are pending" for the same crime or "if a procedure against [the accused] has been discontinued". The latter refers to the suspension of proceedings on grounds other than the merits, such as when the prosecutor drops charges, or if there are "other circumstances that preclude criminal prosecution" (CPA Art. 380). Croatia is also a party to the Convention implementing the Schengen Agreement of 14 June 1985, and applies the *ne bis in idem* principle laid out in its Art. 54 through the EU instruments on judicial co-operation. This principle, however, is narrower than the concept of *ne bis in idem* in CPA Art. 380. The Working Group will examine the application in practice of this provision in Phase 2.

## 9.3 Bank secrecy

112. Convention Art. 9(3) states that a Party shall not decline to render MLA for criminal matters within the scope of the Convention on the ground of bank secrecy.

113. Croatia states that bank secrecy is not a ground for refusal to render mutual legal assistance. MLA requests to obtain bank information or documentation must be accompanied by an order of a competent judicial authority in the requesting state. Croatia explains that this can include both courts and prosecutor's

offices that have the authority to issue such orders domestically. The Working Group will examine in Phase 2 whether there are any obstacles for the provision of bank information as MLA.

## 10. Article 10: Extradition

### 10.1 Extradition for bribery of a foreign public official and legal basis for extradition

114. Convention Art. 10(1) provides that foreign bribery shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them. Art. 10(2) states that, if a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider the Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.

115. Croatia states that foreign bribery is an extraditable offence. It is party to the following multilateral treaties that provide for extradition in foreign bribery cases: the European Convention on Extradition and its first three additional protocols; Council of Europe Criminal Law Convention on Corruption; UNCAC; and UNTOC. Croatia has implemented the European Arrest Warrant. Croatia states that it considers the Anti-Bribery Convention as a basis for extradition for foreign bribery in the absence of another applicable treaty. Croatia also has several applicable bilateral extradition treaties, including those to which the former Yugoslavia was party. Extradition of a non-Croatian national may be granted without a treaty based on reciprocity (MLACMA Art. 34(5)). Extraditable offences are those that are punishable by imprisonment of at least one year or a more severe penalty (Art. 34(2)).

116. The Ministry of Justice and Public Administration is the central authority for extradition (Arts. 6(2) and 40). If the court determines that the statutory preconditions for extradition are met, then the Minister decides whether to surrender the person sought (Arts. 45 & 57). This process can be bypassed with the person sought's consent (Art. 54).

### 10.2 Extradition of nationals

117. Convention Art. 10(3) states that "each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution."

118. Croatia only extradites its nationals under a European Arrest Warrant or if required by a treaty (MLACMA Arts. 32 and 35(1)(1), and Constitution Art. 9). Croatia states that if extradition is declined solely because of nationality, then it would initiate prosecution only if it has criminal jurisdiction over the offence pursuant to the Criminal Act Arts. 9-18 (see Section 4 at p. 14). These include provisions on jurisdiction over extraterritorial offences. However, if prosecution proceeds in Croatia, then an offence committed abroad is considered to have taken place in Croatia. Foreign law applies if it is more lenient to the accused than Croatian law (MLACMA Art. 64). Investigative actions taken by foreign authorities are deemed to have been taken by Croatian ones (MLACMA Art. 68).

119. Two additional conditions limit the prosecution of nationals in lieu of extradition. First, Croatia will initiate proceedings only upon the request of the foreign state (MLACMA Art. 62). Croatia states that Interpol Croatia informs states that have issued an international arrest warrant of this requirement. The Working Group has recommended to other countries that the request of a foreign state should not be required.<sup>9</sup> Second, proceedings in Croatia depend on "the willingness of the requesting state to initiate a transfer of proceedings and provide all the evidence necessary to conduct criminal proceedings". Proceedings therefore may not start until evidence is received from the requesting state.

<sup>9</sup> [Costa Rica Phase 2](#), paras. 192-194 and Recommendation 11(f).

### 10.3 Dual criminality for extradition and other grounds for refusal

120. Convention Art. 10(4) states that extradition for foreign bribery “is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.”

121. MLACMA Art. 35 sets out grounds for denying extradition. Dual criminality is required. Croatia states that the prerequisite of dual criminality “shall be fulfilled if the offence for which extradition is sought is within the scope of” Convention Art. 1.

122. Extradition is also refused if the offence was committed in Croatia, or was against Croatia or its national; the statute of limitations has expired; the requesting state has convicted or acquitted the person sought of the same offence; Croatia has initiated proceedings against the person sought for the same offence; the identity of the person sought is not determined; and evidence is insufficient to establish a reasonable suspicion that the person sought committed the offence. Extradition may also be refused if Croatia can take over the prosecution of an offence, and if this would be appropriate for the “social rehabilitation” of the person sought.

## 11. Article 11: Responsible authorities

123. Art. 11 of the Convention requires Parties to notify the OECD Secretary-General of the authorities responsible for consultation on the appropriate jurisdiction for prosecution (Art. 4(3)), MLA (Art. 9) and extradition (Art. 10), and which shall serve as the channel of communication for these matters. Croatia has designated the State Attorney’s Office as its responsible authority under Art. 4(3), and the Ministry of Justice and Public Administration under Arts. 9 and 10.<sup>10</sup>

## B. IMPLEMENTATION OF THE ANTI-BRIBERY RECOMMENDATION

### 1. Tax Deductibility

124. Parties to the Convention are required to “explicitly disallow the tax deductibility of bribes to foreign public officials, for all tax purposes in an effective manner”. Such disallowance should be binding, and the denial of deductibility should not be contingent on court proceedings or a criminal investigation.<sup>11</sup>

125. Croatia’s Profit Tax Act (PTA) explicitly disallows tax deductions of bribes to foreign officials. The PTA applies to both natural and legal persons. Art. 7a prohibits the deduction of “any undue reward, gift, material or non-material benefit” prohibited by criminal law. The prohibition applies if the reward etc. “may be sanctioned”, i.e. even in the absence of court proceedings or a criminal investigation:

#### Article 7a

(1) Any undue reward, gift or other material or non-material benefit, regardless of the value, which may be sanctioned in accordance with the regulations of criminal law, shall not be recognised as a tax-deductible expense of business.

126. The Working Group’s Phase 2 evaluation should examine the implementation of this provision. PTA Art. 7a entered into force only on 12 October 2023. The Minister of Finance has yet to prescribe implementation regulations for determining the tax base as required by PTA Art. 7a(2). Additional rules or guidance for implementation may also be necessary.

<sup>10</sup> Act on Ratification of the Convention Art. 3.

<sup>11</sup> Anti-Bribery Recommendation XX and 2009 Council Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

## Evaluation of Croatia

### General Comments

127. The Working Group commends the Croatian authorities for their co-operation and openness during the evaluation process. The Group appreciates the feedback provided by the authorities during the drafting of the report to ensure a comprehensive and effective basis for the evaluation. Croatia's legislative framework for implementing the Convention consists principally of the foreign bribery offence in CA Art. 294 and the Corporate Liability Law. The Working Group considers that Croatia's legislation largely conforms to the standards of the Convention, subject to the issues noted below. These and other additional issues will be followed up during Croatia's Phase 2 evaluation.

### Specific Issues

#### Foreign Bribery Offence

128. The Working Group in Phase 2 will take into account case law and practice to analyse in greater depth the foreign bribery offence, including for example the issues of indirect criminal intent, bribery through intermediaries, autonomous definition of a foreign public official, bribes to third party beneficiaries, and the defence of effective regret.

#### Responsibility of legal persons

129. The Working Group should follow up in Phase 2 certain interpretation questions, and in particular whether:

- (a) The liability for lack of supervision by a senior officer can also be established in case of failure to implement adequate internal controls, ethics and compliance programmes or measures;
- (b) The condition for triggering liability that "the legal person has achieved or should have achieved an advantage for itself or another" is broadly interpreted to cover all cases of foreign bribery;
- (c) A legal person can be held liable for committing foreign bribery through a related legal person;
- (d) Legal persons cannot avoid liability or sanctions for foreign bribery and related offences by restructuring, merging, being acquired, or otherwise altering their corporate identity after committing the offence, and before any criminal proceedings have begun.

#### Jurisdiction

130. The rules on jurisdiction over legal persons for foreign bribery in Croatia raise some questions. In particular, Croatia's Phase 2 evaluation should examine whether and how the concepts of territorial and nationality jurisdiction apply to legal persons. The Working Group will also follow up in Phase 2 the nexus with Croatia that is required for territorial jurisdiction to apply in foreign bribery cases.

#### Enforcement

131. A prosecutor is required to commence a pretrial investigation if there is a "reasonable suspicion" that a criminal offence prosecutable *ex officio* has been committed (CPA Art. 2(3)). A refusal to open a pretrial investigation cannot be appealed (CPA Art 206(2)). Once opened, the investigation must be completed within time limits (CPA Art. 229). In Phase 2, the Working Group will consider whether this arrangement in practice conforms with Convention Art. 5.

#### Money laundering

132. Croatia's money laundering offence requires dual criminality, i.e. the predicate offence must be a crime "according to the law of the state in which it was committed". Such a requirement is contrary to

Convention Art. 7, which prescribes that foreign bribery should be a predicate offence of money laundering “regardless of the place where the bribery occurred”. Croatia is recommended to repeal the dual criminality requirement from its money laundering offence.

### **Mutual legal assistance**

133. The refusal of mutual legal assistance based on the principle of *ne bis in idem* may overbroad. In particular, MLA is denied if “proceedings are pending” for the same crime or “if a procedure against [the accused] has been discontinued” on grounds other than the merits. The Working Group will examine the application in practice of this provision in Phase 2. It will also consider whether there are any obstacles for the provision of bank information as MLA.

### **Extradition**

134. If Croatia declines extradition solely on the ground that the person sought is its national, then it would initiate its own prosecution only if two conditions (among others) are met. First, the state seeking extradition must request that Croatian commence prosecution. Second, the foreign state must transfer the proceedings and provide all necessary evidence to Croatia. In Phase 2, the Working Group will examine the impact of these conditions on extradition in practice.

### **Tax deductibility**

135. The explicit prohibition on the tax deduction of bribe in Profit Tax Act (PTA) Art. 7a entered into force only on 12 October 2023. The Minister of Finance has yet to prescribe implementation regulations for determining the tax base as required by PTA Art. 7a(2). Additional rules or guidance for implementation may also be necessary. The Working Group will follow-up the provision’s implementation in practice in Phase 2.

**ANNEX 1. LIST OF ABBREVIATIONS AND ACRONYMS**

Art.	article	MOJ	Ministry of Justice and Public Administration
CA	Criminal Act		
CLL	Corporate Liability Law (Act on the Responsibility of Legal Persons for Criminal Offences)	PNUSKOK	National Police Office for the Suppression of Corruption and Organised Crime
CPA	Criminal Procedure Act	PPA	Public Procurement Act
EU	European Union	PTA	Profit Tax Act
EUR	euro	SME	micro, small or medium-sized enterprise
HSFI	Croatian Financial Reporting Standards	SOE	state-owned or controlled enterprise
IFRS	International Financial Reporting Standards	UNCAC	United Nations Convention against Corruption
ISA	International Standards on Auditing	UNTOC	United Nations Convention against Transnational Organized Crime
MLA	mutual legal assistance	USKOK	Office for the Suppression of Corruption and Organised Crime
MLACMA	Mutual Legal Assistance in Criminal Matters Act		

## ANNEX 2. EXCERPTS OF RELEVANT LEGISLATION

### Criminal Act: Foreign bribery offence

#### Article 294 - Giving a bribe

(1) Whoever offers, gives or promises a bribe intended to that or another person to an official or responsible person in order that he or she perform, within or beyond the limits of his or her authority, an official or other act which he or she should not perform, or fail to perform an official or other act which he or she should perform, or whoever intermediates in such an act of bribery of an official or responsible person shall be punished by imprisonment from one to eight years.

(2) Whoever offers, gives or promises a bribe intended to that or another person to an official or responsible person in order that he or she perform, within or beyond the limits of his or her authority, an official or other act which he or she should perform, or fail to perform an official or other act which he or she should not perform, or whoever intermediates in such an act of bribery of an official or responsible person shall be punished by imprisonment from six months to five years.

(3) In cases of commission of a criminal offense referred to in paragraphs 1 or 2 of this Article, when a bribe is offered, given or promised to an official person, an official person shall also encompass a foreign public official. A foreign public official is an appointed or elected holder of a legislative, executive, administrative or judicial duty or office of the European Union or a foreign country, as well as a person exercising or who is expressly or actually entrusted with exercising a public function for the European Union or a foreign country, including for a legal person constituted under public law to carry out tasks in public interest or for a business entity over which a foreign country exercises a direct or indirect dominant influence, and an official of public international organization or any person authorized by such an organization to act in the name and on behalf of that organization. A foreign country includes all levels of government of that country or of an organized foreign area.

(4) The perpetrator of the criminal offence referred to in paragraph 1 or 2 of this Article who gives a bribe at the request of an official or responsible person and reports the offence before it is discovered or before he or she finds out that the offence has been discovered may have his or her punishment remitted.

#### Article 339 Bribery of Representatives

(1) Whoever, as a member of the Croatian Parliament, European Parliament, legislative or representative body of a foreign country or public international organization or councilor of a representative body of a unit of local or regional self-government solicits or accepts a bribe or accepts an offer or a promise of a bribe for himself or herself or another in order to vote in a certain manner in the legislative or representative body, shall be punished by imprisonment from one to eight years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever offers, promises or gives a bribe intended to that or another person to a member of the Croatian Parliament, European Parliament, legislative or representative body of a foreign country or public international organization or councillor of a representative body of a unit of local or regional self-government so that the latter would vote in a certain manner in the legislative or representative body or whoever intermediates in such an act of bribery.

(3) A foreign country referred to in paragraphs 1 and 2 of this Article includes all levels of government of that country or of an organized foreign area.

### Criminal Act: Money laundering and false accounting

#### Article 248 - Violation of the obligation to keep commercial and business books

(1) Whoever fails to keep commercial or business records he/she is required by law to keep, or keeps them in a way that the transparency of business dealings or the financial situation is rendered difficult, or destroys, conceals, damages considerably or otherwise renders unusable commercial or business records or business documents he/she is required to keep shall be sentenced to imprisonment for a term of up to three years.

### **Article 265 - Money Laundering**

(1) Whoever invests, takes over, converts, transfers or exchanges pecuniary gains acquired by a criminal offence in order to conceal or falsely represent their illegal origin or to help the perpetrator or participant in a criminal offence by which a pecuniary gain was acquired to avoid prosecution or confiscation of the pecuniary gain acquired by a criminal offence, shall be punished by imprisonment from six months to five years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be imposed on whoever conceals or falsely portrays the true nature, source, place, disposal, transfer and existence of rights or ownership over the pecuniary gains acquired by a criminal offence.

(3) The same punishment as referred to in paragraph 1 of this Article shall be imposed on whoever acquires, possesses or uses pecuniary gains acquired by a criminal offence committed by another person.

(4) The same punishment as referred to in paragraph 1 of this Article shall be imposed on whoever intentionally gives instructions or advice or eliminates barriers or in other way facilitates the commission of a criminal offence referred to in paragraph 1, 2 or 3 of this Article.

(5) Whoever commits a criminal offence from paragraph 1 or 2 of this Article in financial or other business operations or if the perpetrator is in business of money laundering or if the pecuniary gains from paragraph 1, 2 or 3 of this Article are of great value, shall be punished by imprisonment from one to eight years.

(6) Whoever undertakes an action referred to in paragraph 1, 2 or 5 of this Article while acting in negligence in relation to circumstances that the action concerns pecuniary gains acquired by a criminal offence, shall be punished by imprisonment up to three years.

(7) If pecuniary gains referred to in paragraphs 1 to 6 of this Article are acquired by a criminal offence committed in a foreign state, the perpetrator shall be punished if the committed offence also constitutes a criminal offence under the laws of the country in which it was committed.

(8) The perpetrator referred to in paragraphs 1 to 6 of this Article who contributes significantly to the detection of a criminal offence by which pecuniary gains are acquired may be exempted from punishment.

(9) Pecuniary gains, objects and means derived from a criminal offence referred to in paragraph 1 to 5 of this Article or intended or used for committing a criminal offence referred to in paragraphs 1 to 5 of this Article shall be confiscated and the rights determined as null and void.

### **Art. 279 - Forgery of an official or business document**

(1) A public official or responsible person who enters false information into an official or business document, record or file, or fails to enter an important piece of information, or certifies by his/her signature or official seal such a document, record or file containing false information, or enables by his/her signature or official seal the making of a document, record or file containing false information shall be sentenced to imprisonment for a term of between six months and five years.

(2) The same sentence referred to in paragraph 1 shall also be imposed on whoever uses a false official or business document, record or file in service or business as if they were true.

## **Criminal Act: other provisions**

### **Article 20**

(1) A criminal offense may be committed by an act or omission.

(2) Whoever fails to prevent the occurrence of a legally described consequence of a criminal offense shall be liable for failure to act if he is legally obliged to prevent the occurrence of such a consequence and if failure to act is equal to the commission of that act.

(3) A perpetrator who has committed a criminal offense by omission may be punished less severely, unless it is a criminal offense that can be committed only by omission.

**Article 40 - Types of penalties**

- (1) Penalties are a fine, imprisonment and long-term imprisonment.
- (2) A fine may be imposed as a principal and as an ancillary penalty.
- (3) Imprisonment and long-term imprisonment may be imposed only as principal punishments.
- (4) When the law prescribes a prison sentence of up to three years for a certain criminal offense, the court may impose a fine as the main sentence.
- (5) For criminal offenses committed out of greed, a fine may be imposed as an ancillary punishment even when it is not prescribed by law or when the law prescribes that the perpetrator shall be punished by imprisonment or a fine, and the court shall impose imprisonment as the main punishment.
- (6) Work for the common good shall be pronounced as a substitute for imprisonment or a fine.

**Act on the Responsibility of Legal Persons for Criminal Offences****I. BASIC PROVISIONS****Article 1**

- (1) This Act determines the preconditions of liability, penalties, security measures, confiscation of property gain, confiscation of objects, public announcement of a judgment, statute of limitations and criminal proceedings for criminal offences of legal persons.
- (2) Legal persons within the meaning of this Act are also foreign persons who are considered legal persons under Croatian law.

[...]

**Article 2 – Application of criminal law**

Unless otherwise prescribed by this Act, the provisions of the Criminal Act, the Criminal Procedure Act and the Act on the Office for the Suppression of Corruption and Organized Crime shall apply to legal entities.

**II. CONDITIONS OF LIABILITY****Article 3 – The basis of liability of legal persons**

- (1) A legal person shall be punished for the criminal offence of a responsible person if it violates a duty of a legal person or with which the legal person has achieved or should have achieved an advantage for itself or another.
- (2) Under the conditions referred to in paragraph 1 of this Article, a legal person shall be punished for the criminal offence of a responsible person entrusted with the performance of activities in the field of activity of a legal person, also where the commission of the criminal offence was made possible by the lack of supervision or control by a responsible person who manages the affairs of a legal person.
- (3) Under the conditions referred to in paragraphs 1 and 2 of this Article, a legal person shall be punished for criminal offences prescribed by the Criminal Act and other laws in which criminal offences are prescribed.

**Article 4 – Responsible person**

A responsible person in the sense of this Act is a natural person who manages the affairs of a legal entity or is at any level entrusted with the performance of activities in the field of activity of a legal entity.

**Article 5 – Accounting for the fault of the responsible person to the legal entity**

- (1) The liability of a legal person shall be based on the fault of the responsible person.
- (2) A legal person shall also be punished for the criminal offence of a responsible person even in the case when the existence of legal or actual obstacles to determining the responsibility of the responsible person is established.

**Article 6 – Exclusion and limitation of liability of legal entities**

- (1) The Republic of Croatia, as a legal person, may not be punished for a criminal offense.

(2) Local and regional self-government units may be punished only for crimes that were not committed in the exercise of public authority.

#### **Article 7 – Liability in case of change of the legal entity’s status**

(1) If a legal person ceases to exist before the criminal proceedings have ended, a fine, security measures, public announcement of the verdict, confiscation of property gain and confiscation of items may be imposed on the legal person that is its general legal successor.

(2) If a legal person ceases to exist after the final completion of the criminal proceedings, fines, security measures, public announcement of the verdict, confiscation of property gain and confiscation of items shall be carried out in accordance with the provisions of paragraph 1 of this Article.

(3) A legal person in bankruptcy shall be punished for criminal offenses committed before initiation or during the bankruptcy proceedings.

### **III. PENALTIES**

#### **Article 8 – Types of penalties**

Penalties are a fine and termination of the legal entity.

#### **Article 9**

Deleted.

#### **Article 10 – The level of monetary fines**

(1) If a fine or imprisonment with a special maximum term of one year is prescribed for a criminal offence, a legal person may be fined from EUR 5 000 to EUR 10 000 000.

(2) If the criminal offence is punishable by imprisonment with a special maximum term of five years, a legal person may be fined from EUR 10 000 to EUR 15 000 000.

(3) If the criminal offence is punishable by imprisonment with a special maximum term of ten years, the legal person may be fined from EUR 15 000 to EUR 20 000 000.

(4) If the criminal offence is punishable by imprisonment with a special maximum term of fifteen years or a heavier sentence, the legal person may be fined from EUR 20 000 to EUR 25 000 000.

(5) If the purpose of punishment would not be achieved by sanctions prescribed by paragraphs 1 to 4 of this Article, the legal person may be fined in the amount up to 10% of the annual total turnover of the legal person in the business year preceding the year of reaching decision imposing the fine.

[...]

## **Profit Tax Act**

### **II TAXPAYER**

#### **1 General provisions**

Article 2(1) A taxpayer is a company or another legal or natural person that is a resident of the Republic of Croatia and performs its economic activity independently, permanently, and in order to achieve profit, income, or revenue, or other business relevant benefits.

(2) A taxpayer is also a domestic permanent establishment of a foreign entrepreneur (non-resident).

(3) Taxpayers are also natural persons who determine income in the manner prescribed for self-employment activities under the regulations on income taxation or who are starting to perform a self-employment activity or if they declare that they will pay profit tax instead of income tax.

[...]

### **III TAX BASE**

#### **3 Increase of the tax base**

Article 7a(1) Any undue reward, gift or other material or non-material benefit, regardless of the value, which may be sanctioned in accordance with the regulations of criminal law, shall not be recognised as a tax-deductible expense of business.

### **IX CALCULATION AND PAYMENT OF TAX**

#### **1 Tax calculation and payment liability**

Article 32(1) Profit tax is calculated for the taxation period, according to the tax base determined for the taxation period and the prescribed rate pursuant to the provisions of this Act.

(2) The taxpayer shall determine the tax base and pay the tax ending with the day of submitting the tax return.