Organisation for Economic Co-operation and Development

DAF/WGB(2024)49/FINAL

Unclassified English - Or. English

19 December 2024

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

Phase 2 Evaluation of Croatia

Report

10-13 December 2024
Paris, France

This document was adopted by the Working Group on 13 December 2024.

For further information, please contact:
William Loo (+33 (0)1 45 24 94 44, William.Loo@oecd.org)
Lucia Ondoli (+33 (0)1 45 24 99 73, Lucia.Ondoli@oecd.org)

JT03557710

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Executive Summary

This Phase 2 report by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on Croatia's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report details Croatia's achievements and challenges, including in enforcing its foreign bribery offence.

The Working Group commends Croatia for the steps taken to fight foreign bribery despite its very recent accession to the Convention in January 2024. Croatia has raised awareness of the Convention and further efforts are planned. Significant initiatives have also been undertaken to promote whistleblowing. Croatia's export credit agency has enacted an Ordinance to implement several anti-foreign bribery measures. Croatia has commendably repealed a dual criminality requirement for the money laundering offence. In 2023, improvements to Croatia's criminal and tax legislation facilitated its accession to the Convention. Prosecutorial and police units that are specialised in corruption cases have established a record of enforcement of domestic bribery against individuals and have recently commenced investigations against three companies for domestic bribery.

However, the Working Group highlights that the enforcement of foreign bribery is yet to be proven. Additional steps should have been taken by Croatia to explore all potential sources of evidence and jurisdiction with respect to foreign bribery allegations. None of these cases has resulted in convictions or even formal investigations. Furthermore, corporate enforcement of both domestic and foreign bribery has been extremely rare. Delays in corruption cases also contribute to a negative perception of judicial independence in Croatia. Enforcement of bribery-related money laundering and false accounting also needs improvement.

There are also some concerns on legislation and practice. Undue payments to a foreign official to perform acts outside their competence have not yet been prosecuted as bribery in practice. Rules on jurisdiction over companies and bribery of foreign legislators need clarification through legislative amendments. Confiscation of the proceeds of bribery from bribe-givers is almost never imposed in practice. A new whistleblowing law is generally broad in coverage but does not expressly apply to reports of foreign bribery or those who report crimes only to law enforcement. Penalties for retaliating against whistleblowers appear too low.

Croatia is enhancing detection and awareness of foreign bribery, but more efforts are needed. Croatia did not detect most of the foreign bribery allegations reported in the Croatian and foreign media. The reporting of suspected crimes by public officials to law enforcement should be improved. Croatia's national anti-corruption strategy addresses foreign bribery and the Convention, but future measures should also be based on a foreign bribery risk assessment. Further efforts are needed to raise the private sector's awareness of foreign bribery and encourage Croatian companies operating abroad to implement adequate anti-corruption compliance programmes. The prohibition against the tax deduction of bribes has yet to be enforced.

The report and its recommendations reflect the conclusions of experts from Greece and Poland and were adopted by the Working Group on 13 December 2024. The report is based on legislation and other materials provided by Croatia, as well as research by the evaluation team. Information was also obtained during a July 2024 on-site visit to Croatia, in which the evaluation team met representatives of the Croatian public and private sectors, prosecutor's office, judiciary, parliament, civil society, and media. Croatia will report in writing in two years (i.e. by December 2026) on the implementation of all recommendations and on its enforcement efforts.

A. Introduction

1. This document reports on the Phase 2 evaluation of Croatia conducted by the OECD Working Group on Bribery in International Business Transactions (Working Group). The purpose of the evaluation is to study the structures in Croatia to enforce and to apply the laws and policies implementing the OECD anti-bribery instruments, namely the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention); 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) and related instruments.

A.1. The onsite visit

2. An evaluation team composed of lead examiners from Greece and Poland, and the OECD Secretariat,[1] conducted an onsite visit of Croatia on 8-12 July 2024. The evaluation team met representatives of the Croatian public and private sectors, prosecutor's office, judiciary, parliament, civil society, and media. (See Annex 1 for a list of participants.) Croatian authorities absented themselves from the meetings with non-governmental participants. Prior to the visit, Croatian authorities provided written responses to the Working Group's standard and supplementary Phase 2 questionnaires. Croatian authorities provided further information to the evaluation team before and after the visit. The evaluation team also conducted independent research to gather additional information.

3. The evaluation team appreciates the co-operation of Croatian authorities during this evaluation. It is also grateful to all participants for their co-operation and openness during the discussions.

A.2. General observations

A.2.a. Political and legal system, economy and foreign bribery risks

4. Croatia is a parliamentary democracy. The President is the head of state and is elected by popular majority to a 5-year term renewable once (Constitution Art. 95). The Prime Minister heads the government, and is appointed by the President and approved by Parliament (Art. 109). The Sabor is the unicameral Parliament with members elected to 4-year terms (Arts. 72-73). The judiciary consists of the Supreme Court, as well as High, County and Municipal Courts. Constitutional matters are adjudicated by the Constitutional Court which Croatia states is independent from all state bodies and the judicial system. Croatia has a civil-law system. The sources of binding law include the Constitution, legislation, international treaties, and other valid sources of law (Art. 115).

5. Croatia has a population of 3.8 million and is a member of the EU (including the Schengen Area and Euro currency). Its GDP ranks 40th out of the 46 Working Group countries. Services account for over 70% of GDP, with tourism contributing approximately 25%. The informal economy is about 10% of GDP but may be as high as 35%.[2]

6. In terms of trade, Croatian exports have increased strongly since EU membership in 2013. In 2022, Croatia ranked 41st in the Working Group for exports of goods and 32nd for commercial services. The top exported goods were machinery and transport equipment; manufactured goods; miscellaneous manufactured articles; food and live animals; and mineral fuels, lubricants, and related materials. The main export destinations were Italy, Germany, Slovenia, Bosnia and Herzegovina, Hungary, Serbia, and Austria. The main imported goods were machinery and transport equipment; mineral fuels, lubricants, and related

[1] Greece was represented by Mr. Dimosthenis Stigas, Appellate Judge; and Ms. Georgia Kaoura, Strategic Planning and International Relations Specialist, National Transparency Authority. Poland was represented by Mr. Rafał Kierzynka, Chief Expert – Judge, Ministry of Justice; and Mr. Jacek Łazarowicz, Prosecutor, Ministry of Justice. The OECD Secretariat was represented by Mr. William Loo, Ms. Lucia Ondoli and Ms. Rusudan Mikhelidze, Anti-Corruption Division.

[2] OECD (2023), Economic Survey: Croatia, pp. 25, 31 and 47; Croatian Bureau of Statistics; IMF World Economic Outlook Database; Economist Intelligence Unit.

materials; and manufactured goods. The top import sources were Italy, Germany, and Slovenia. The main service exports and imports were travel and business services respectively.[3]

7. Concerning foreign direct investment, Croatia ranked 39th in the Working Group in 2022. The top destinations were Slovenia, Bosnia and Herzegovina, Cayman Islands, Serbia, Marshall Islands, Montenegro, and Liberia. Some of these may be "pass through" jurisdictions for investment destined elsewhere. The principal sectors were financial service activities (excluding insurance and pension funding); water transport; wholesale trade (excluding motor vehicles and motorcycles); manufacture of food products; and electricity, gas, steam, and air conditioning supply.[4]

8. Croatia's exposure to risks of foreign bribery stems from countries with which it has economic ties, its state-owned and controlled enterprises (SOEs), as well as its micro, small and medium-sized enterprises (SMEs). Several of Croatia's main trade and investment partners have a perceived high level of public sector corruption, such as Bosnia and Herzegovina, Serbia, and Montenegro.[5] Croatia's SOE sector is large compared to EU as well as central and eastern European countries. Some SOEs are active internationally, including in corruption-prone sectors such as energy, defence and construction.[6] An SOE is implicated in one known foreign bribery allegation. SMEs also represent a substantial part of the economy. In 2022, 99.8% of Croatian companies were SMEs, accounting for 56.5% of value added and 70.9% of employment in the non-financial business sector. Many are active internationally, with those in industry scoring higher than the EU average on merchandise trade with countries outside the EU.[7]

A.2.b. Implementation of the Convention

9. The Act on Confirmation of the Convention was adopted by Croatia's Parliament on 27 October 2023 and published in the Official Gazette on 7 November 2023. Croatia deposited its instrument of accession to the Convention with the OECD on 22 November 2023 and became a Party to the Convention on 21 January 2024. Croatia also adhered to the Anti-Bribery Recommendation. The Working Group conducted its Phase 1 evaluation of Croatia in December 2023.

A.2.c. Cases involving the bribery of foreign public officials and related offences

10. Croatia has not opened formal investigations in any of the four known allegations of Croatian individuals or companies bribing foreign public officials (i.e. active foreign bribery). It commenced "inquiries" into three of these four allegations in December 2023 or January 2024, i.e. shortly after the start of this Phase 2 evaluation:

(a) Military Equipment (Bosnia and Herzegovina): According to media reports beginning in 2021, a Croatian company allegedly signed a contract in 2004 with Bosnia and Herzegovina's Defence Ministry to purchase old weapons and military equipment. Sometime in 2009-2011, the then Defence Minister allegedly changed the terms of the contract without consulting other officials. As a result, the Croatian company supposedly received weapons and ammunition of a higher value than it had paid for, causing the Bosnian government to lose BAM 9.7 million (EUR 4.95 million). The Defence Minister was charged with abuse of office and corruption in November 2021 and convicted in December 2023. The conviction became final in October 2024.

(b) Power Project (Slovenia): In December 2021, a multilateral development bank reached a settlement with a non-Croatian company. Part of the settlement concerned misconduct by the company's Croatian subsidiary in relation to a power project in Slovenia. The company also settled

[3] WTO Stats; UN Comtrade Data; UNCTADStat.
[4] Croatian National Bank; UNCTADStat (2022), Foreign Direct Investment: Outward Stock.
[5] Transparency International, Corruption Perception Index 2023.
[6] OECD (2023), Economic Survey: Croatia, p. 89; OECD (2021), Review of the Corporate Governance of State-Owned Enterprises: Croatia, pp. 21-22.
[7] European Commission (2023), SME Performance Review 2022/2023: Croatia Country Sheet.

a civil case in Slovenia. In 2022, the company further pleaded guilty in Slovenia to acting as an accessory to abuse of office and paid a EUR 23 million fine.

(c) Gas Plant (Syria): According to a 2016 media report, a Monaco company allegedly paid bribes on behalf of international energy companies to win contracts globally. In one such transaction, the company reportedly paid EUR 2.75 million to the head of the Syrian arm of a Croatian oil company. The individual was also Croatia's honorary consul in Damascus and had close ties to the Syrian government. In return, the individual allegedly secured contracts to build gas plants for a client of the Monaco company in 2008.

(d) Ammunition (Ukraine): According to media reports since at least November 2023, Ukraine's Ministry of Defence (MOD) signed a contract with a Ukrainian company in August 2022 to purchase ammunition. The Ukrainian company was to then procure the shells from a Croatian company for delivery by February 2023. The MOD paid in advance almost the entire purchase price of UAH 1.3 billion (EUR 31 million). Approximately EUR 12 million of the purchase money was then transferred from the Ukrainian company to companies in Slovakia, Croatia and finally elsewhere in the Balkans. The balance reportedly stayed with the Ukrainian company in Ukraine. No ammunition was delivered to the MOD. In January 2024, the media published invoices of payments by the Ukrainian company to the Slovak company. The report also suggested that the ammunition was overpriced and that various individuals received kickbacks. Ukrainian authorities began an investigation in November 2023 and arrested several individuals in January 2024.

11. Croatia states that it has examined these allegations and concluded that the first three cases do not involve foreign bribery. However, this conclusion was not based on an exhaustive and thorough evaluation of the available evidence, as explained in section C.1.c.ii at p. 30. Given the limited number of active foreign bribery allegations, this report also considers where appropriate cases of non-Croatian companies bribing Croatian public officials (i.e. passive foreign bribery), and some significant cases of Croatian companies bribing Croatian public officials (domestic bribery).

B. Prevention, detection and awareness of foreign bribery

B.1. General efforts to raise awareness of foreign bribery

B.1.a. Anti-foreign bribery strategy

12. Croatia has been adopting national strategic documents on anti-corruption since 2002. The current Strategy for the Prevention of Corruption for the period 2021-2030 has five broad objectives, including "Strengthening the institutional and normative framework for the fight against corruption" and "Raising public awareness about the harmfulness of corruption, the need to report irregularities and strengthening transparency". Under each objective, the strategy defines measures in different areas, including the private sector. Three-year action plans then specify activities for implementing these measures. The Government has adopted the Action Plan for 2022-2024. The next plan for 2025-2027 is being developed.

13. The national strategy and action plan mention the Anti-Bribery Convention and measure 4.1.12 concerns "Improving anti-bribery frameworks in international business transactions". To implement this objective, Croatia assessed its legislative and institutional framework in 2020-2022 to align it with the Convention.[8] In 2023, Croatia amended its legislation for the purpose of acceding to the Convention. It has not identified the sectors and entities at risk of committing foreign bribery, however.

Commentary

The lead examiners commend Croatia for including foreign bribery and the Convention in its national anti-corruption strategy, and amending its legislation as required by the Convention. They recommend that Croatia (a) conduct a risk assessment to identify the sectors and entities that are

[8] OECD (2022), Fighting Transnational Bribery in Croatia: Assessment of Legal and Policy Frameworks.

exposed to foreign bribery, and (b) develop measures targeting these risk areas, including through awareness-raising, prevention, detection, and enforcement.

B.1.b. General initiatives to raise awareness of foreign bribery

14. Croatia has made efforts to raise awareness of foreign bribery among public officials. In November 2021, it held a conference on "Fighting transnational bribery in Croatia: Impact of the OECD Anti-Bribery Convention and new perspectives for public and private stakeholders". Three workshops in May 2022 covered assessments of Croatia's foreign bribery legislative and institutional framework and included presentations by experts from Working Group countries. In May 2024, the MOJ and US Embassy in Zagreb organised the conference "Integrity Without Borders: Strategies for Preventing and Combatting Foreign Bribery". The event offered practical guidance for implementing the Convention to stakeholders from government and law enforcement. Additional awareness-raising for officials in law enforcement, tax administration, export credits, official development assistance, and diplomatic representations is described in later sections of this report.

15. Some efforts have also been made to raise awareness in the private sector. Business associations attended the November 2021 and May 2024 conferences mentioned above. The Croatian Chamber of Commerce informs its members about legal developments, including the Convention. The Bar Association has included the Convention in its criminal law workshops for lawyers as of 2023. Three conferences in 2022-2024 covered the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. The conferences addressed corruption but not the Convention or foreign bribery specifically. HAMAG-BICRO is Croatia's agency for small- and medium-sized enterprises (SMEs). It held workshops for exporters, primarily SMEs, which included a presentation on responsible business conduct. Recent initiatives focus more specifically on the Anti-Bribery Convention. On 1 October 2024, a round table entitled "The Role of the OECD in Strengthening Anti-Corruption Policies in the Private Sector" was organised by the Association of Corporate Lawyers, Croatian Business Compliance Association and the MOJ. Private-sector companies or business organisations represented 23 of 28 participants. Another conference co-organised by the MOJ, National Contact Point for Responsible Business Conduct and ICC Croatia on the "Synergy of the Business Sector and Public Administration in the Fight Against Corruption" was held on 6 December 2024.

16. Despite these efforts, the private sector's awareness of the Convention and foreign bribery can be improved. Most large companies that participated in this evaluation state that they are aware. A company states that this is mainly because they must comply with anti-bribery regulations from other countries like the US. Another company mentions that the Croatian government emphasised this topic, especially after the legislative amendments in 2023. Lawyers agree and add that companies have sought legal advice on this topic. However, one journalist states that most business entities "do not recognise the topic of foreign bribery". Companies admit in conversations with them that, when bribery is a "market requirement" in a foreign country, Croatian companies "will agree to it". The Ministry of Foreign and European Affairs has not raised awareness, despite its contact with the private sector. Insufficient efforts have been made by the Ministry of Finance which is responsible for state-owned enterprises (SOEs), or the Financial Services Supervisory Agency (Hanfa) which regulates the private sector and listed companies.

Commentary

Croatia has commendably raised awareness of the Convention and foreign bribery despite acceding to the Convention only recently. Nevertheless, further efforts are needed, especially in the private sector. The lead examiners therefore recommend that Croatia further raise awareness of foreign bribery among Croatian companies operating abroad, including SOEs.

B.2. Reporting and whistleblowing

B.2.a. Reporting by public officials, private individuals and companies

17. Both public officials and private individuals have a duty to report criminal offences that are prosecutable *ex officio* (CPA Art. 204). This includes foreign bribery and related offences. Public officials and "responsible persons" of a legal person or public body who fail to report are punishable by up to three years' imprisonment (CA Arts. 87(6) and 302(2)). Three convictions of this offence were recorded in 2019-2023. Private individuals who fail to report foreign bribery or related offences are not sanctionable.

18. Reports of corruption can be made (in person, by phone or email) to the police or the Office for the Suppression of Organised Crime and Corruption (USKOK). The MOJ accepts email reports and forwards them to competent authorities. Reports may be anonymous. Civil Servants Act Art. 17 grants anonymity and certain protections to civil servants and state employees, but not private sector individuals (Art. 2). Whistleblowing legislation provides further channels and protection, including for private sector whistleblowers (see next section).

19. Reports in practice have been submitted mostly by private individuals, not public officials. In 2019-2023, USKOK did not receive any reports of foreign bribery or foreign companies bribing Croatian officials. Private individuals submitted an annual average of 48 reports for domestic bribery and 963 for other corruption. USKOK received another 83 reports for bribery and 80 for other corruption from the police (which includes reports by individuals to the police). But reports from public officials and bodies averaged only 4 for bribery and 25 for other corruption.

20. An individual or company may self-report a criminal offence in return for an exemption from or reduction in punishment (see section C.2.d.ii at p. 49, and paras. 245 and 249).

Commentary

The lead examiners note that Croatian individuals and public officials have never detected or reported foreign bribery allegations. Reports of domestic corruption are made mostly by private individuals. Specific recommendations to encourage relevant Croatian officials to detect and report foreign bribery are described in the sections below.

B.2.b. Whistleblowing and whistleblower protection

21. In 2022, Croatia adopted the "Act on the Protection of Persons Reporting Irregularities" (Whistleblower Protection Act, WPA). The WPA replaces a 2019 law and transposes the EU Directive No. 2019/1937. The Ombudsperson monitors the WPA's implementation.

B.2.b.i. Scope of application

22. The WPA covers a broad range of reporting persons. It applies to the reporting of information acquired in the context of "professional activities in the public or private sector" (WPA Art. 6(5)). This includes employees, self-employed persons, shareholders, contractors, persons participating in any way in the work activities, and persons whose working relationship has ended or was about to start. (Art. 6(2) and (5)(a)-(e)). Protection extends to "connected persons" such as a whistleblower's relatives, helpers, or other natural and legal persons connected with the whistleblower in a work-related context (Arts. 6(8) and 11(3)). The report may concern "actual or potential irregularities which have occurred or are very likely to occur" (Art. 6(2)). The reporting person must have reasonable grounds to believe that the reported irregularity is true (Art. 12(1)).

23. More problematically, there are significant doubts that the WPA covers all reports of foreign bribery and related offences. WPA Art. 4(1) sets out the irregularities to which the law applies. Arts. 4(1)(a)-(c) concern EU acts, financial interests and internal market. These provisions therefore would apply the WPA to bribery of EU officials, and possibly bribery of officials of foreign countries if an EU-funded project is

involved. Under Art. 4(1)(d), the WPA also applies to irregularities relating to other provisions of national law "if such breaches undermine the public interest". At the onsite visit, the Ombudsperson's Office explained that the notion of "public interest" excludes reports of certain crimes. For example, the WPA would cover embezzlement in an enterprise that is state-owned but not one that is privately held. Presumably, a private company bribing a non-Croatian, non-EU official is also excluded.

24. The Ombudsperson's Office revised its position after reviewing a draft of this report. As mentioned above, Art. 4(1)(d) applies the WPA to any breaches of national legislation that undermine the "public interest". Croatia contends that foreign bribery is a crime and hence would be prosecuted because of the principle of legality *ex officio*. As a result, "the State Attorney's Office will be engaged, state resources will be spent, it also may affect some fundamental rights of a defendant. All of this, without doubt, would not be possible if a prosecution of a bribe wasn't considered as public interest." In essence, Croatia states that the WPA covers the reporting of all crimes.

25. Croatia further argues that this issue could be clarified through education and internal documents/guidance, and a legislative amendment is not necessary. Croatia's WPA includes a general reference to the "public interest", which produces uncertainty, especially for potential whistleblowers. This uncertainty was confirmed during the onsite visit, when the Ombudsperson's Office clearly stated that the notion of "public interest" excludes reports of certain crimes, as mentioned above.

Commentary

The lead examiners welcome Croatia's enactment of the new WPA. They note in particular that the law protects a broad range of reporting persons.

However, the lead examiners are seriously concerned that the WPA does not clearly and unambiguously cover all reports of foreign bribery and related offences. Croatia argues that the WPA covers the reporting of all crimes, but this is not stated clearly in the statute. Instead, the WPA states that it only applies to cases of "public interest", a general and undefined term. That the Ombudsperson has revised its position on this issue demonstrates the statute's lack of clarity.

Most importantly, a statute like the WPA must state clearly and in no uncertain terms that whistleblowers who report foreign bribery are unquestionably covered. Many potential whistleblowers will decide not to come forward if they feel that there is any chance the WPA does not apply. Any ambiguity or room for argument on the WPA's scope of coverage will serve to discourage whistleblowing.

For these reasons, the lead examiners recommend that Croatia amend the WPA to explicitly clarify that the Act covers the reporting of foreign bribery and related offences.

B.2.b.ii. Reporting channels

26. The WPA provides for three reporting channels. Internal reporting is made directly to the entity with which the reporting person has a professional relationship (e.g. an employer). Employers with 50 or more staff must establish an internal reporting channel and appoint a "confidential person" to receive and review reports (Arts. 19-22). A whistleblower may report externally to the Ombudsperson's Office, either directly or after having reported internally (Arts. 23-24). The whistleblower may make a public disclosure if an internal or external report did not lead to an appropriate response within specified deadlines; if an irregularity may pose an immediate or obvious danger to the public interest; or if there is a risk of retaliation or low prospect of an effective response (Art. 26).

27. However, the WPA does not apply if a person reports a criminal offence only to prosecutors (including USKOK) or the police. Individuals are legally obligated to report crimes to authorities (CPA Art. 204; see para. 17). WPA Art. 5(3) permits a whistleblower to make such a report to competent authorities. But to enjoy the WPA's protection, a whistleblower must also report through one of the three channels designated by the WPA mentioned above. Croatian authorities state that in practice the

"confidential persons" and the Ombudsperson must forward reports related to criminal offences to the State Attorney's Office (SAO) (WPA Arts. 22(2)(4) and 24(2)(4)). However, this does not solve the issue of a whistleblower who reports only to law enforcement. Nor is it clear that the forwarding of the report necessarily absolves the whistleblower of the legal duty to report the crime to the prosecutor's office.

28. In addition, there are doubts as to what happens if a report is first submitted to law enforcement, and then through a WPA channel. Croatia states that "the WPA still can be applied if the whistleblower reports directly to the police or state attorney, but to have a whistleblower protection he also has to use one of three channels envisaged by the WPA". Croatia then contradicts its position by stating that "if the whistleblower directly turns to the state attorney and files a criminal report (which is not anonymous, but the whistleblower identifies himself), it is clear that this is not a case of conducting the process in accordance with the Act on the Protection of Whistleblowers". In such case, only the criminal procedure provisions on witness protection may apply. This suggests that a report first submitted to the law enforcement authorities may not qualify for protection. There is no sound policy reason why protection applies if a report is first made through a WPA channel and then to law enforcement, but not if the order is reversed or if the report is only to the latter. Croatia also refers to SAO guidelines which state that a prosecutor who receives a report from a whistleblower should forward it to the Ombudsperson and inform the reporting person that they "should contact the Ombudsperson regarding the general legal information and conditions for the protection of the reporting person in terms of the Act".[9] But these guidelines fall short of saying that the whistleblower is protected.

Commentary

The lead examiners recommend that Croatia amend the WPA to protect a whistleblower who only reports to the prosecutor's office or police instead of through one of the WPA reporting channels, or who reports to the prosecutor's office or police first.

B.2.b.iii. Protection from and remedies for retaliation

29. The WPA provides for confidentiality and prohibits retaliation. A whistleblower's identity should remain confidential subject to limited exceptions, e.g. necessary disclosure in investigations or judicial proceedings (Art. 14). An anonymous whistleblower who is later identified qualifies for protection (Art. 12(2)). The WPA provides for a broad definition of retaliation in a work-related context, which includes suspension; dismissal; demotion and denial of promotion; reduction in wages; changes of responsibilities and working conditions; disciplinary measures; negative evaluations; non-renewal or termination of a fixed-term employment; blacklisting; coercion, intimidation, harassment, or ostracism; discrimination or unfair treatment; infliction of harm or financial loss; and referral for psychiatric or medical treatment (Arts. 6(9) and 9). The onus is on the person who imposed a detrimental measure to prove that it was justified (Art. 31).

30. Remedies for retaliation include judicial protection, compensation for damages, legal aid and emotional support (WPA Art. 11). Municipal courts and the Zagreb Municipal Labour Court provide judicial protection unless another commercial or administrative court has special jurisdiction. The court may order the termination of retaliation; remedy its consequences (e.g. ordering reinstatement); award damages; and publish the judgment at the defendant's expense (Arts. 28-29). The court may also provide interim relief to prohibit retaliation and must decide such an application within eight days (Arts. 32-33).

31. There are some concerns about the timeliness of judicial remedies. The WPA underlines the need for "urgent resolution" of proceedings (Art. 28(3)). However, the Ombudsperson has reported that courts in some cases did not comply with this provision. Some cases saw significant delays, e.g. over a year between the filing and the first hearing, and over two years for the first-instance verdict.[10] The EU has

[9] State Attorney's Office (1 Feb. 2024), Guidelines n. A-244/2022, p. 5.
[10] Ombudsperson (29 Mar. 2024), 2023 Annual Report, p. 240.

observed that delay in the civil and administrative courts remains a serious concern .[11] The Ombudsperson has recommended that the MOJ and Judicial Academy train judges on the WPA provision on urgency.[12] But it is difficult to see how training to improve judges' knowledge of the WPA could overcome a structural problem of delay and congestion across Croatian courts.

32. The Ombudsperson provides additional non-binding remedies. She can prepare a report assessing whether a whistleblower's "constitutional or legal rights […] have been threatened or infringed upon" (WPA Art. 24(2); Ombudsperson Act (OA) Arts. 24-26). In practice, the Ombudsperson asks the employer to justify its actions. If the Ombudsperson concludes that retaliation occurred, she can issue recommendations, opinions, proposals, and warnings to the employer (OA Art. 15). In cases of failure to comply, the Ombudsperson can refer the matter to the employer's supervisory authority, the government, Parliament and the public (OA Art. 27). However, Croatia explains that this provision is unlikely to apply to a private employer's failure to implement remedial measures. "Confidential persons" must also follow up internal reports and inform the Ombudsperson of the outcome (WPA Art. 22(3)). In 2019-2023, the Ombudsperson issued 7 opinions, 2 warnings, and 2 reports to employers. Croatia adds that courts can take into account the Ombudsperson's non-binding measures when considering judicial protection of whistleblowers.

33. Sanctions for retaliation against a whistleblower and other breaches of the WPA appear too low to be deterrent. A legal person can be fined EUR 4 000-6 000 for retaliating against or failing to protect a reporting person. The fine falls to EUR 400-4 000 for individuals including sole proprietors (WPA Art. 36). Other violations such as a failure to create a reporting system or to protect confidentiality are punishable by a EUR 1 300-4 000 fine for legal persons, and EUR 130-1 300 for individuals (Art. 35). As of July 2024, 14 misdemeanour proceedings have been opened, mostly for failure to adopt internal reporting procedures or appoint a "confidential person". There is no information on the outcome of these proceedings.

Commentary

The lead examiners welcome the fact that the WPA covers a broad range of retaliatory measures. However, they are concerned about delays in the provision of remedies to whistleblowers who suffer retaliation, and the insufficient penalties for a breach of the WPA. Deterrent sanctions are particularly important noting that, as explained in the section below, stakeholders state that there is still a culture unfavourable to reporting and a fear of retaliation in Croatia.

The lead examiners therefore recommend that Croatia (a) take steps to ensure the timeliness of judicial proceedings for the protection of whistleblowers, and (b) ensure that fines for retaliation against whistleblowers are effective, proportionate, and dissuasive.

B.2.b.iv. Awareness-raising and whistleblowing in practice

34. Croatia has raised awareness of whistleblowing. Activities include a publication, special events, presentations, and workshops (including with business associations). A national anti-corruption campaign covered reporting. The Judicial Academy held workshops for judges, prosecutors, and judicial advisors. The Ombudsperson's Office publishes information on its website and conducts or participates in training for "confidential persons", employers, union representatives, judicial officials, and other stakeholders. In September 2024, the Ombudsperson published a Guide for Whistleblowers outlining a reporting person's rights and obligations under the WPA.[13] Croatia is developing a "virtual assistant" to provide legal information on the WPA to the public and electronic submission of reports to the Ombudsperson.

35. Further awareness-raising is needed, however. Reporting rates are low, especially in the private sector. In 2023, "confidential persons" informed the Ombudsperson of just 38 internal reports of

[11] European Commission (24 Jul. 2024), Rule of Law Report: Croatia, pp. 10-11.
[12] Ombudsperson (29 Mar. 2024), 2023 Annual Report, p. 240.
[13] Ombudsperson (20 Sep. 2024), Guide for Whistleblowers, p. 6.

irregularities, of which 26 were in state-owned enterprises or public bodies. Despite a steady increase since 2019, the Ombudsperson received 57 external reports in 2023, of which only 8 were from the private sector.[14] Civil society and business associations state that there is still a culture unfavourable to reporting and a fear of retaliation. The Ombudsperson also found problems such as whistleblowers not knowing or understanding the WPA; "confidential persons" with misunderstandings and challenges when dealing with reports; and employers failing to protect whistleblowers or retaliating against "confidential persons".[15]

36. The Ombudsperson's resources may be insufficient, according to civil society representatives in this evaluation. Its remit goes well beyond addressing whistleblowing: in 2023 alone, the Office handled 6 680 cases in fields from labour rights and social care to non-discrimination, etc. While the Office's budget increased every year since 2013, the department responsible for whistleblowing has only seven employees (five of which hired after the adoption of the WPA) and no separate budget. Backlog of whistleblowing cases increased from 18 cases in 2022 to 42 in 2023, mainly because of cases with multiple reports, complex irregularities, and competent authorities' delay in reporting the outcome of proceedings.[16] Croatia suggests that the backlog might also be because the new WPA allows for direct reporting to the Ombudsperson.

Commentary

The lead examiners welcome Croatia's initiatives to raise awareness of the WPA. Nevertheless, many challenges to the Act's implementation remain. They therefore recommend that Croatia (a) further raise awareness and provide guidance to employers and potential whistleblowers, and (b) ensure that the Ombudsperson has sufficient resources for its whistleblowing function.

B.3. Detection through media reports

37. USKOK monitors the media for foreign bribery allegations. It states that the spokesperson in its Anti-Corruption and Public Relations Department "reviews printed and online media and news broadcasts of national and local television stations on daily basis". The purpose is to monitor information on USKOK's cases and "the possible commission of criminal offences under the jurisdiction of the Office, including information on foreign bribery." The spokesperson monitors the "media from Croatia and neighbouring countries" daily, and "certain foreign media in English" periodically.

38. The Ministry of Foreign and European Affairs (MFEA) also monitors the media for foreign bribery allegations. It states that a "policy on media monitoring by overseas missions" has been in place for the past 15 years. The MFEA Public Relations Department trains diplomats before foreign postings, including on monitoring foreign media coverage. Each embassy or mission tasks a diplomat or consular officer with monitoring foreign media and sending summaries of significant cases to the MFEA. These case notes are also forwarded to the MOJ and Ministry of the Interior. Whether or how the allegations are also sent to Croatian law enforcement is unclear. The MFEA does not mention the obligation for all public officials to report criminal offences to law enforcement (CPA Art. 204; see para. 17). Nor does it indicate that these monitoring and reporting procedures are stipulated in written policy. It adds that new instructions require reporting to the MFEA of "any article […] related to possible criminal or corrupt actions by Croatian nationals in the host country". But only 11 diplomats had received this instruction as of July 2024.

39. Media monitoring of foreign bribery allegations should be strengthened. Of the four known foreign bribery cases involving Croatian companies, USKOK learned of the Ammunition (Ukraine) case in the media. But for the Military Equipment (Bosnia and Herzegovina) and Power Project (Slovenia) cases, the media reported the allegations in 2021. USKOK commenced "inquiries" into these allegations only in December 2023 or January 2024. USKOK was also unaware when the media reported the allegation in

[14] Ombudsperson (29 Mar. 2024), 2023 Annual Report, pp. 231-234.
[15] Ombudsperson (29 Mar. 2024), 2023 Annual Report, pp. 232-237.
[16] Ombudsperson (29 Mar. 2024), 2023 Annual Report, pp. 2 and 235.

the Gas Plant (Syria) in 2016. It learned of the allegation during a 2017 meeting with law enforcement officials from other countries. For its part, MFEA's overseas missions failed to report any of these four foreign bribery allegations, at least three of which were reported by the media in countries where Croatia has a diplomatic presence.

40. A March 2024 legislative amendment attracted media criticism though its impact on crime detection is unclear. Under CA Art. 307a, the unauthorised disclosure during a non-public criminal proceeding of the content of an investigative or evidentiary document is punishable by three years' imprisonment. The offence's purpose is supposedly to deter leaks that may affect investigations as well as the rights of defendants and witnesses. The offence does not apply to journalists, or to disclosures that are for the purpose of protecting the victim of a crime, in the interest of the defence, or "in another predominantly public interest". Since the provision applies to the disclosure of information from a pre-existing criminal proceeding, it is unlikely to restrict the reporting of a crime that is unbeknownst to law enforcement.

Commentary

The lead examiners are concerned that Croatia failed to detect most of the foreign bribery allegations reported in the Croatian and foreign media. They therefore recommend that USKOK and the MFEA strengthen their monitoring of domestic and foreign media for allegations of foreign bribery committed by Croatian citizens or companies. The MFEA should also establish clear procedures and channels for reporting foreign bribery allegations to Croatian law enforcement.

B.4. Officially supported export credits

41. Export credits and guarantees are financing provided to an exporter or a bank to facilitate an international trade transaction. Export credit agencies (ECAs) review applications for and manage the provision of such support. Croatia's ECA is the Croatian Bank for Reconstruction and Development (*Hrvatska banka za obnovu i razvitak*, HBOR). Because ECAs deal with companies that are active in international business, they can prevent, detect and report potential foreign bribery allegations involving these companies. ECAs can also sanction companies that have committed foreign bribery by denying them support. The Anti-Bribery Recommendation and the Recommendation of the Council on Bribery and Officially Supported Export Credits (Export Credits Recommendation) therefore ask ECAs to implement anti-bribery measures. HBOR has enacted an Ordinance for this purpose. The Ordinance was revised on 15 November 2024, shortly before the adoption of this report.

42. To prevent and detect foreign bribery, Ordinance Art. 7(2)(b) requires an exporter to declare in the application for support that (a) it and other persons involved in the transaction has not and will not participate in foreign bribery in the subject transaction; and (b) commissions and fees paid to agents are for legitimate services. The exporter must also disclose convictions of bribery in the previous five years and current investigations for this offence. Applications are checked for potential irregularities related to bribery, including verification of whether the applicant has been blacklisted by multilateral development banks (Arts. 7(1) and (2)(c)). Enhanced due diligence is applied to applicants with an increased risk, such as those with prior bribery convictions (Art. 8). No cases of foreign bribery have been detected in practice. An applicant with a recent bribery conviction is subjected to enhanced due diligence and may be denied support (Arts. 8(2)(b)(i), 9(1) and 9(3)). In practice, support has not been refused on this ground.

43. HBOR considers the anti-corruption compliance programmes of only some but not all applicants for support, and may also lack the expertise for conducting such assessments. If an applicant has a bribery conviction or is found to have participated in bribery by an arbitration panel in the previous five years, then HBOR examines whether the applicant has undertaken, implemented and documented "appropriate internal corrective and preventive measures". Such measures may include implementing an anti-corruption compliance programme; replacing individuals who participated in bribery; and conducting periodic audits and publishing their results (Art. 8(2)(b)(i)). For applicants without recent prior bribery convictions, HBOR does not consider their anti-corruption compliance programmes. Anti-Bribery Recommendation XXIII.D.i

states that countries should "encourage their government agencies to consider, where international business transactions are concerned and as appropriate, internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery in their decisions to grant public advantages, including […] officially supported export credits". To implement this Recommendation, HBOR could issue guidelines on additional situations in which it would consider an applicant's compliance programme, such as where certain red flags of foreign bribery exist. The current HBOR ordinance mentions certain bribery red flags in Art. 8(1) but they do not apply to Art. 8(2)(b)(i) which states that the applicant's compliance programme must be examined if the applicant has a bribery conviction or is found to have participated in bribery by an arbitration panel. When asked about its ability to assess compliance programmes, HBOR states that it has not needed to do so thus far. In future cases, it may enlist external consultants or experts since HBOR's staff may not have the relevant expertise.

44. The reporting of foreign bribery can be improved. Under Ordinance Art. 9(2), an organisational unit that determines bribery is involved in an export credit transaction must inform HBOR's competent decision-making bodies and the Management Board Office. These bodies then notify law enforcement in accordance with legal regulations and HBOR internal procedures. The provision raises two questions. First, there is no reference to the obligation to report bribery and other crimes under Criminal Procedure Act (CPA) Art. 204 (see para. 17). HBOR explains that the Ordinance focuses on the OECD Export Credits Recommendation, not all other regulations. Second, HBOR would report a matter only "if it has not already been publicly announced". Presumably, this means that the matter is not publicly known. However, CPA Art. 204 does not exempt reporting in such cases. Reporting publicly known bribery allegations is important since HBOR may be in possession of relevant evidence of which prosecutors are not aware. After reviewing a draft of this report, HBOR amended the Ordinance on 15 November 2024 to extend reporting to matters that are "publicly announced".

45. HBOR has raised awareness among exporters but only to a limited extent among staff. Workshops, presentations and the application form for support have informed exporters of the issue. But HBOR staff "have not received general anti-corruption training". Only the Export Credits Recommendation has been sent by e-mail, posted on HBOR's intranet, and discussed in workshops.

Commentary

The lead examiners note that HBOR considers the anti-corruption compliance programmes of only applicants for support with a prior conviction or arbitral finding of bribery. They acknowledge that a detailed examination of every applicant's compliance programme may not be feasible given the number of applications that HBOR receives. Nevertheless, HBOR could develop guidance on additional circumstances under which it would consider an applicant's compliance programme, e.g. where red flags of foreign bribery exist. The lead examiners therefore recommend that Croatia should encourage HBOR to consider the anti-corruption compliance programmes of applicants for export credits, as appropriate, and ensure that HBOR has the expertise for doing so. They also recommend that Croatia train HBOR staff on preventing, detecting and reporting foreign bribery.

B.5. Official development assistance

46. Measures to prevent, detect and report foreign bribery committed in the course of projects funded by official development assistance (ODA) are prescribed by the OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption (ODA Recommendation). The Working Group monitors the implementation of sections 6-10 of the Recommendation. Croatia's ODA programme is decentralised, with the Ministry of Foreign and European Affairs (MFEA) co-ordinating the reporting. The size of the programme has risen from EUR 63.82 million in 2019 to EUR 135.2 million in 2022. The top recipients are the western Balkans; Ukraine; Middle East; and the Horn of Africa. Bilateral assistance has been provided through non-governmental organisations (NGOs) but not yet the private sector.

47. Croatia's measures to prevent and detect corruption in ODA-funded projects are still evolving. Its responses to this evaluation's questionnaire mention a three-phased procedure for approving financing for NGOs that does not describe any anti-corruption due diligence measures. Later in this evaluation, Croatia describes three recent projects with NGOs in which applicants were required to make statements on criminal liability and data accuracy. Whether and how the MFEA verifies the information provided is unclear. Workshops were held to inform NGOs of eligibility requirements and reporting procedures. After seeing a draft of this report, the MFEA adds that an applicant must declare that it or its "key personnel" are not under investigation for or have been convicted of bribery, fraud or money laundering. The MFEA works with the Ministry of Finance to implement financial controls.

48. Nevertheless, there is room for improvement. Croatia has not assessed the risk of bribery and corruption in its ODA programme. The MFEA states that, in cases of irregularities or fraud, it may suspend payments or request the return of funds. It also "does not collaborate with providers whose practices fail to adhere to international standards". However, there is no indication that these measures are reflected in official policy, or contracts with NGOs and private entities that implement ODA projects. There are no statistics on exclusions in practice. The MFEA also performs field controls "to ensure that the reported activities are actually being carried out". But this falls short of a contractual right of audit that would include the tracing of funds spent, for example. The MFEA emphasises that it requires a project partner to produce receipts of expenses. This overlooks that bribes are often hidden as expenditures supported by falsified invoices. There is no verification of whether a potential project partner has been debarred by a multilateral development bank. The MFEA does not consider a project partner's anti-corruption compliance programme before an ODA-funded contract is granted since current partners consist only of small NGOs.

49. Regarding the reporting of foreign bribery, Croatia refers to the WPA which is not relevant, for three reasons. First, the WPA does not apply to the reporting of all instances of this crime (see para. 23). Second, the WPA does not create an obligation to report, unlike the Criminal Procedure Act Art. 204 (see para. 17). Third, the WPA typically concerns the reporting of wrongdoing committed in the workplace. It is therefore more relevant to, for example, an MFEA official who discovers bribery committed by a fellow employee in the Ministry, not by an external project partner. Croatia states that no reports of corruption or foreign bribery have been made in practice.

50. Croatia has not raised awareness of foreign bribery and corruption issues among project partners or ODA officials. It refers only to staff "security screenings"; general training that officials receive when they join the public administration; and subsequent training of serving officials on the "standards for financing and contracting programmes and projects of public interest". Croatia adds that fewer than ten officials are involved in ODA and that more training will be provided in the future.

Commentary

The lead examiners recommend that Croatia (a) assess the risk of bribery and corruption in its ODA programme, as per ODA Recommendation 10(ii); (b) ensure that ODA contracts contain sufficient provisions to prevent and detect foreign bribery, as per ODA Recommendation 8(i); (c) verify whether a potential project partner has been debarred by a multilateral development bank before granting an ODA-funded contract; (d) establish an explicit procedure for ODA officials to report foreign bribery to law enforcement; (e) adopt a written policy on contracting with project partners that have been convicted of foreign bribery or corruption, in line with ODA Recommendation 8; and (f) train ODA officials on the prevention, detection and reporting of foreign bribery.

B.6. Foreign diplomatic representations

51. This section considers the role of Croatian diplomatic missions in detecting and reporting foreign bribery, as well as in supporting Croatian companies facing bribe solicitations abroad. Overseas missions' monitoring of the media for foreign bribery allegations and the reporting of such allegations to law enforcement are discussed in section B.3 at p. 14.

52. The MFEA has few recent initiatives to raise awareness of foreign bribery. Legislation on the topic has been included in the intranet system for diplomats. A 2024 meeting for all heads of mission addressed foreign bribery. However, diplomats have not been trained specifically on foreign bribery and reporting obligations. Croatia mentions training on the risk of bribery of MFEA – not foreign – officials. Additional training by the Croatian Security and Intelligence Agency was "for the purpose of raising the overall awareness of possible briberies on all levels while being abroad". As mentioned in section B.1.b at p. 9, the MFEA has also not raised awareness of foreign bribery among Croatian companies abroad.

53. The MFEA's response when approached by Croatian companies facing bribe solicitation abroad is inadequate. It states that a company would be advised to inform foreign authorities if the bribe solicitation occurs abroad, or the Croatian judicial authorities and Ministry of Interior if the solicitation is in Croatia. However, MFEA diplomats have not received written instructions to provide such a response. More importantly, such advice risks being interpreted to mean that only the bribe-soliciting official would be prosecuted. It would be important to warn Croatian companies and individuals that they would also be prosecuted in Croatia if they accede to a bribe request, whether from a Croatian or foreign official.

Commentary

The lead examiners recommend that the MFEA (a) raise awareness of foreign bribery and train officials in diplomatic representations abroad, and (b) instruct these officials on how to assist Croatian enterprises confronted with bribe solicitation abroad.

B.7. Tax authorities

54. This section deals with the tax deduction of bribes; detection and reporting of foreign bribery discovered during tax examinations; and sharing of tax information. The tax authorities' role in supporting criminal foreign bribery investigations is described in para. 103.

B.7.a. Non-tax deductibility of bribes and financial penalties

55. Croatia enacted legislation in 2023 to expressly prohibit the tax deduction of bribes (Phase 1 Report paras. 125-126). It states that bribes were already not tax deductible previously. Profit Tax Act (PTA) Art. 7a was then enacted to explicitly disallow tax deductions of "any undue reward, gift, material or non-material benefit" which may be sanctioned under criminal law. Croatia states that the prohibition is not contingent on court proceedings or a criminal investigation. The taxpayer has the burden of proving the legality of a contested expense (General Tax Act (GTA) Art. 88). The Profit Tax Ordinance has been amended to set out the applicable procedure and to provide a form for a taxpayer to declare bribes in the tax return.[17] Croatia acknowledges that in most cases a taxpayer will not declare a bribe and self-incriminate. Declarations may only arise in rare cases such as when there has been a change in corporate management and the new managers discover bribery committed by their predecessors.

56. Croatia states that fines and confiscation imposed as sanctions for bribery are not tax deductible. Profit Tax Act Art. 7(1)(7) prohibits the deduction of "penalties imposed by the competent authority". This includes sanctions imposed by a court for foreign bribery, according to Croatia. Croatia also refers to Income Tax Act Art. 11(7)(2) which prohibits the deduction of "expenses for fines and misdemeanours, expenses for the costs of court or administrative proceedings in personal cases and interest on late payments of personal expenses".

B.7.b. Enforcement of non-deductibility of bribes

57. Criminal investigations of bribery offer an opportunity to enforce the non-deductibility of bribes. During such an investigation, law enforcement may identify a bribe concealed as a fictitious expense for which a tax deduction may have been claimed. If the criminal matter has proceeded further and the

[17] Official Gazette 156/23.

taxpayer has been convicted of bribery, then the taxpayer cannot deny that the claimed expense is a bribe; this will have already been proven in court.

58. Croatia has not enforced the non-deductibility of bribes, including in cases when criminal proceedings for bribery have been commenced. No such deductions have been denied in practice. In two concluded passive foreign bribery cases, bribes were paid via consultant contracts and invoices for fictitious work. Payments for the work may therefore have been claimed as legitimate business expenses. In a third ongoing bribery case, bribes benefiting a company director were hidden as corporate business expenses. Croatian tax authorities have not examined whether the bribes were claimed as tax deductions in these three cases. The bribery in these cases occurred before the 2023 amendment to the Profit Tax Act, but bribes were nevertheless non-tax deductible under Croatian law at the relevant time (see para. 55).

59. Croatia's explanations for the lack of enforcement in these cases do not alleviate these concerns. It argues that the companies which committed bribery in some of these cases were foreign and not Croatian. But this ignores the fact that the companies and their Croatian subsidiaries or intermediaries could nevertheless have been taxpayers in Croatia. (Indeed, a Croatian subsidiary of a foreign company was implicated in one of these cases.) Croatia also argues that these companies are being investigated or have been prosecuted criminally for bribery. But as explained in para. 57, the existence of criminal proceedings reinforces – not diminishes – the need to examine tax returns. Croatia next argues that criminal proceedings are required to be secret. However, there is no reason why tax returns cannot be examined when the investigative target has become aware of the investigation, has been indicted or has been convicted. Finally, Croatia states that an examination of tax returns would jeopardise criminal proceedings that use special investigative techniques. Even if true, the tax examination can be conducted after the investigation is over, e.g. when the case has reached the indictment stage. Croatia's explanation would not justify the inaction in the first two cases above where proceedings have been concluded. In any event, not all foreign bribery investigations use special investigative techniques.

60. One passive foreign bribery case involving a foreign company shows that Croatia does not fully grasp the relevant enforcement issues. Croatia points out that a foreign country refused to provide mutual legal assistance to Croatia in this case. But Croatia nevertheless convicted a company executive of bribery in the case, and therefore would presumably have had sufficient evidence to determine whether the bribe had been claimed as a tax deduction. Croatia next argues that "sufficient evidence of bribery does not necessarily indicate that there is evidence of unjustified tax deduction liability". However, sufficient evidence of bribery would allow tax authorities to at least check whether the bribe payment has been deducted from taxes. Croatia adds that its tax authorities "are not competent to determine a possible unjustified reduction of the tax liability *in another country*". However, the issue is whether bribes have been deducted from taxes paid to Croatia, not a foreign country.

Commentary

The lead examiners regret that Croatia has not taken the opportunity to enforce the non-tax deduction of bribes against taxpayers who are investigated or prosecuted for bribery. Even if a tax examination must be postponed to avoid jeopardising criminal proceedings, that justification would not apply when the taxpayer has been convicted.

The lead examiners therefore recommend that Croatia take steps to ensure that (a) prosecutors in bribery cases routinely inform tax authorities of cases where a bribe may be concealed as a fictitious, tax-deductible expense, and (b) tax authorities routinely examine the tax returns of taxpayers who are investigated or convicted of bribery to determine whether a tax deduction of the bribe has been claimed.

B.7.c. Detecting and reporting foreign bribery

61. Routine examinations and audits of tax returns can also lead to the detection of bribes and denials of their tax deduction. Anti-Bribery Recommendations XXI.iii and iv thus ask tax authorities to proactively detect and report suspicions of foreign bribery.

62. Croatia has not directed its tax authorities to detect foreign bribery. It states that a tax examiner can detect bribery in two instances: (1) when a local tax officer examines a tax return, and (2) when a tax inspector conducts a tax audit. Taxpayers are selected for audit based on risk criteria and size (General Tax Act (GTA) Art. 119). However, tax examiners have not been instructed to detect bribes during these examinations where appropriate.

63. Training on foreign bribery is also insufficient. The Independent Sector for Financial Investigations (ISFI) attended the May 2024 seminar that covered foreign bribery (see para. 14). But the ISFI is responsible for supporting law enforcement in criminal investigations, not audits of tax returns. The seminar also focused on issues of criminal law enforcement, not tax. Tax auditors instead attended an online course on "Ethics and Fight against Corruption" which focused on preventing corruption in the tax administration rather than detecting bribery during tax examinations. Another half-day online course on the "Prevention of Corruption and Anti-Corruption Mechanism in Croatia" took place in 2024. The training mentions the Convention among other international anti-corruption treaties. However, it does not explain how bribes can be detected during tax audits, such as red flag indicators that auditors should look for. The OECD Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors has been translated but not yet distributed to auditors or incorporated into their training. Croatia mentions six other training courses that do not concern corruption or bribery but money laundering, fraud and forensic accounting. After seeing a draft of this report, Croatia states that it plans to train tax inspectors and local officials who review tax returns on the detection of bribes. This is positive. However, when assessing the implementation of the Convention, the Working Group only takes into account measures that have been taken and not merely planned.

64. Croatian tax authorities are obliged to report suspected crimes. If during a tax inspection a suspicion arises that the taxpayer has committed an offence, tax authorities must report to "the competent authority" (GTA Art. 123). Though not mentioned in this evaluation, tax officials are presumably also subject to the general duty to report crimes to law enforcement (see para. 17). In 2019-2023, "criminal charges" were submitted to USKOK in four cases, none of which involves foreign bribery.

Commentary

The lead examiners consider that Croatia has not made sufficient efforts to ensure that its tax authorities effectively detect and report bribery discovered during tax audits. They therefore recommend that Croatia train tax examiners specifically on these matters.

B.7.d. Limitation period for reopening tax returns

65. The limitation period for auditing a tax return may be too short for detecting bribery or denying tax deductions of bribes. Croatia states that a tax audit can be performed "within three years from the start of the statute of limitations with regard to the right to assessment of the tax liability". The period is six years in cases of tax fraud, abuse of rights, or proceedings ordered by other bodies (GTA Art. 117). These periods may be insufficient, considering the time required to detect and investigate bribery cases. By way of comparison, the statute of limitations for criminal bribery proceedings is 15 to 20 years (see para. 125).

66. After reviewing a draft of this report, Croatia states that it is in the process of amending its legislation to double the limitation period to six years. The period would also be lengthened in cases with a cross-border element or suspicion of bribery. Croatia hopes the amendment will enter into force on 1 January

2025. This is positive. However, the Working Group only considers enacted legislation when assessing the implementation of the Convention.[18]

Commentary

The lead examiners recommend that Croatia take steps to ensure that the limitation period for auditing a tax return is sufficiently long for detecting bribery or denying the tax deduction of bribes, such as by allowing the period to be suspended while a criminal bribery investigation or prosecution is ongoing.

B.7.e. Sharing information with Croatian and foreign law enforcement

67. Croatian tax authorities may provide information to a criminal or court procedure in Croatia. Tax secrecy does not apply (GTA Art. 8(5)(3)). Tax information can be made available to a foreign bribery investigation through ISFI (see para. 140).

68. Tax information may also be provided to foreign authorities for use in foreign bribery investigations. Since 2014, Croatia has been party to the Convention on Mutual Administrative Assistance in Tax Matters (MAAC). MAAC Art. 22.4 allows a party to use tax information received from another party in a criminal foreign bribery investigation if (a) the supplying party's laws allow such non-tax use, and (b) the supplying party authorises such non-tax use. Croatia states that treaties such as MACC have the force of law domestically (see para. 4). The enactment of additional legislation to facilitate information exchange is therefore unnecessary. Double taxation agreements with Andorra, Cyprus,[19] Japan and Viet Nam similarly allow non-tax use of tax information by incorporating the optional language of paragraph 12.3 of the Commentary to Article 26 of the OECD Model Tax Convention.

B.8. Accounting and auditing, and corporate compliance, internal controls and ethics programmes

B.8.a. Accounting standards

69. The Phase 1 Report (paras. 93-96) did not identify issues on Croatia's accounting standards. Accounting requirements are mainly set out in the Accounting Act. The Act applies to "entrepreneurs", which include companies and Croatian branches of foreign companies, among others (Art. 4). Large companies and "public interest entities" (PIEs, which include listed companies and financial institutions) must prepare financial statements in accordance with the International Financial Reporting Standards (IFRS). Other entities apply the same if their parent or a subsidiary is also subject to the IFRS; otherwise, they apply the Croatian Financial Reporting Standards adopted by Croatia's Financial Reporting Standards Committee (Arts. 3(2), 5, 15-16).

70. PIEs that are large companies (or parents of a large group) with more than 500 employees on average during the previous business year are obliged to publish non-financial reports describing their corruption and bribery risks as well as mitigation policies (Arts. 61 and 63). In 2024, Croatia has introduced mandatory "sustainability reporting" to transpose EU Directive No. 2022/2464. Obligated entities include large PIEs, parent companies of a large group, large enterprises, medium and small-sized enterprises listed on EU regulated markets, as well as non-EU companies with a net turnover exceeding EUR 150 million in the EU and a branch or subsidiary in Croatia (starting from the financial year 2024 to 2028,

[18] For example, see Chile: Follow-up to the Phase 3 Report and Recommendations, para. 5.

[19] Note by the Republic of Türkiye: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".
Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

depending on the type and size; Arts. 29-37 and 70-73). Sustainability reports must be prepared in accordance with the European Sustainability Reporting Standards, which include information on the entities' systems to prevent, detect, and address allegations of corruption and bribery.

B.8.b. External auditing

B.8.b.i. Entities subject to external audit

71. The following entities are subject to annual external auditing: (a) PIEs, (b) large- and medium-sized entrepreneurs; (c) parent companies of large- and medium-sized groups; (d) joint stock companies, limited partnerships, and limited liability companies which on an individual or consolidated basis exceed in the year preceding the audit at least two of the following three criteria: total assets of EUR 2.5 million, net income of EUR 5 million, and at least 25 employees on average; (e) entrepreneurs that have applied to list their securities on a regulated market; and (f) entrepreneurs that have participated in mergers, acquisitions or divisions as acquirers, and newly established companies (Accounting Act Art. 20).

B.8.b.ii. Audit quality and auditor independence

72. The Audit Act regulates the performance of auditing services by certified auditors and audit firms. These services must be performed independently, autonomously, and objectively (Art. 5(9)). Auditors must act according to the principles of professional ethics and scepticism. Audit firms and statutory auditors must be independent from the audited entity and free from any existing or potential conflicts of interests. Audit services cannot be performed if there is a risk of self-review, self-interest, advocacy, family ties, or intimidation arising from financial, personal, business, employment, or other relationship between the audited entity and the firm and auditor, its network, and any person who may influence the audit. Auditors may not request or receive any gifts or services. Audit firms must ensure the independence of certified auditors and establish appropriate and effective mechanisms for preventing, identifying, eliminating, or managing threats to independence (Arts. 47-53). In 2022, the Croatian Chamber of Audit adopted a decision to apply the International Standards on Quality Management (ISQMs).

73. The Ministry of Finance (MOF) issues work authorisations for auditors and audit firms, and supervises compliance with the Audit Act and related EU legislation. In cases of non-compliance, the MOF may issue warnings, orders to eliminate irregularities, bans up to three years, and revocation of work authorisations (Audit Act Arts. 16, 19, 68, 94-95). Audit firms that breach independence may be fined up to EUR 26 540 (EUR 106 170 for PIE auditors) (Arts. 116-118). Since 2019, the MOF has reviewed 50 audit firms but has not discovered any breaches of independence.

B.8.b.iii. External auditing standards and the detection of foreign bribery

74. External audits are conducted in accordance with the Accounting Act, Audit Act, and the International Standards on Auditing (ISAs) (Accounting Act Art. 20(7); Auditing Act Arts. 4(24) and 5(9)). Two ISAs are relevant for detecting foreign bribery. ISA 240 concerns the detection and reporting of material misstatements in a company's financial statements that are caused by fraud. Foreign bribery is often associated with fraudulent conduct such as false accounting to conceal the bribery. ISA 250 concerns the detection of non-compliance with laws that may have a material effect on the financial statements. Such laws may include those on foreign bribery.

75. Additional training is necessary to improve the detection of foreign bribery in practice. None of the specific cases of active and passive foreign bribery or corruption considered in this evaluation was detected through external auditing. Croatia has not trained auditors on detecting foreign bribery. Auditors are obliged to undergo continuous professional training, which may be organised by the MOF, Croatian Chamber of Audit (CAC) and other competent bodies (Audit Act Arts. 14(1) and 14d). The CAC's professional training includes webinars on anti-money laundering, fraud and ISA 240, and corporate governance. These "indirectly/broadly" raise awareness of foreign bribery, says Croatia. One auditor states that the mandatory

annual training addresses the identification of fraud and corruption, as well as of unusual transactions. There is no indication, however, that such training covers corruption red flags or raises awareness of foreign bribery risks. Nevertheless, representatives of major audit firms demonstrate some awareness of the topic.

Commentary

The lead examiners recommend that Croatia train auditors to further raise their awareness of foreign bribery risks and enhance their capacity to detect red flag indicators of foreign bribery.

B.8.b.iv. Reporting foreign bribery to management and encouraging companies to respond

76. The ISAs require auditors to communicate fraud and non-compliance with laws to the audited company's "appropriate level of management" and, where appropriate, "those charged with governance" (ISA 240(40)-(42); ISA 250(20)-(24)). If auditors suspect that management or those charged with governance are involved in non-compliance, they shall communicate the matter to the next higher authority at the entity, if it exists, such as an audit committee or supervisory board (ISA 250(25)). EU rules oblige auditors of PIEs to inform the audited entity of "irregularities, including fraud with regard to the financial statements of the audited entity". The auditor must invite the audited entity to investigate the matter and take appropriate remedial measures (EU Regulation 537/2014 Art. 7(1)). Auditors participating in this evaluation are aware of these obligations. There are no known reports of foreign bribery, however.

77. Croatia does not have specific measures to encourage companies to respond actively and effectively to suspicions of foreign bribery reported by external auditors, as required by Anti-Bribery Recommendation XXIII.B.iv. The Croatian Chamber of Commerce has translated the International Chamber of Commerce 2023 Rules on Combating Corruption. However, the Rules merely mention that companies should have measures to detect transactions that contravene the Rules and take "appropriate corrective action" in such cases.

Commentary

The lead examiners recommend that Croatia take steps to encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports.

B.8.b.v. Reporting foreign bribery to competent authorities and protection from legal action

78. Anti-Bribery Recommendation XXIII.B.v asks countries to consider requiring external auditors to report suspected acts of foreign bribery to competent authorities independent of the company, such as law enforcement or regulatory authorities. Countries that permit such reporting should ensure that auditors making such reports on reasonable grounds are protected from legal action.

79. Croatia incorrectly states that ISAs 240 and 250 require auditors to report suspected fraud or non-compliance with laws to competent authorities. These standards merely state that auditors shall determine whether they have an obligation to make such reports under law, regulation, or relevant ethical requirements (ISAs 240(43) and 250(29)).

80. In fact, only some auditors in Croatia are required to report suspicions of foreign bribery to authorities. If an audited PIE does not investigate an irregularity, then the auditor must inform authorities that are responsible for investigating such irregularities; auditors of PIEs must also report material breaches of the legislation governing the entity (EU Regulation 537/2014 Arts. 7(2) and 12(1)). However, there may be some questions about the awareness of this obligation. In the responses to this evaluation's questionnaire, Croatian authorities do not refer to these provisions, though some auditors are aware and identified the competent authorities for receiving reports (such authorities are also indicated in Audit Act Art. 74). Auditors are generally required to report suspicious transactions to the Anti-Money Laundering

Office.[20] But this applies to the reporting of suspected money laundering or transactions involving criminal proceeds, not foreign bribery in general. In 2019-2023, accountants made 15 reports and auditors none. The State Audit Office also reports criminal offences to the State Attorney's Office.[21] But the State Audit Office only audits publicly-owned enterprises, not privately-held companies.

81. Two provisions appear to protect auditors who report irregularities from legal action. Auditor reports to the Anti-Money Laundering Office or to bodies that supervise PIEs are not considered as violations of confidentiality obligations (Audit Act Art. 57(4)(5)-(7)). Good faith reports concerning PIEs also "shall not constitute a breach of any contractual or legal restriction on disclosure of information" (EU Regulation 537/2014 Arts. 7(3) and 12(3)). An auditor adds that auditors can file anonymous reports to the State Attorney's Office. However, there is no clear legal basis for such disclosures besides those mentioned above. Croatia states that "auditors or audit firms have the obligation to report any suspicion of a criminal offence to the competent authorities" but likewise does not indicate a specific legal basis. Croatia adds that the Chamber of Auditors is planning to prepare guidelines for auditors reporting irregularities including criminal offences.

Commentary

The lead examiners recommend that Croatia make training available and consider developing guidance for auditors to clarify which auditors are obliged to report suspected criminal offences to the competent authorities, and to raise awareness of the provisions protecting reporting auditors from legal action.

B.8.c. Corporate compliance, internal controls and ethics programmes

82. Croatia has not sufficiently promoted corporate anti-corruption programmes. A Corporate Governance Code indicates that listed companies should have anti-corruption policies and tailored risk management systems. But companies that do not comply are only required to explain why.[22] The Code also does not provide guidance on how to implement anti-corruption compliance programmes. Government bodies including Hanfa do not provide information or training on anti-corruption compliance. Croatia's Institute for Compliance, a non-governmental entity, published in 2021 Compliance Guidelines that were developed by private sector representatives and sponsored by the government.

83. The prevalence of anti-corruption compliance programmes in Croatian companies is varied. Private sector representatives state that most large companies have such programmes, especially those subject to anti-bribery legislation outside Croatia. Medium companies lag behind. SMEs struggle to develop compliance measures due to a lack of awareness and resources, despite receiving some support from business associations. Croatia's Strategy for the Prevention of Corruption for the period 2021-2030 confirms that "there is still a lot of room for improvement" and contains a measure on "Further development of compliance systems and policies in the business sector". Under the Action Plan 2022-2024, the Croatian Chamber of Economy is to hold a seminar on the implementation of compliance policies. The Croatian Employer's Association should also establish a platform for companies (including SMEs), business associations, civil society, and academia to learn and share experiences.

84. Compliance programmes in state-owned enterprises (SOEs) also need to be strengthened and expanded to include foreign bribery. A 2019 government decision obligates SOEs to introduce a compliance function. In June 2024, the Ministry of Finance (MOF) published guidelines on this topic, which also address the establishment of anti-corruption programmes and measures.[23] In practice, most SOEs have inadequate compliance systems and their compliance officers are not sufficiently independent,

[20] Audit Act Art. 57(4)(5); AMLFTA Art. 57(2); see also section B.9.c at p. 24.
[21] State Audit Office Act Arts. 9 and 21(6).
[22] Hanfa and Zagreb Stock Exchange (2019), Corporate Governance Code, p. 9, and provisions n. 61, 66 and 83.
[23] Ministry of Finance (Jun. 2024), Guidelines for the function of monitoring business compliance in legal entities majority-owned by the Republic of Croatia.

according to business associations. An "Anti-Corruption Programme for companies in majority state ownership 2019-2020" required SOEs to adopt and publish anti-corruption action plans. The MOF states that almost all companies complied with these obligations, but a business association believes that some SOEs have since abandoned their measures. Most of the measures in the anti-corruption programme appear to promote integrity within SOEs, instead of preventing bribery committed by SOEs. Croatia states that the new Anti-Corruption programme for SOEs under the anti-corruption strategy Action Plan 2025-2027 will be further oriented to preventing bribery committed by SOEs.

Commentary

The lead examiners recommend that Croatia engage with business organisations and professional associations to encourage companies operating abroad, including SOEs and SMEs, to implement effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Companies should receive concrete guidance reflecting the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance.

B.9. Prevention and detection through anti-money laundering measures

85. A broad assessment of Croatia's anti-money laundering (AML) system is beyond the scope of this evaluation. This evaluation instead focuses on aspects of the AML regime that relate to foreign bribery and the Convention. This includes Croatia's national money laundering risk assessment, and measures to prevent and detect money laundering predicated on foreign bribery. The money laundering offence and its enforcement are considered in section C.5 at p. 56. The Anti-Money Laundering and Terrorist Financing Act (AMLTFA) sets out Croatia's AML regime. The Anti-Money Laundering Office (AMLO) in the Ministry of Finance is Croatia's financial intelligence unit.

B.9.a. National money laundering risk assessment

86. Croatia has not analysed the risk of money laundering predicated on foreign bribery. AMLTFA Art. 5 requires an update of Croatia's national risk assessment on money laundering and terrorist financing at least once every four years. The last update in November 2023 "included analysis related to corruption related crimes" but "did not include a special chapter" on foreign bribery, according to Croatia.

Commentary

The lead examiners recommend that Croatia include foreign bribery as a specific threat in its next national money laundering risk assessment.

B.9.b. Customer due diligence and politically exposed persons (PEPs)

87. AML measures including customer due diligence (CDD) by financial institutions can mitigate the risks of money laundering and other offences, including foreign bribery. Regulated entities in Croatia must conduct CDD before establishing a client relationship, which includes identification and verification of the identity of the customer and beneficial owner, as well as the purpose and nature of a business relationship or a transaction. The business relationship must then be monitored to ensure consistency with the knowledge of the client, business and risk profile, and source of funds (AMLTFA Art. 15).

88. Enhanced due diligence (EDD) is further required for relationships and transactions deemed high risk, including those with politically exposed persons (PEPs). A PEP is an individual who holds or has held in the past 12 months "prominent public office in [an EU] member state or third country" (AMLTFA Art. 46(2)). This includes presidents of states, prime ministers, ministers and their deputies, legislators, judges etc. (Art. 46(3)). After a PEP has ceased to hold its prominent public position for more than 12 months, a reporting entity must conduct a risk assessment to determine whether additional measures are necessary (Art. 47(3)). One reporting entity participating in this evaluation goes further and considers that an individual who has been a PEP will always be a PEP.

89. AMLTFA Art. 47 prescribes the types of EDD that must be applied to high risk relationships and transactions. These include obtaining senior management approval to establish the business relationship; establishing the source of wealth and funds in the relationship or transaction; and conducting enhanced ongoing monitoring of the business relationship.

B.9.c. Suspicious transaction reporting

90. AMLTFA Art. 56 requires regulated entities to notify AMLO of a suspected money laundering transaction without delay, or by the following working day with a justification for the delay. Entities must also refrain from carrying out a suspicious transaction.

B.9.c.i. Training, guidance, typologies and feedback for reporting entities

91. AMLFTA Art. 56(6) specifies four indicia of suspicion but only of a general nature. For example, a transaction is considered suspicious if it "corresponds to the typologies or trends of money laundering or terrorist financing". The provision understandably does not elaborate on what those trends are, since the *modus operandi* of money laundering evolves over time. Trends and typologies are therefore more appropriately dealt with through guidance issued and regularly updated by appropriate authorities.

92. However, written guidance and typologies to reporting entities on suspicion should be improved, including by addressing foreign bribery. Croatia states that it has issued additional typologies, red flag indicators and money laundering trends. However, none of this information addresses foreign bribery specifically. Moreover, the written guidance is contained in successive AMLO annual reports.[24] There is therefore no consolidated standing written guidance, i.e. official guidance that is updated and remains in effect until further notice. A reporting entity seeking written guidance would therefore need to inconveniently consult the annual reports for multiple years. There is also no indication of whether information in a previous annual report has become obsolete. Two reporting entities participating in this evaluation state that the authorities "are trying [to provide typologies] but there is space for improvement".

93. Croatia agrees that additional written guidance and typologies are needed. It states that AMLO and the Croatian National Bank have carried out numerous training sessions for reporting entities since July 2021. But training cannot replace consolidated, up-to-date and written guidance that serves as readily accessible reference materials for reporting entities. This is especially true for anti-money laundering professionals who did not or cannot attend the training. The Working Group has therefore long recommended that countries provide written guidance and typologies to reporting entities that specifically address foreign bribery.[25]

94. In any event, the training provided by Croatia did not sufficiently address foreign bribery-related money laundering. Croatia lists 17 training events from July 2021 to December 2023. Topics ranged from the relevant legislative framework, National and Supranational Risk Assessment, suspicious and cash transactions reporting requirements, red flag indicators, typologies and trends of money laundering, beneficial ownership requirements. None of the training events specifically covered foreign bribery, according to Croatia.

95. Feedback to reporting entities is also inadequate. In evaluations of other countries, the Working Group has repeatedly recommended that adequate feedback be provided to reporting entities, including on the outcome of STRs.[26] Croatia states that it provides banks that have submitted STRs with data on the

[24] The 2022 report is available here.
[25] For example, see Australia Phase 4, recommendation 1(a)(i), and Japan Phase 4, recommendation 2(c), among others.
[26] For example, see Argentina Phase 3bis, recommendation 8(c); Israel Phase 3, recommendation 6(c); Portugal Phase 3, recommendation 8(c); South Africa Phase 3, recommendation 8(c); Norway Phase 4, recommendation 1(d); Spain Phase 3, recommendation 12)(iii); Czech Republic Phase 2, para. 240(a); Poland Phase 2, recommendation 2(f); and Türkiye Phase 2, recommendation 10(b). See also Austria Phase 3, recommendation 6; and Sweden Phase 3, recommendation 5(c).

number of STRs received, analysed and disseminated to law enforcement, as well as the number of AMLO proceedings resulting from STRs. But one reporting entity participating in this evaluation indicates that the only feedback it receives is aggregated statistics on all reporting entities in AMLO annual reports. Two other entities assume that an STR has led to an investigation if their client's account was subsequently frozen or the case was reported in the media. A fourth reporting entity concurred with these comments that feedback is insufficient. Moneyval corroborates these views, finding that feedback is "often limited to the AMLO Annual Reports and conferences. […] Limited feedback and guidance of AMLO towards reporting entities limits the adequate response of the private sector to suspicious behaviours". It recommended that AMLO provide more frequent and case-by-case feedback to regulated entities on the outcomes and the quality of STRs.[27]

Commentary

The lead examiners recommend that Croatia (a) provide consolidated and standing written guidance and typologies to STR reporting entities, and ensure that such material specifically addresses money laundering predicated on foreign bribery, (b) train reporting entities on the detection of money laundering predicated on foreign bribery, and (c) provide more frequent feedback to reporting entities on the outcomes and quality of their STRs.

B.9.c.ii. Suspicious transaction reporting in practice

96. Croatia has incomplete data on suspicious transaction reporting. In evaluations of other countries, the Working Group has recommended that countries maintain statistics on STRs that result in or support bribery investigations and prosecutions.[28] In this evaluation, Croatia only provides the number of STRs received and used in disseminations, as well as the number of disseminations. It states that it cannot indicate whether the STRs relate to corruption or bribery offences. It has data on the number of STRs that led to criminal investigations of money laundering and terrorism financing, but not of bribery and corruption. Croatia nevertheless states that its system meets international standards. Regardless, the absence of relevant data means it cannot be said with certainty that Croatia's STR system uncovers money laundering and corruption effectively.

97. The limited information available nevertheless suggests that STRs are not effective in detecting money laundering or corruption. AMLO received 923 STRs in 2019, but then averaged over 3 200 reports annually in 2020-2023. In 2019-2022, a fairly high proportion of STRs (1 151 annually or 38%) were "used in disseminations" to law enforcement. The annual average of total disseminations was 230. However, few STRs have led to money laundering investigations, given the paucity of this offence's enforcement (see section C.5 at p. 56). The number of STRs that led to corruption investigations is also likely low. As mentioned in section A.2.c at p. 7, this evaluation considers Croatia's known active and passive foreign bribery allegations, as well as some significant domestic bribery cases. None of these cases was detected through STRs.

98. Croatia argues that Moneyval has reached a different conclusion. Moneyval reported in 2021 that "law enforcement expressed satisfaction with the financial intelligence provided by AMLO. Nevertheless, the statistics provided […] do not seem to confirm this statement." In fact, "a low number of the AMLO's disclosures triggered money laundering investigations/prosecutions".[29] Croatia states that in 2023 Moneyval considered that AMLO had "largely addressed" the issue. But this conclusion relates to the number of "cases *disseminated* by AMLO" to law enforcement. This is not the same as the number of money laundering and corruption investigations that were *commenced* due to STRs, as explained in

[27] Moneyval (2021), Mutual Evaluation Report: Croatia, paras. 198 and 232 and p. 63.
[28] For example, see Czech Republic Phase 2, para. 240(c); Ireland Phase 2, recommendation 13(d)(ii); Ireland Phase 3, recommendation 6(b)(ii) and (iii); Italy Phase 3, recommendation 8(c); and Italy Phase 4, recommendation 5(d).
[29] Moneyval (2021), Mutual Evaluation Report: Croatia, paras. 176 and 239. See also pp. 5, 10 and 60.

para. 97. There is also no indication that Moneyval considered the data described in the same paragraph which show that few STRs have led to money laundering and corruption investigations.

Commentary

The lead examiners recommend that Croatia (a) maintain detailed statistics on STRs, including the number of STRs received, used in disseminations, and that led to criminal investigations in foreign bribery cases, as well as the predicate offences concerned; and (b) take steps to improve the detection of corruption offences (including foreign bribery) through STRs.

B.9.c.iii. AMLO resources and training

99. AMLO states that it has sufficient resources to process STRs. Its staffing has been fairly stable, increasing from 19 in 2019 to 23 in 2023. However, the number of STRs has increased by 318% over the same period. With 11 STR analysts in AMLO in 2023, each analyst would have been responsible for analysing an average of 351 STRs that year. Moneyval found that, after the increase in STRs, each analyst in 2020 had approximately 1.5 days to process an STR. It concluded that AMLO's human resources were insufficient.[30] In response, AMLO states that it has since hired 11 new officials, with further increases expected in 2025 and 2026.

100. AMLO staff have received training on foreign bribery only once. They attended the conference "Integrity Without Borders: Strategies for Preventing and Combatting Foreign Bribery" organised by the MOJ and US Embassy in Zagreb in May 2024 (see para. 14). However, the purpose of the event was to raise awareness of foreign bribery for a range of relevant Croatian public officials. It did not address technical issues concerning the laundering of the proceeds of foreign bribery.

Commentary

The lead examiners recommend that Croatia raise awareness among AMLO officials of foreign bribery, including technical issues concerning the laundering of the proceeds of foreign bribery.

C. Investigation, prosecution and sanctioning of foreign bribery and related offences

C.1. Investigation and prosecution of foreign bribery

C.1.a. Relevant law enforcement authorities

101. The Office for the Suppression of Corruption and Organised Crime (USKOK) is responsible for investigating and prosecuting cases of corruption, including foreign bribery. USKOK is a specialised unit within the State Attorney's Office (SAO) which is Croatia's prosecutor's office. The USKOK Act (USKOKA) gives USKOK exclusive jurisdiction over the offences of bribery of (domestic and foreign) officials and representatives (i.e. legislators), trafficking in influence, and abuse of authority (Art. 21(2)(1)). USKOK also has jurisdiction over corruption-related money laundering and tax evasion (Art. 21(2)(4)) as well as corporate bribery cases (Corporate Liability Law (CLL) Art. 2). USKOK states that it also has jurisdiction over bribery-related false accounting, even though this is not explicitly mentioned in the USKOK Act. USKOK's responsibility also extends to organised crime cases (USKOKA Art. 21(2)(2) and (3)).

102. USKOK has jurisdiction over corruption offences throughout Croatia (USKOKA Art. 2(1)). It is headquartered in Zagreb. All its operations and personnel are in Zagreb except for the Prosecutor's Department which has offices in four counties: Zagreb, Split, Rijeka and Osijek.[31] USKOK states that each

[30] Moneyval (2021), Mutual Evaluation Report: Croatia, paras. 205 and 207.
[31] USKOK website; USKOKA Art. 16(2).

case is assigned to one of its offices through electronic registers. The assignment of USKOK cases is therefore not subject to the general rules in Criminal Procedure Act (CPA) Arts. 20-24.

103. Additional bodies provide police support to USKOK cases. The National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK) is the primary police unit in corruption investigations (Phase 1 Report para. 75). PNUSKOK was created in 2008 and is presently an organisational unit within the Criminal Police Directorate of the Police Directorate in the Ministry of Interior.[32] The economic crime and corruption departments in each of the 20 police districts are also available in foreign bribery cases. The Independent Sector for Financial Investigations (ISFI) in the Ministry of Finance provides expert assistance and supports criminal prosecution bodies "for the purpose of detecting and suppressing all forms of tax fraud, tax evasion, tax crimes, determining property of significant value that was acquired illegally, all forms of tax evasion, contributions and other public benefits and other related criminal acts, submission of indictments and criminal reports" (Tax Administration Act Arts. 9(1)(11) and 9(2)). The ISFI describes this co-operation as "excellent".

C.1.b. Conduct of foreign bribery cases

104. Upon receiving a complaint, a state attorney (i.e. prosecutor) is required to record it in the register of criminal complaints (i.e. the electronic Case Tracking System) and assess it within six months.[33] If more information is required for the assessment, then the prosecutor and the police can conduct an "inquiry" (CPA Arts. 206(4) and 206h). The prosecutor rejects the complaint if the relevant conduct is not a criminal offence that can be prosecuted *ex officio*; the statute of limitations has expired; the circumstances exclude guilt; there is no reasonable suspicion that the suspect committed the offence; or the report is not credible (CPA Art. 206(1)). An additional ground of rejecting a complaint based on "expediency" does not apply to foreign bribery cases.[34] A complainant may appeal a refusal to open an investigation first to the USKOK Collegiate Body and further to the Department for Internal Supervision of the State Attorney's Office (USKOKA Arts. 28a-28e).

105. After receiving a complaint (and conducting an inquiry if necessary), the prosecutor opens a pretrial investigation if (a) there is a "reasonable suspicion" that a criminal offence prosecutable *ex officio* has been committed, and (b) there are no legal obstacles to prosecution (CPA Arts. 2(3) and 217). The prosecutor conducts the investigation but may delegate some tasks to an investigator (CPA Art. 219; USKOKA Art. 16(1)(1)). A pretrial investigation judge hears applications, such as for investigative measures that require judicial authorisation. Time limits for the investigation are discussed in section C.1.d.i at p. 33.

106. Within one month of the investigation's conclusion, the prosecutor must suspend or terminate the matter if the conduct does not amount to an offence prosecutable *ex officio*; there are circumstances that exclude the defendant's guilt; the statute of limitations has expired; or there is insufficient evidence that the defendant committed a crime (CPA Art. 224). Otherwise, the prosecutor must file an indictment (Arts. 230 and 341). If a three-judge panel confirms the indictment, then the matter proceeds to trial (Arts. 354 and 367). The County Courts in Osijek, Rijeka, Split and Zagreb generally hear USKOK cases in the first instance (USKOKA Art. 31).

C.1.c. Enforcement of actual bribery cases

107. This section examines Croatia's bribery enforcement against natural and legal persons. Enforcement of bribery-related money laundering and false accounting is considered in sections C.5 at p. 56 and C.6 at p. 57.

[32] Regulation on the Internal Organisation of the Ministry of Interior Arts. 36 and 53.
[33] CPA Arts. 205(5) and 206b(1); State Attorney's Office Rules of Procedure Arts. 4(22) and 120-121.
[34] CPA Art. 206c; USKOKA Art. 29(2); Phase 1 Report para. 77.

C.1.c.i. Domestic bribery enforcement against natural persons

108. Croatia has a record of enforcement of bribery of Croatian officials (domestic bribery). In 2019-2023, Croatia averaged annually 68 investigations, 70 prosecutions and 33 convictions of domestic bribe-paying, i.e. active bribery (CA Art. 294). However, these figures are skewed by an exceptional number of investigations in 2022 (255) and prosecutions in 2023 (253) related to the procuring of COVID-19 vaccination certificates. Excluding the years with the outlying data, the annual average is approximately 21 investigations and 24 prosecutions. The figures for domestic bribe-taking (i.e. passive bribery under CA Art. 293) during the same period are 12 investigations, 12 prosecutions and 19 convictions. In addition, there was limited enforcement of bribery of representatives (i.e. legislators) (CA Art. 339): 2 investigations of passive bribery, 1 prosecution for active bribery, and no convictions. (See Annex 4 at p. 74 for statistics.)

109. Enforcement has included notable cases against senior Croatian officials. A former Prime Minister was prosecuted for bribery and corruption in at least five separate proceedings beginning in 2011. In 2023, the Supreme Court imposed a global sentence of 18 years and 8 months for his three convictions. During this evaluation, Croatia mentions ongoing investigations for bribery and corruption against at least four ministers, three County Court judges, three State Secretaries and a senior government advisor.

110. One recent case against senior Croatian officials raised significant concerns, however. In 2019, media reports alleged that a Croatian software company made minimal changes to a computer programme before offering it to the government at four times the original price. The minister responsible accepted the offer and purchased the software. USKOK reportedly received expert evidence confirming the overpayment but nevertheless declined to prosecute in 2021. In this evaluation, USKOK reiterates that it did not have a reasonable suspicion of a crime to warrant opening a pretrial investigation. But then the European Public Prosecutor's Office (EPPO) commenced its own proceedings and indicted the minister in December 2022. During a subsequent press conference, the then-USKOK Director admitted that her office did not inform EPPO of the case in a timely fashion but denied covering up the matter. In this evaluation, Croatia states that "we strongly oppose any assumption of covering up the matter. The decision in the case was made in accordance with established circumstances and facts at that moment. Such decision could have been revised in case of gathering additional evidence."

C.1.c.ii. Foreign bribery enforcement

111. Less impressive is Croatia's enforcement of active foreign bribery, i.e. Croatian individuals or companies bribing foreign public officials. Croatia does not have any investigations, prosecutions or convictions for this crime. Summaries of the four known allegations of active foreign bribery are in para. 10. Croatia opened an inquiry into two of the allegations (Ammunition (Ukraine) and Military Equipment (Bosnia and Herzegovina)) in December 2023 or January 2024, i.e. shortly after the start of this Phase 2 evaluation. Almost one year later, it still has not decided whether to open pretrial investigations in these cases. For the Power Project (Slovenia) case, Croatia commenced an "inquiry" at the same time but has since terminated the case. The fourth case (Gas Plant (Syria)) was ended without even an inquiry. As explained below, there are concerns that Croatia has not thoroughly explored all potential sources of evidence and jurisdiction when examining these allegations. Premature terminations can also be seen in several cases of passive foreign bribery (i.e. foreign companies bribing Croatian officials).

112. The Power Project (Slovenia) case was ended after a brief inquiry. According to media reports, in December 2021, a multilateral development bank reached a settlement with a non-Croatian company. Part of the settlement concerned misconduct by the company's Croatian subsidiary in relation to a power project in Slovenia. The non-Croatian parent company also pleaded guilty to abuse of office and settled a second civil case in the country. Shortly after this evaluation commenced, USKOK opened an inquiry. Croatia initially stated that USKOK closed the case after receiving information from Slovenian authorities that the Croatian subsidiary had not been charged in that country. But the absence of a charge would seem an irrelevant consideration. Furthermore, Croatia does not indicate whether Slovenia's decision not to charge was based on the merits of the case. A decision for Slovenia not to charge also does not necessarily

preclude Croatia from doing so, since the two countries' laws on substantive liability and jurisdiction could be different. Later, Croatia states that the indictment in Slovenia against the parent company covered the business activities of the Croatian subsidiary. This would suggest that the subsidiary was involved in criminal activity but was nevertheless not charged in Slovenia. Furthermore, the subsidiary is a separate legal person from its parent and hence *ne bis in idem* does not apply. USKOK adds that a second reason for closing the case was because the Croatian subsidiary did not obtain a benefit from the "incriminated activities". No consideration has been given to pursuing natural person liability. Croatia states that it did not receive information from Slovenia indicating the involvement of Croatian individuals. As explained below, Croatia also closed the case without seeking relevant information in Croatia and abroad.

113. The Military Equipment (Bosnia and Herzegovina) case similarly exhibited a lack of proactivity. According to media reports, a Croatian company allegedly signed a contract with Bosnia and Herzegovina's Defence Ministry to purchase old weapons and military equipment. The Defence Minister later allegedly changed the terms of the contract which allowed the Croatian company to receive goods of a higher value than it had paid for. The Defence Minister was charged with abuse of office and corruption in November 2021 and convicted in December 2023. Almost one year since opening its inquiry, the only step taken by USKOK has been reading the first and second instance judgments convicting the Bosnian minister. USKOK states that the judgments describe the "presented evidence" in detail. It adds that it did not receive from its Bosnian counterparts additional evidence that could implicate the Croatian company and individuals. As with the Power Project (Slovenia) case, Croatia again decided not to proceed partly because Bosnia and Herzegovina did not prosecute the Croatian company or individuals. USKOK also confirms that it does not have any further requests for information from Bosnian authorities. As further explained below, no investigative action was taken in Croatia.

114. Unlike the previous two cases, Croatia did not even open an inquiry into the Gas Plant (Syria) case. According to media reports, a Monaco company allegedly paid bribes on behalf of international energy companies to win contracts globally. In one such transaction, the company reportedly paid EUR 2.75 million to the head of the Syrian arm of a Croatian oil company. The individual was also Croatia's honorary consul in Damascus and had close ties to the Syrian government. In return, the individual allegedly secured contracts to build gas plants for a client of the Monaco company in 2008. After learning this information at a Eurojust meeting, USKOK concluded that "not a single action, *according to the newspaper text*, is related to the Republic of Croatia, especially not in relation to the national oil company". No steps were taken to verify the other media information that linked the allegation to Croatia. Crucially, authorities in several other Working Group countries investigated and prosecuted the Monaco company implicated in the case. USKOK has not inquired with these authorities whether they possessed information that could be relevant to potential proceedings in Croatia.

115. Two other cases also demonstrate a lack of initiative to explore all sources of information overseas. As mentioned above in the Power Project (Slovenia) case, a company reached a settlement with a multilateral development bank (MDB) that partly concerned misconduct by the company's Croatian subsidiary. USKOK terminated its case without examining whether the evidence in the possession of the MDB could implicate the Croatian subsidiary. A similar lack of proactivity was seen in a separate passive foreign bribery case. A Swedish company examined possible bribery in numerous countries including Croatia and later reached a settlement with US authorities. USKOK sought information from Sweden because the company's headquarters were located there, and presumably co-operation with an EU country would be easier. It concluded that "there was no need and … no basis to seek legal assistance from the US" despite the fact that US authorities have reached a settlement and therefore likely possess substantial amounts of evidence. The evidence in their possession is not necessarily the same as that in the hands of Swedish authorities. The US is also a Party to the Convention, and hence the Working Group would have been available as a forum for facilitating assistance. USKOK also argues that the available information did not justify sending an MLA request to the US. However, it should have inquired with US authorities through informal channels. Croatia has now closed its case without making these inquiries.

116. The lack of proactivity is seen not only in seeking evidence from abroad but also domestically. In the Military Equipment (Bosnia and Herzegovina) case, USKOK has only reviewed the judgment of conviction in Bosnia and Herzegovina (see above). No efforts were made to seek corroborating evidence in Croatia. USKOK explains that approaching the company or individual concerned in Croatia would tip off the investigation. Even if this is true, USKOK could have sought other information such as corporate, financial and travel records held by other Croatian authorities. USKOK argues that "based on the data collected", the gathering of domestic evidence "would [not] have had an impact on the determination of the criminal responsibility". The basis for this conclusion is unclear. USKOK adds that some data are no longer available, though this conclusion was not reached after an unsuccessful attempt to retrieve the data. USKOK also did not gather evidence in Croatia before terminating the Power Project (Slovenia) and Gas Plant (Syria) cases. USKOK argues that there were no reasons to collect domestic evidence in these cases.

117. Finally, more efforts could have been made in another significant passive foreign bribery case. A Finnish company allegedly paid EUR 1.6 million in bribes to Croatian officials to obtain a EUR 112 million contract. Finland opened an investigation in 2010 and formed a joint investigative team with Croatia and Austria. It convicted natural and legal persons of bribery in February 2015. USKOK did not open an investigation during this time. It maintains that there was again "not enough evidence" and hence no reasonable suspicion of a crime to justify a formal investigation in Croatia. The convictions in Finland were eventually overturned on appeal in 2016. Croatia thus argues that the ultimate acquittals in Finland "no way calls into question the actions and conclusion of the Croatian prosecutors on not initiating criminal proceedings". But this misses the point: Finnish authorities had sufficient evidence to take the matter to trial, but Croatia nevertheless concluded that it did not have enough evidence to even open an investigation. USKOK argues that it was sufficiently proactive by participating in the joint investigative team. USKOK also insists that "it would be wrong to conclude that [Finland's indictment] implies that the Croatian authorities could or should have acted in the same way."

Commentary

The lead examiners acknowledge that Croatia has a record of domestic bribery enforcement. However, the enforcement of foreign bribery is yet to be proven. Formal investigations have not been opened into any of the four known allegations of active foreign bribery. Decisions on whether to do so in several matters continue to languish. Of even greater concern, additional steps should have been taken by Croatia to explore all potential sources of evidence and jurisdiction, including seeking relevant evidence both abroad and in Croatia.

For these reasons, the lead examiners recommend that Croatia take steps to ensure that USKOK (a) acts promptly and proactively so that complaints of foreign bribery are seriously investigated and credible allegations are assessed, and (b) proactively gathers information from diverse sources to enhance foreign bribery investigations, including by obtaining evidence in Croatia and inquiring with foreign authorities whenever appropriate.

C.1.c.iii. Corporate bribery enforcement

118. Enforcement of bribery of public officials against legal persons in Croatia has been virtually non-existent. There has been no enforcement for foreign bribery. For domestic bribery, statistics provided by Croatia show that in 2019-2023 there was only one investigation for bribe-giving (in 2023), and no prosecutions or convictions. Since the Corporate Liability Law was enacted in 2003, there has been only one corporate bribery conviction. A pharmaceutical company was convicted in 2015 after its executives and employees bribed doctors in Croatia to prescribe the company's medicines. Croatia describes three other corporate bribery cases that have not produced convictions but are in the investigation stage. One recently reached indictment.

119. Croatia explains why companies were not charged with bribery in some cases. In one case, a company was convicted of instigating abuse of position and authority, not bribery, for reasons explained in section C.2.b. In a second case, an Austrian company was not prosecuted because Austria acquitted the company's executives of bribing Croatian officials. This was the decision even though the main reason for the acquittals was not on the merits but the expiry of the statute of limitations.[35] Croatia nevertheless went on and prosecuted its officials of abuse of position and authority. It did not prosecute the company for instigating this crime, unlike in the first case. A last case concerned companies that were not bribers but slush fund vehicles and a political party that benefited from illegal political financing.

120. The lack of corporate bribery prosecutions contrasts sharply with convictions for other offences including economic crimes. According to one academic paper,[36] there were an average of 40.2 corporate convictions for all offences annually in 2016-2020. Economic crimes accounted for a vast majority of cases, e.g. 58% of corporate trials and 67% of convictions in 2020. The paper thus concluded that "a full twenty years after the enactment of the initial version of the [Corporate Liability Law], criminal proceedings against legal entities are no longer an exception." During this evaluation, the paper's author agrees that the number of corporate convictions for bribery is strikingly low compared to other crimes. It is also noteworthy that, since these cases of corporate enforcement did not involve corruption or organised crime, they would have been prosecuted by the regular prosecutor's offices, not USKOK.

121. Croatia suggests that 2023 CLL amendments expanded the scope of corporate liability and would therefore increase enforcement. This is debatable, since there is no indication that companies were not prosecuted before 2023 for reasons addressed by the amendments. Furthermore, there have been numerous corporate convictions before 2023 for other crimes, just not bribery (see para. 120). The lack of corporate bribery convictions is therefore more a problem of enforcement, not legislation.

Commentary

The lead examiners note that two companies are under investigation and another company has been recently indicted for domestic bribery. This is a positive development. Nevertheless, they are seriously concerned that corporate bribery enforcement is extremely rare in Croatia. Croatia has but a single corporate conviction for bribery of public officials some 21 years after the Corporate Liability Law's enactment, even as enforcement for other crimes has become commonplace.

For these reasons, the lead examiners recommend that Croatia take steps, such as training and awareness-raising, to ensure that USKOK investigates and prosecutes legal persons for bribery whenever appropriate.

C.1.d. Statute of limitations and delay

122. This section considers two limitation periods applicable to foreign bribery cases: (1) time limit for pretrial investigations, and (2) statute of limitations for the foreign bribery offence. It also considers the more concerning issue of delay in corruption proceedings.

C.1.d.i. Time limit for pretrial investigations

123. On their face, time limits for pretrial investigations may be too short for foreign bribery cases. Under CPA Art. 229, an investigation must be completed within six months. A prosecutor may extend this by six additional months by providing reasons to a senior prosecutor. The Chief State Attorney may exceptionally extend the period by another six months. If the investigation is not completed within these 18 months, then a defendant or victim may complain to a pretrial investigation judge. The judge may then set a deadline for the investigation's completion.

[35] Phase 4 Austria, para. 118.
[36] Vuletic, I. (2023), Corporate Criminal Liability: An Overview of the Croatian Model after 20 Years of Practice, pp. 2 and 6-7.

124. Croatian authorities state that these time limits are merely indicative. The CPA does not specify consequences for missing the deadlines. Of the foreign bribery and domestic corruption cases considered in this evaluation, the investigations in six cases have been concluded. The time from the opening of an investigation to the application for indictment exceeded 18 months in three cases. The prosecutions in all of these cases were nevertheless concluded successfully. Prosecutors who participate in this evaluation state that they have never had a case thrown out for breaching the deadlines for investigations. They add that evidence gathered after the expiration of a deadline is admissible at trial.

C.1.d.ii. Limitation period for foreign bribery offence

125. The Phase 1 Report (paras. 84-85) did not identify issues with the statute of limitations for foreign bribery in Croatia. The period is 20 years for bribery to perform a prohibited act (CA Art. 294(1)) and bribery of representatives (CA Art. 339). It is 15 years for bribery to perform a required act (CA Art. 294(2)). The same periods apply to legal persons (CLL Art. 21a). The period is extended by two years if a first instance judgment is rendered before the period's expiry. 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 of the Court of Justice of the European Union is pending (CPA Art. 18a). Outstanding mutual legal assistance requests do not suspend the limitation period.

126. Statistics provided by Croatia indicate that in 2019-2023 the statute of limitations expired in five passive bribery cases, and no cases of active bribery or bribery of a representative.

C.1.d.iii. Delay in corruption proceedings

127. Delay in proceedings of corruption and other complex crimes is a longstanding issue in Croatia. It is one of the most significant enforcement challenges, according to lawyers, academics, judges, prosecutors, civil society representatives, and journalists who participated in this evaluation. Delay in corruption cases also contributes to a very negative perception of judicial independence in Croatia (see para. 157).

128. Data provided by Croatia in this evaluation indicate delays in criminal investigations and prosecutions. Croatia does not have active foreign bribery cases. However, passive foreign bribery and complex domestic corruption cases are a reasonable substitute for examining this issue given their similar complexity and transnational nature. Of the six concluded cases considered in this evaluation, the average time from the opening of the investigation to conviction in the first instance was 5.8 years. But this figure is skewed by two convictions that took only 1.4 and 1.7 years. For the remaining cases, the average rises to 7.5 years.[37] Croatia also provides data on the length of cases of corruption and other economic crimes (see Annex 5 at p. 67). These data include many less complex cases with shorter delays (since the dataset covers all cases). Nevertheless, these statistics do show that delay in corruption cases is substantially higher than in other economic crimes cases.

129. The principal source of delay may be the first instance trial. For the purposes of this issue, the criminal process can be divided into four stages: investigation, indictment, trial, and appeal. For the six concluded passive foreign bribery and complex domestic corruption cases considered in this evaluation, the trial lasted on average 5.8 years. This is already lengthy, but the figure rises to 7.5 years when the two outlier cases are disregarded. A European Commission (EC) report found that the average length of criminal proceedings in County Courts was 808 days in 2023. The figure for bribery cases before first instance courts was 532 days in 2022.[38] Moneyval expressed similar concerns and noted cases taking over 10 years to reach conviction.[39] A 2023 study commissioned by the MOJ examined delay in cases of proceeds-generating offences (including passive but not active domestic bribery). It found that trials of

[37] USKOK disagrees with discarding the two outlier cases.
[38] European Commission (24 Jul. 2024), Rule of Law Report: Croatia, p. 11.
[39] Moneyval (2021), Fifth Round Mutual Evaluation Report: Croatia, para. 117.

such cases lasted on average 452 days (1.2 years), over twice as long as for all criminal offences (209 days). The trials in a selected group of complex cases were even longer (769.5 days).[40]

130. Concerns have also been expressed about the investigation stage. Investigations in three of the six cases considered in this evaluation took an average of 3.8 months, but the remaining three took 32.8 months. The EC (p. 15) noted that 27% of USKOK investigations in 2022 took longer than a year. However, USKOK is adamant that delay is not a problem in its investigations. It produces its own statistics showing that the annual average length of an active bribery investigation in 2019-2023 ranged from 7.5 to 10.5 months, and 6.0 to 16.1 months for passive bribery. These figures are at odds with others provided by Croatia, however (see Table 5.1 of Annex 5 at p. 67). USKOK also insists on the European Commission's finding that "there has been some progress to improve the efficiency of investigation and prosecution of corruption cases".[41] USKOK does acknowledge, however, that investigations last longer "in exceptional cases where complex expert analysis is required or when international legal assistance is requested".

131. The indictment stage has also been cited as a cause of delay. Once the investigation is complete, a prosecutor applies to a three-judge panel for an indictment (see para. 106). The 2023 study (p. 24) found that this stage averaged 452 days for cases of proceeds-generating offences, and 593.9 days in the selected complex cases. Moneyval (para. 264) made a similar observation and cited one case that took more than two years. The indictment phase of the six cases considered in this evaluation averaged only 2.6 months but the sample size is too small for definitive conclusions to be drawn. Lawyers participating in this evaluation and the 2023 MOJ report complain that prosecutors draft overly lengthy indictments. USKOK replies that this is due to the cases' complexity. Some have argued that delay is due to the accused's objections to the indictment and admissibility of evidence. The indictment cannot be confirmed until these objections (including appeals) are resolved. But a lawyer in this evaluation retorts that the defence is merely using available legal tools.

132. The impact of the appellate stage is less clear. Supreme Court appeals in five cases considered in this evaluation were decided after an average of 1.7 years. Decisions in two of the cases became final 8.6 and 9.9 years after the first instance judgment because of further appeals and retrials. The 2023 study (p. 24) found that appeals in cases of proceeds-generating offences were three times longer than for other crimes. But practitioners who participated in the study did not give reasons for undue delay (p. 25). Delay has also been reduced after the High Criminal Court began hearing appeals in 2021. A legislative amendment the following year aimed to reduce the number of retrials.

133. A commonly-cited cause of delay is a failure to prioritise complex cases in the courts. According to the 2023 study (pp. 20 and 25-26), this leads to excessive workloads for judges and encourages them to conclude simpler cases first. Complex cases are often split up, often with one or two hearings a month before being adjourned for another month or more. Lawyers and academics in this evaluation concur. They also point out that a panel of three County Court judges hears even corruption cases like paying a small bribe to a traffic police officer. Assigning such cases to a single judge and/or to the Municipal Courts would free up County Court judges to hear more complex cases.

134. The 2023 study and participants in this evaluation mention several other causes of delay and solutions to which the government appears less than receptive. The judiciary has expressed concerns about a lack of judges, but the government states that Croatia already has one of the highest number of judges per capita in Europe. A lack of court infrastructure, workspace and IT equipment has also been cited. The government contends that it recently made significant investments in this area. Another supposedly major cause of delay is defence applications to exclude illegal evidence. Again, the government replies that it enacted legislation in 2019 to curtail successive applications of this nature.

[40] Bonačić M., Vojvoda, N. and Željko, D. (2023), Analysis of Reasons Leading to Undue Delays in Court Proceedings in Complex Criminal Cases, p. 24.
[41] European Commission (24 Jul. 2024), Rule of Law Report: Croatia, p. 14.

135. To the contrary, the government has not acceded to these ideas and appears to prefer an entirely different approach. Apart from taking the measures described above, it refers to a recent introduction of electronic filing of court documents and the use audio (instead of manual) recording of proceedings beginning in May 2025. Though helpful, these measures are unlikely to reduce delay significantly, given the problem's magnitude. (The government disagrees with this observation.) The government is also counting on a working group on reforming the Criminal Procedure Act (CPA). But the group has not produced any draft legislation since its formation in 2022 and has since become non-operational after some members changed positions. After seeing a draft of this report, the government decided on 14 October 2024 to form a new working group on CPA reform, and another working group to draft legislation to improve USKOK's efficiency. But there is no deadline for either working group to complete its work or for legislation to be enacted. In any event, lawyers and academics in this evaluation believe that the better way forward is not more legislation but practical solutions such as a better prioritisation of cases.

Commentary

The lead examiners are concerned about delay in proceedings of corruption and other complex crimes in Croatia. It would be too prescriptive for the lead examiners to specify which of the myriad proposals put forth by stakeholders should be adopted by Croatia. What is clear, however, is that Croatia needs to demonstrate a greater sense of urgency and quickly deploy more substantial measures to tackle delay than it has done so far. The lead examiners therefore recommend that Croatia, as a matter of priority, take further measures to reduce delay in proceedings of foreign bribery and related crimes.

C.1.e. Resources, expertise and training

136. Resources and staff of the judiciary and prosecutor's office were increased recently. Croatia reports an 11% increase in USKOK's 2023 budget from 2022, and a 35% increase from 2019. It also believes that there are ample judges (see para. 134). An NGO in this evaluation agrees that court budgets are high, but judges' salaries are low. Job action in early 2024 ultimately led to substantial salary increases for both judges and prosecutors. However, judges continue to demand that future salary increases be indexed to inflation. Croatia states that its government has formed yet another working group to address this matter.

137. Data provided by Croatia suggest a high caseload for prosecutors. In 2019-2023, each prosecutor received annually on average 9.3 new investigations and 7.7 indictments. However, at the end of 2023, USKOK's 30 prosecutors had 3 345 outstanding cases, i.e. 111.5 cases per prosecutor. A high caseload but a low number of new cases also suggests significant backlog and is consistent with substantial delay in the judicial system (see previous section). For the police, PNUSKOK has 39 officers in its four corruption and organised crime departments and 12 additional officers in its "strategic wing". Another 205 officers are in the economic and corruption departments of regional police districts.

138. In terms of expertise, USKOK and PNUSKOK obviously specialise in corruption cases but knowledge of corporate investigations may be lacking. As mentioned in section C.1.c.iii at p. 32, corporate enforcement of bribery in Croatia has been virtually non-existent. USKOK and PNUSKOK therefore likely do not have experience in such cases. These bodies add that only external experts are available in forensic accounting and electronic evidence. An EC report stated that "PNUSKOK only has limited capacity to collect evidence but expects to acquire technical equipment to help with digital forensics in 2023."[42]

139. Training on foreign bribery and corporate investigations is also lacking. During the past three years, the Judicial Academy has provided training only on corruption prevention, rule of law, cybercrime, money laundering, international co-operation, and basics of accounting and bookkeeping. PNUSKOK describes a university course on "white collar criminal investigation" and another on "Criminal Methods of Investigating Complex White-Collar Crime and Corruption". The courses are only for 50 students per year,

[42] European Commission (5 Jul. 2023), Rule of Law Report: Croatia, p. 15.

and only in one university. The Police Academy offers training to current officers. One module covered "transnational criminal investigation of corruption in public procurement procedures and in business dealings in general". How many PNUSKOK officers have taken these courses is unclear. Other training courses deal with corruption in the police.

Commentary

The lead examiners recommend that Croatia (a) ensure that USKOK and the courts are sufficiently resourced, and (b) train USKOK, PNUSKOK and relevant judges on foreign bribery and corporate investigations.

C.1.f. Investigative tools and techniques

140. The CPA sets out the investigative techniques available to prosecutors. The same investigative techniques apply to investigations of both natural and legal persons (CLL Art. 2). State bodies, organisations, banks and other legal entities, among others, are obliged to deliver information requested by the state attorney (except for legally protected secret information) (CPA Art. 206g(2)). Other investigative tools include search and seizure (Arts. 240-260); "temporary confiscation" of objects intended or used to commit a criminal offence or which resulted from its commission (Art. 556a); interrogation of a defendant (Arts. 272-282); hearing of witnesses (Arts. 283-300) and experts (Arts. 308-328). Freezing bank accounts requires a judicial order (CPA Art. 557a-e). USKOK states that it has not encountered any difficulties in freezing assets in corruption cases. Tax information is available through the Independent Sector for Financial Investigations of the Tax Administration.

141. USKOK can demand information subject to bank secrecy without prior judicial authorisation (USKOKA Art. 49; Credit Institutions Act Art. 157(3)(11)). If the bank does not provide the information by a specified deadline, the matter goes to a pretrial investigation judge. If the judge confirms the demand and the failure to comply continues, the bank and its responsible person may be sanctioned. The judge may also order a bank to monitor and provide updates on an account. USKOK can obtain additional financial information from the Anti-Money Laundering Office (see para. 97). USKOK states that it has not encountered difficulties obtaining bank information in practice.

142. The Beneficial Ownership Register became operational in January 2020. Entities must submit timely information about beneficial owners and updated information. Breach of such obligations can result in sanctions against legal persons and their natural person representatives. Croatia states that the register is approximately 96% complete. USKOK prosecutors have direct access to the register.

143. Special investigative techniques are not available in some bribery cases. CPA Arts. 332-339 provide for "special evidentiary actions" if an investigation "could not be carried out in any other way or would be possible only with disproportionate difficulties". Available actions include wiretapping; interception and collection of computer data; surreptitious surveillance and recording; undercover operators; and controlled deliveries. However, the CPA provisions apply only in investigations of enumerated offences (CPA Art. 334). This includes active bribery under CA Art. 294 but not bribery of representatives (i.e. legislators) under CA Art. 339.

Commentary

The lead examiners recommend that Croatia amend the CPA to make special investigative techniques available in all foreign bribery investigations.

C.1.g. Non-trial resolutions

C.1.g.i. Plea agreements

144. Plea agreements are the only form of non-trial resolution that applies to foreign bribery cases (Phase 1 Report para. 80). As mentioned at para. 106, a three-judge panel examines an indictment to

determine whether the matter should proceed to trial. During this hearing, the prosecutor and the defendant may enter into a plea agreement (CPA Arts. 360-363). The agreement must contain a description of the offence, the defendant's statement on admission of guilt, and the type and extent of punishment, among other things. The court can reject the agreement only if it is not in accordance with the sentence prescribed by law or the agreement is otherwise illegal. An agreement cannot be rejected on the basis that the punishment is too lenient.[43] Plea agreements are also available to legal persons.

145. Plea agreements are common in bribery cases. In 2019-2023, they accounted for 78% of convictions for active domestic bribery and 34% for passive domestic bribery (see Annex 4 at p. 74).

C.1.g.ii. Guidance on plea agreements

146. Croatia's State Attorney's Office has issued Instruction O-2/09 to prosecutors on using plea agreements. The document is detailed (the English translation is 15 pages). It sets out the conditions and manner for plea negotiations. A prosecutor must record each step of the negotiation process and inform its superior of negotiations in complex cases. The agreement should be in writing "whenever possible". The Instruction also describes situations in which a plea agreement should be avoided. This includes cases of "corruption at the highest level" where there is a public interest in a court decision and a plea agreement "could be interpreted as favour to the defendant". The Instruction was communicated to the public in 2010 and added to the State Attorney's Office's website again in October 2024.

147. The Instruction further provides guidance on the degree of sentence reduction. A prosecutor is required to consider all the circumstances and evidence in the case as well as the consequences of a plea bargain. The agreed penalty should be "in proportion to the punishment policy for a specific criminal offence, and to all subjective and objective elements of a particular criminal offence." It should generally be at least two-thirds of the sanction that would have been imposed if the defendant was convicted after trial, and at least one-half if a trial would be complex. The sentence reduction must also take into account offences that a defendant assists the authorities in discovering, if any.

148. The main concern with the Instruction is that it is extremely outdated. It was issued in 2010 when the CPA plea agreement provisions were first enacted. The applicability of some parts of the Instruction are unclear because they are so obsolete. For example, when deciding whether to use a plea agreement or the amount of sentence reduction, the Instruction requires prosecutors to consider six factors set out in State Attorney's Office Act Art. 74(1). But this provision was repealed in 2018. It is therefore unclear whether prosecutors should continue to consider these factors, and if not, what they should consider instead. Several other references to the Criminal and Criminal Procedure Acts are also outdated. Croatia states that it is considering a new Instruction.

Commentary

Anti-Bribery Recommendations XVIII.i and ii provide that non-trial resolutions "follow the principles of due process, transparency, and accountability". In particular, countries should adopt a clear and transparent framework and criteria for using non-trial resolutions. The lead examiners therefore recommend that Croatia (a) issue updated guidance to prosecutors on the use of plea agreements, and (b) provide clear and publicly accessible information on the framework of plea agreements, criteria regarding their use, and advantages that an alleged offender may obtain by entering into a plea agreement.

C.1.g.iii. Transparency of plea agreements

149. Croatia does not make public all key elements of plea agreements. Croatia is anonymising judgments before making them available online by January 2025. However, publication of judgments in cases resolved through plea agreements does not provide sufficient transparency. When a case is

[43] Supreme Court (24 Jan. 2018) Kzz-2/2018-3 and (5 May 2018) Kzz-17/2018-5.

resolved through a plea agreement, the judgment often lacks detailed information about the case and its resolution. Indeed, the trial court is not necessarily aware of and hence is not required to describe all the circumstances justifying the sentence agreed by the parties. (This was one reason why the Supreme Court decided that the trial court cannot reject a plea agreement even if it disagrees with the agreed penalty.)[44] Furthermore, a judgment does not describe matters such as the considerations for using a non-trial resolution.

Commentary

Anti-Bribery Recommendation XVIII.iv asks countries to make public elements of non-trial resolutions, including the main facts and the natural and/or legal persons concerned; relevant considerations for using a non-trial resolution; nature of and rationale for the sanctions imposed; and remediation measures taken by the defendant. Publication of this information allows the public to assess a resolution's appropriateness which enhances confidence in the judicial process.

For this reason, the lead examiners recommend that Croatia make public elements of non-trial resolutions of foreign bribery cases, in accordance with Anti-Bribery Recommendation XVIII.iv, and without prejudice to the Criminal Act's rules on the publication of judgments.

C.1.h. Prosecutorial and judicial independence

C.1.h.i. General provisions

150. Croatian legislation provides for judicial and prosecutorial independence. The judiciary and State Attorney's Office are autonomous and independent (Constitution Arts. 115 and 121a; State Attorney's Office Act (SAOA) Art. 3; Courts Act Art. 6). Any form of influence or coercion towards a judge or prosecutor, including through the use of media or public appearances, is prohibited (SAOA Art. 6; Courts Act Art. 6). A deputy state attorney is independent when working on cases assigned to him/her unless the State Attorney's Office Act provides otherwise (SAOA Art. 5(2)). Preventing a judge or prosecutor from taking an action or decision by force or threat is a criminal offence (CA Art. 312).

C.1.h.ii. Prosecutorial appointment, discipline and dismissal

151. The State Attorney's Council (SAC) is the self-governing body for prosecutors (SAC Act (SACA) Art. 41(1)). SAC has 11 members comprising 7 deputy state attorneys, 2 parliamentarians including one from the opposition, and two university law professors (SACA Art. 5(1)). Members are elected to four-year terms renewable once (Art. 6). The seven members who are deputy state attorneys are elected by other state attorneys and deputies (Art. 16).

152. Regarding appointments, SAC appoints all state attorneys and deputies except for the Chief State Attorney. The Chief State Attorney is appointed to a four-year term renewable once by Parliament on the proposal of the government with the prior opinion of the competent parliamentary committee (State Attorney's Office Act (SAOA) Art. 23). The USKOK Director is appointed to a 4-year term with no term limits by the Chief State Attorney with the opinion of the Minister of Justice and the collegium of the State Attorney's Office (USKOKA Arts. 3(2) and 4(1)). Deputy USKOK Directors are appointed to four-year terms by the Chief State Attorney on the proposal of the Director (USKOKA Art. 9(2)).

153. Concerning discipline and dismissal, disciplinary proceedings may be requested by the Chief State Attorney; Minister of Justice; an immediately superior state attorney; or the state attorney of the office where the deputy works (SACA Arts. 90(1)-(2)). If SAC finds a "well-founded suspicion" of a disciplinary offence, then it commences proceedings (Art. 91). If the offence is proven, penalties include a reprimand, fine and dismissal (Art. 86). On the USKOK Director's proposal, the Chief State Attorney may dismiss a Deputy USKOK Director (USKOKA Art. 10). The USKOK Director may be dismissed by SAC on the Chief

[44] Supreme Court (24 Jan. 2018) Kzz-2/2018-3.

State Attorney's proposal (SACA Art. 81(1)). The Chief State Attorney is dismissed by Parliament on the government's proposal after an opinion of the relevant parliamentary committee (SAOA Art. 28).

154. In April 2023, the USKOK Director resigned after six months into her second four-year term. According to Croatia, the Director stated that she resigned "for personal reasons". There was speculation in the press that the resignation was related to USKOK's failure to prosecute a government minister (see para. 110) or a traffic accident involving the Director's official driver and state vehicle. Neither the press nor participants in this evaluation have referred to evidence that would substantiate these allegations, however.

C.1.h.iii. Judicial appointment, discipline and dismissal

155. The State Judicial Council (SJC) is the judiciary's self-governing body (SJC Act (SJCA) Art. 41(1)). The SJC has 11 members comprising 7 judges, 2 parliamentarians including one from the opposition, and two university law professors (SJCA Art. 4(1)). All levels of courts are represented (Art. 4(2)). Members serve a maximum of two four-year terms (Art. 5). Members who are judges are elected by other judges (Art. 17(2)).

156. The SJC is responsible for the appointment, transfer, discipline and dismissal of judges. SJCA Art. 51 sets out the criteria for appointments. The SJC publishes vacancies. Candidates are evaluated based on an interview, evaluation of past work, and results from an examination by the State School for Judicial Officials (Arts. 52-57). Disciplinary proceedings may be requested by a court president; a person authorised to perform judicial administration duties; president of an immediately superior court; Supreme Court President; or the Minister of Justice (Art. 67). Disciplinary penalties include a reprimand, fine and dismissal (Art. 63). Dismissals may also be based on other grounds such as a criminal conviction (Arts. 73 and 76-77). A similar procedure applies to the appointment and dismissals of court presidents (Arts. 80-86).

157. The perception of judicial independence in Croatia is very poor. According to the EU,[45] only 23% of the general population and 28% of companies in 2024 perceive independence to be "fairly or very good". This is apparently due to a perception of governmental and political interference or pressure, and interference or pressure from economic or other specific interests, respectively. However, the report also notes that more detailed surveys to identify the reasons underlying the perception have not been conducted. In this evaluation, the issue of judicial independence was specifically put to civil society, journalists, prosecutors, judges, investigators, lawyers, academics, companies and business associations. Not a single participant identifies an actual example of political or governmental interference in a specific judicial proceeding. A plurality opined that the poor perception of judicial independence stems from the enormous delay in corruption cases (see section C.1.d.iii at p. 34). This delay in turns fuels a belief that corruption is unpunished.

C.1.i. Mutual legal assistance

158. Convention Art. 9 requires Parties to co-operate with one another to the fullest extent possible in providing "prompt and effective legal assistance" for the purpose of criminal investigations and proceedings, as well as for non-criminal proceedings against legal persons, within the Convention's scope. Anti-Bribery Recommendation XIX sets out additional requirements on international co-operation.

C.1.i.i. Legal framework and types of assistance available

159. Croatia is party to several multilateral and bilateral treaties that can be used as a legal basis for mutual legal assistance (MLA) in foreign bribery cases. Multilateral treaties include the OECD Anti-Bribery Convention, European Convention on Mutual Assistance in Criminal Matters, Council of Europe Criminal Law Convention on Corruption, United Nations Convention against Corruption (UNCAC), and United

[45] European Commission (24 Jul. 2024), Rule of Law Report: Croatia, pp. 3-4.

Nations Convention against Transnational Organized Crime (UNTOC). Relevant bilateral treaties are in force with Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, and United States.

160. The Mutual Legal Assistance in Criminal Matters Act (MLACMA) regulates MLA when an international treaty is not applicable. The provision of assistance under the Act requires reciprocity, except for the service of documents (MLACMA Art. 17). The Act on Judicial Co-operation in Criminal Matters with the Member States of the European Union (JCCMEUA) implements the European Investigation Order (EIO). In Phase 1 (para. 107), Croatia stated it would apply Convention Art. 9(1) to provide MLA for use in foreign non-criminal proceedings against a legal person for foreign bribery. The Convention is part of Croatia's internal legal order and has primacy over domestic law (Constitution Art. 134).

161. The Ministry of Justice, Public Administration, and Digital Transformation (MOJ) is the central authority for sending and receiving MLA requests (MLACMA Art. 6). Where the MLACMA or a treaty permits, Croatian judicial authorities may send requests directly to foreign authorities with the MOJ on copy (Arts. 6(4)-(5)). Urgent requests can be communicated through Interpol (Art. 6(6)). Croatian authorities explain that incoming MLA requests are executed by the courts, and EIOs by county State Attorney's Offices (SAOs). The assignment is made by territorial competence, based on the residence of the individual or seat of the company concerned. USKOK has a Department for International Co-operation and Joint Investigations that is responsible for co-operating with foreign authorities and international organisations. The Department can manage and participate in joint investigation teams in corruption cases (USKOKA Art. 17).

162. Available assistance includes search and seizure, freezing and confiscation, taking of evidence, provision of data and documentation, transfer of proceedings, and judgment execution. Croatia can participate in joint investigation teams when allowed by an international instrument. Croatian authorities can also spontaneously exchange information through the MOJ (MLACMA Arts. 6 and 18).

163. The Phase 1 Report (para. 113) concluded that the provision of bank information as MLA should be followed up. Bank secrecy is not a ground for refusal. The procedure for seeking bank information under the Criminal Procedure Act applies. The state attorney must submit to a judge a reasoned motion, which can be replaced by an MLA request. The request must include an order of a competent judicial authority in the requesting state, i.e. a court or prosecutor's office authorised to issue such orders domestically. Croatia states that no significant obstacles have been encountered in this field, though requesting states occasionally omit the relevant decision of a competent judicial authority. Delay in providing bank information and other types of MLA is considered in para. 171 below.

C.1.i.ii. Grounds for refusing MLA

164. Croatia requires dual criminality for MLA even though the MLACMA does not expressly so stipulate. 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" (Phase 1 Report para. 109). In line with Convention Art. 9(2), dual criminality is deemed to exist for offences falling within the scope of the Convention. It is also not required for certain requests from EU countries (JCCMEUA Art. 10). Croatia states that it did not refuse any MLA requests in 2019-2023 because of an absence of dual criminality.

165. 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 under Croatian law, or if criminal proceedings are pending in Croatia against the prosecuted person for the same criminal offence (Art. 13(1)(2)). The latter ground for refusal has caused some delays in a bribery case. An incoming MLA request received in September 2023 was still outstanding as of July 2024. Croatia states that parts of the request involved Croatian citizens and

offences committed in Croatia's territory. The SAO therefore "decided to make a thorough check of all the circumstances of the case in order to decide in which parts the request could be executed".

166. A further ground of refusal based on *ne bis in idem* is overbroad. Under MLACMA Art. 13(1)(1), a request must be 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 (including based on a non-trial resolution) or may not be executed pursuant to the requesting state's law. The concern, however, is that this provision goes further and requires MLA to also be denied "if a procedure against [the accused] has been discontinued". This refers to the suspension of proceedings on grounds other than the merits, such as when the prosecutor drops charges or there are "other circumstances that preclude criminal prosecution" (CPA Art. 380).

167. Croatia's justification for this provision's overreach does not resolve these concerns. It argues that the provision draws on "relevant international instruments" like the Convention Implementing the Schengen Agreement (CISA) and EU Charter of Fundamental Rights. However, the definition of *ne bis in idem* in these instruments does not cover the discontinuance of proceedings on grounds other than the merits. Croatian authorities also stress that the MLACMA only has subsidiary application (when international treaties or other legislation do not apply) and few requests are refused in practice because of *ne bis in idem*. Nevertheless, the application of this provision in a foreign bribery case is not excluded.

168. Croatian authorities' attempt to narrow this provision is commendable but nevertheless falls short. In April 2024, the MOJ issued recommendations to prosecutors and judges of the Supreme and High Criminal Courts on MLACMA Art. 13(1)(1). These state that the *ne bis in idem* principle should be interpreted in accordance with CISA and the jurisprudence of the European Court of Justice. Unfortunately, MOJ recommendations cannot override a statutory provision or bind prosecutors and judges.

169. Croatia later argues that the English translation of MLACMA Art. 13(1)(1) provided earlier to the Working Group "could be misleading". A "more faithful translation" would be that the term "substantive legal grounds" applies to both acquittals and discontinuance. The Working Group and Croatian authorities have discussed the issue of MLA refusal extensively, including during the 2023 Phase 1 evaluation, May 2024 Phase 2 questionnaire responses, July 2024 onsite visit, and October 2024 Croatian comment on the first draft of the evaluation report. All these exchanges proceeded on the basis that Croatia could deny MLA because proceedings have been discontinued on grounds other than the merits. That the MOJ issued recommendations – in the Croatian language – in April 2024 on MLACMA Art. 13(1)(1) further suggests that the problem is much more than translation. Croatia also confirms that discontinuance of the proceedings refers to CPA Art. 380, which also covers suspension of proceedings on grounds other than the merits.

Commentary

The lead examiners recommend that the Working Group follow up whether under MLACMA Art. 13(1)(1) MLA can be refused solely because a criminal proceeding against the defendant in Croatia has been discontinued on grounds other than the merits.

C.1.i.iii. MLA in practice

170. Croatia does not have comprehensive and accurate data on MLA. It provides three separate sets of statistics, all covering corruption, money laundering, and other selected offences. One of the sets contains data only for 2013-2020. The other two cover more recent years but contain discrepancies. Some of the statistics are provided by the MOJ and USKOK, while the SAO provides additional information "of a descriptive nature". Croatia concedes that data on MLA are only "partly available". "Unified statistics" on judicial co-operation with EU countries are not available.

171. These limited statistics do not raise concerns about delays in providing MLA in cases of corruption and money laundering, although the sample size is small. In 2019-2023, Croatia executed 3 MLA requests

for the offences of giving or taking a bribe. These did not concern foreign bribery, according to Croatian authorities. The average execution time was 55 days (1.8 months). A fourth request received in September 2023 was still outstanding in July 2024 (see para. 165). Croatia also executed 16 requests relating to money laundering which took 5 months on average. Three of these requests sought bank information and were executed in approximately 5 months. But one request from India and another from Bosnia and Herzegovina took 210 and 300 days, respectively. Croatia explains that these were for a large number of documents from multiple authorities. In 2019-2023, 31 EIOs and orders to secure assets in corruption cases were executed in 2 to 3.5 months.

172. The available data on outgoing requests also do not raise issues. In 2019-2023, Croatia sent 7 MLA requests relating to bribery cases. All were executed within 6.5 months on average. Croatia does not appear to have encountered difficulties in seeking MLA in the bribery cases analysed for this report. The only exception is one passive foreign bribery case with a Hungarian defendant. Hungary repeatedly denied Croatia's requests for assistance purportedly to protect "Hungarian national interests". A 2023 survey of Working Group members concerning incoming and outgoing MLA with Croatia, conducted during Croatia's accession to the Convention, did not raise significant concerns.

173. Concerning resources, both MOJ and USKOK representatives report a shortage in staff and indicate that some recruitments would be very beneficial. Nevertheless, this does not appear to have significantly affected MLA response times (see above). As for training, the Judicial Academy organised nine workshops in 2023 on Croatia's mutual legal assistance legislation for 40 judges and 57 prosecutors.

Commentary

The lead examiners strongly recommend that Croatia maintain comprehensive statistics on incoming and outgoing MLA requests.

C.1.j. Extradition

174. Convention Art. 10 makes bribery of a foreign public official an extraditable offence under the laws of the Parties and the extradition treaties between them.

C.1.j.i. Legal framework for extradition

175. Croatia is party to bilateral and multilateral treaties that provide for extradition in foreign bribery cases. The relevant multilateral treaties are the Anti-Bribery Convention, 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. Applicable bilateral treaties are with Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, and United States. Non-Croatian nationals may be extradited 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)), and thus include foreign bribery.

176. The MOJ is the central authority for extradition (MLACMA Arts. 6(2) and 40). It also has the final say in extradition proceedings. If a competent court concludes that the statutory conditions for extradition are met (Art. 47), the MOJ then decides whether to surrender the person sought (Art. 57).

C.1.j.ii. Grounds for denying extradition

177. MLACMA Art. 35 sets out mandatory grounds for denying extradition. Dual criminality is required. Croatia deems this requirement to be met if the offence for which extradition is sought is within the scope of Convention Art. 1 (Phase 1 Report para. 121). Extradition is also refused if the offence was committed in Croatia, or was against Croatia or its nationals; the statute of limitations has expired; a "domestic court" 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; or the

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.

C.1.j.iii. Extradition of nationals

178. Convention Art. 10(3) requires Parties to ensure that they can either extradite or prosecute their nationals for foreign bribery. A Party that declines to extradite a person for foreign bribery solely on the basis of nationality shall submit the case to its competent authorities for the purpose of prosecution.

179. Croatia only extradites its nationals under a European Arrest Warrant or if required by a treaty.[46] If Croatia prosecutes a national in lieu of extradition, 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).

180. More problematic is an additional condition that Croatia prosecute its nationals only upon the request of the foreign state seeking extradition (MLACMA Art. 62). Croatia states that this requirement is in line with the European Convention on Extradition Art. 6(2). Anti-Bribery Convention Art. 10(3), however, expressly states that if a country refuses extradition in a foreign bribery case solely based on nationality, then it "shall" submit the case to its competent authorities for the purpose of prosecution. Accordingly, in evaluations of other countries, the Working Group has held that a request of a foreign state should not be a precondition for the prosecution of a national in lieu of extradition.[47]

181. Moreover, there is no reason why the onus should be on the foreign state and not Croatia to act. Under Croatian law, a pre-trial investigation must be opened if there is a "reasonable suspicion" that a crime has been committed (see para. 105). This is the same evidentiary threshold for granting extradition (MLACMA Art. 43(1)(3)). An extradition request must therefore necessarily contain sufficient evidence for Croatia to open a domestic investigation. Otherwise, the extradition request would be rejected due to insufficient evidence, and not *solely* on grounds of nationality.

182. Croatia's reply to this argument does not resolve these concerns. It argues that it cannot initiate criminal proceedings based a request for provisional arrest of a person sought for extradition. Such a request is only required to contain a "brief factual and legal description of the criminal offence" (MLACMA Arts. 8(3)(4) and 44). But this implies that less evidence is needed to arrest an individual and deprive him/her of liberty than to merely open an investigation. Furthermore, even if the evidence falls short of a "reasonable suspicion" to open a pretrial investigation, the prosecutor and the police can and should conduct an "inquiry" to gather more information (CPA Arts. 206(4) and 206h; see para. 104). After reviewing a draft of this report, Croatia confirms that a prosecutor may indeed open an inquiry based on information contained in an incoming request for provisional arrest. In any event, not all extradition cases commence with provisional arrest. Many begin with a full extradition request that should contain evidence of a reasonable suspicion.

183. A final condition for prosecution in lieu of extradition is also problematic. Croatia states that prosecution depends on "the willingness of the requesting state to initiate a transfer of proceedings and provide all the evidence necessary to conduct criminal proceedings" (Phase 1 Report para. 119). Again, there is no reason why the onus should be on the foreign state and not Croatia to act. As mentioned above, Croatian prosecutors can conduct an "inquiry" to gather more information, including in Croatia. If a pretrial investigation is eventually opened, then Croatian authorities can use MLA arrangements to request evidence from foreign states, including but not limited to the country that sought the Croatian national's

[46] MLACMA Arts. 32 and 35(1)(1) and Constitution Art. 9. Croatia states that its nationals may be extradited under a bilateral treaty to only four countries: Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia.
[47] For example, see Costa Rica Phase 2 paras. 192-194 and recommendation 11(f).

extradition. Croatia may also request the country to transfer its criminal proceedings to Croatia, rather than passively wait for the country to initiate transfer.

184. The MOJ recommendations of April 2024 (see para. 168) also refer to the extradition of nationals but do not resolve the issue. In such cases, the MOJ "will begin consultation in the sense of Article 4, paragraph 3 of the Convention, and to transfer or initiate criminal proceedings". However, MOJ recommendations cannot override legislation or bind prosecutors. Only prosecutors, not the MOJ, can initiate criminal proceedings in a specific case. Moreover, Convention Art. 4(3) only concerns consultation among the Convention's Parties, but foreign bribery cases can involve other countries. Croatia states that its authorities can otherwise co-operate with these countries under an applicable extradition treaty or the reciprocity principle. However, this is not mentioned in the MOJ recommendations. More importantly, this does not ensure that the competent Croatian authorities will take the initiative in a specific case where extradition has been refused solely because of nationality.

185. In 2019-2023, one extradition request received in 2019 was refused by Croatia based on nationality. The requesting country then asked that Croatia take over the proceedings and sent Croatia its criminal file. As of June 2024, an SAO decision on whether to prosecute was still pending. Croatia explains that its authorities asked for and are awaiting additional evidence from the foreign state.

Commentary

The lead examiners recommend that Croatia take steps to ensure that, when it declines an extradition request in a foreign bribery case solely on the ground of nationality, the case is submitted to its competent authorities for consideration of prosecution regardless of whether Croatia has been asked to do so by the requesting state, or whether the requesting state has initiated a transfer of its criminal proceedings and evidence against the Croatian national to Croatia.

C.1.j.iv. Extradition in practice

186. Croatia has provided statistics on extradition requests made and received in 2019-2023, including the offence type, foreign state, execution time, and grounds for refusal. Croatia received 145 extradition requests, of which 95 were executed, 31 rejected, 14 are pending, and 5 were withdrawn by the requesting state. Three of the requests involved an offence of bribe giving or taking. The authorities could not confirm whether these concerned foreign bribery. The time for surrendering the person sought ranged from 22 days to 4 years. Like for MLA, statistics on European Arrest Warrants (EAWs) are more limited. Croatia executed 95 EAWs in 2019 with an average execution time of 66 days, and 61 EAWs with an average of 41 days in 2020.

187. One extradition proceeding in Croatia with a foreign bribery connection was widely reported internationally. Monaco sought a (non-Croatian) whistleblower in a foreign bribery case who claimed that the criminal complaint against him was unfounded and retaliatory. Croatian authorities arrested the person in 2020 after receiving a request for his extradition from Monaco. The MOJ eventually denied extradition in July 2021 because Monaco requested extradition to interrogate the individual, while the applicable legal basis only permitted extradition for prosecution or sentence execution. The MOJ states that, when deciding whether to extradite, it may take into account an allegation that the foreign criminal proceedings are retaliation for whistleblowing. However, it was not necessary to do so in this case.

188. Concerning outgoing requests, Croatia has not sought extradition in foreign bribery cases given the absence of enforcement of this crime. It sent two requests for domestic bribery in 2019-2023. The first one has been outstanding since 2021. The second was denied due to the expiry of the statute of limitations. Earlier in 2011, a former Prime Minister was extradited from Austria to Croatia to face prosecution. In the passive foreign bribery case mentioned at para. 172, Hungary repeatedly refused to surrender one of its

nationals to stand trial for bribing the Croatian Prime Minister. Croatia ultimately convicted the Hungarian national *in absentia*.

Commentary

The lead examiners note that statistics on the European Arrest Warrant (EAW) are limited, like those on MLA. They therefore strongly recommend that Croatia maintain comprehensive statistics on incoming and outgoing extradition requests and EAWs.

C.2. Offence of foreign bribery

189. Croatia criminalises the bribery of foreign public officials principally through Criminal Act (CA) Art. 294. Bribery for acts or omissions that an official should not perform is covered by Art. 294(1), and those that the official should perform by Art. 294(2). Art. 294(3) extends these provisions to bribery of a "foreign public official". A second offence in CA Art. 339 deals specifically with the bribery of "representatives", i.e. legislators. The full text of these provisions is in Annex 3 at p. 69.

190. The Phase 1 Report (para. 127-128) concluded that Croatia's foreign bribery offences largely conform to the Convention. This Phase 2 Report focuses on follow-up issues identified in Phase 1 and two new matters regarding bribery outside official competence and bribery of a representative.

C.2.a. Elements of the foreign bribery offence

191. In Phase 1 (para. 7), Croatia stated that crimes, including the foreign bribery offences in CA Arts. 294 and 339, 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. Under indirect intent, the perpetrator's acceptance of the criminal offence can take different forms, such as "reconciliation with the consequences" and "not opposing to the consequences". Indirect intent is essentially *dolus eventualis*, which is similar to "recklessness" or "wilful blindness" in certain countries.

192. In Phase 2, Croatia asserts that these offences apply to typical cases of foreign bribery committed through an intermediary.[48] Consider a hypothetical in which an individual ("principal") seeks a EUR 10 million government contract in a corruption-prone foreign country and economic sector. The principal pays EUR 1 million "fee" to a consultant to "do whatever it takes" to obtain the contract. The consultant does not have technical expertise in the contract's subject matter and does not provide any tangible work product that would justify the fee. The principal does not ask what the consultant would do or how the money would be spent. The consultant then bribes a foreign public official without informing the principal, and successfully delivers the contract. Croatian officials state that the principal has indirect intent to bribe and would be liable. Croatian judges took a different view. The principal has indirect intent to bribe because he/she supplies the bribe money to the consultant. Otherwise, the principal would be liable for instigating the consultant to commit bribery. Supporting case law was not provided for these positions.

193. Coverage of bribes paid to third party beneficiaries is clearer. The Phase 1 Report (para. 21) observed that CA Arts. 294 and 339 cover bribes intended for an official "or another person". The offences thus *prima facie* cover third party beneficiaries. In Phase 2, Croatia describes a case in which a judge agreed to ensure a favourable outcome to litigation involving a briber. In return, the briber arranged for a job transfer of the judge's son and secured employment for the son's wife.

194. Croatia's definition of a "foreign public official" in CA Art. 294(3) is substantially similar to the Convention's. The Phase 1 Report (paras. 14-20) did not identify any discrepancies. Croatia added that the definition is "autonomous", i.e. it does not require proof of the law of the country of the foreign public

[48] See OECD (2009), Typologies on the Role of Intermediaries in International Business Transactions, paras. 48-51.

official. Instead, the definition is functional: it is sufficient that the person concerned exercise one of the functions listed in CA Art. 294(3). Croatia reiterates this position in Phase 2. There is no case law interpreting this provision which entered into force only in October 2023.

Commentary

The lead examiners recommend that the Working Group continue to follow up (a) the application of indirect intent in foreign bribery cases, and (b) whether the definition of a foreign public official requires proof of foreign law.

C.2.b. Bribery for acts outside official competence

195. The Convention covers bribery in order that a foreign official act outside his/her competence. Art. 1(1) states that it should be a criminal offence for an individual to bribe a foreign public official in order that the official act or refrain from acting "in relation to the performance of official duties". This phrase "includes any use of the public official's position, whether or not within the official's authorised competence" (Art. 1(4)(c)). An example is "where an executive of a company gives a bribe to a senior official of a government, in order that this official use his office – though acting outside his competence – to make another official award a contract to that company" (Commentary 19).

196. The Ministry of Justice states that Croatia's bribery offences on their face cover this situation. CA Arts. 293-294 explicitly prohibit the offering, giving or promising of a bribe to an official for an act or omission "within or beyond the limits of their authority".

197. In practice, however, prosecutors and judges resort to a separate offence of abuse of position and authority under CA Art. 291 in cases of bribery for acts outside an official's competence. In one passive foreign bribery case, Croatia's Deputy Foreign Minister was leading the government's negotiations to obtain bank loans for acquiring buildings for overseas Croatian embassies. A non-Croatian bank bribed the Deputy Minister to obtain the loan contract. The ultimate decision on which bank would provide the loan rested with the government. The Deputy Minister, however, had influence over the decision. Prosecutors explain that the Deputy Minister's actions "did not fulfil all the legal characteristics of the criminal offence of taking a bribe". This is because the bribery offence in CA Arts. 293-294 only covers payment to an official to perform an act that the official is required or not allowed to do. Bribery to perform discretionary acts is instead covered by the offence of abuse of authority under Art. 291. This narrow interpretation of the bribery offence derives from case law. The view that Arts. 293-294 do not cover bribery for discretionary acts is also why these offences do not cover the bribery of legislators, as explained in section C.2.c p. 48. The same approach was taken in a second passive foreign bribery case where a company executive bribed the Prime Minister and a Minister. In return, the officials influenced the government's decision to sell real estate to the company at inflated prices. The officials were convicted of abuse of position and authority, not bribery.

198. The concern is that the abuse of position and authority offence applies only to Croatian and not foreign officials. CA Arts. 293(4) and 294(3) extend the bribery offence to foreign public officials. There is no equivalent provision for the abuse of position and authority offence.

Commentary

The lead examiners are seriously concerned that under Croatian law an undue payment to an official to act outside his/her competence constitutes the offence of abuse of position and authority, and is not considered bribery. However, the abuse of position and authority offence has not been extended to foreign officials. As noted above, CA Arts. 293-294 explicitly prohibit the offering, giving or promising of a bribe to an official for an act or omission "within or beyond the limits of their authority". The lead examiners therefore recommend that Croatia train judges and prosecutors to ensure that its foreign bribery offence covers the bribery of a foreign official to act outside his/her competence.

C.2.c. Bribery of representatives

199. The Criminal Act contains a separate offence specifically for the bribery of representatives, i.e. legislators. Croatia explains that the principal bribery offence in CA Arts. 294 only covers bribery for an official to perform "an official act" which does not include a legislator's act of voting (Phase 1 Report para. 14). A separate offence in CA Art. 339 was therefore enacted in 2011. The offence was extended to legislative officials of a foreign country and public international organisations in 2023:

> 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 organisation or councillor 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 organisation 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 organised foreign area.

200. The concern is that the offence in CA Art. 339 does not cover all official acts of a legislator. The provision explicitly prohibits bribing a legislator to "vote in a certain manner". On its face, it does not apply to other acts such as abstaining or absenting from voting (though the MOJ argues the former is implicitly covered). Nor does it cover making certain statements or taking particular positions in legislative debates, or refraining from doing so. The only case law on Art. 339 provided by Croatia concerns acts of voting and not other actions by a legislator.[49]

201. Croatian participants in this evaluation provide conflicting interpretations of whether CA Art. 339 covers non-voting acts, none of which is supported by case law. One parliamentarian asserts the provision covers all voting and non-voting acts of a legislator. An MOJ official disagrees and states that Art. 339 covers only voting. A second MOJ official and another parliamentarian state that Art. 339 covers voting and abstaining, but not absenting from voting nor acts or omissions during legislative debates.

202. The MOJ also argues that shortcomings in the Art. 339 offence are remedied by the principal bribery offence in Art. 294. Art. 294 covers bribery to perform acts against an official's duty. The MOJ states that an act of voting "does not meet the condition that it is an official or other action undertaken in the public service, so such actions could not be classified as criminal offences against official duty". A separate offence of Art. 339 therefore had to be enacted in 2013 to cover bribery to vote. However, the legislators' opinion and the Criminal Act explanatory notes did not identify any acts other than voting to fall beyond the purview of Art. 294. This, the MOJ argues, implies that other acts such as absence from voting or participation in parliamentary debates would fall under Art. 294.

203. The MOJ's position is doubtful. Voting, participating in legislative debates, and attending (or being absent from) legislative sessions are all acts that are routinely performed by legislators. There is no principled reason why only some and not all these acts constitute "an official or other action undertaken in the public service". The legislators' opinion and Criminal Act explanatory notes did not specifically consider

[49] Supreme Court (7 Feb. 2014) Kž-Us-6/14-4.

whether acts other than voting fall within Art. 294. This silence is more likely because legislators simply did not consider the issue non-voting acts at all. Furthermore, special investigative techniques are available for investigating offences under Art. 294 but not Art. 339 (see para. 143). If the MOJ's position is accepted, then a wiretap can be used to investigate bribing a legislator to be absent from voting but not to vote, for example. This leads to a highly fragmentary and incongruent result that may well be rejected by the courts.

204. Compared to the MOJ, a prosecutor who participated in this evaluation suggests a much more consistent interpretation of Arts. 294 and 339. In his view, Art. 294 applies to bribery for an official to perform or breach an official duty. But there is no duty on a legislator to vote because such an act is discretionary. Art. 294 therefore cannot apply to bribery of a legislator to vote in a certain manner. Following the same reasoning, the provision would also not apply to other discretionary acts such as abstention and absence from voting, or participation in parliamentary debates. In short, bribery of legislators falls under Art. 339, and any shortcomings in this provision cannot be remedied by Art. 294. It is also noteworthy that the position that Art. 294 does not cover discretionary acts is also why judges and prosecutors do not apply this provision to bribery for acts outside official competence (see section C.2.b at p. 47).

Commentary

The lead examiners are concerned that Croatia does not fully criminalise the bribery of foreign legislators. On its face, the CA Art. 339 offence only covers the bribery of a legislator to vote in a certain manner. It does not prohibit bribery to perform other acts such as absenting from voting; making certain statements or taking particular positions in legislative debates; or refraining from doing so. The Ministry of Justice's explanation that the additional acts are covered by Art. 294 is not convincing and is also contradicted by a prosecutor. None of these positions is supported by case law. The Ministry of Justice also argues that CA Art. 339 implicitly covers abstaining from voting based on rules applicable to the Croatian parliament, but this too is contradicted by a prosecutor. Furthermore, such rules may not apply to a foreign legislator.

The lead examiners also note that companies have been known to win international business by bribing foreign legislators to perform acts other than voting. It is thus vital that Croatia's legislation prohibits such conduct beyond doubt. The lead examiners therefore recommend that Croatia amend the Criminal Act to ensure its coverage of bribery of a foreign legislative official to perform acts other than voting, including abstaining and absenting from voting, as well as making and refraining from making certain statements in legislative debates.

C.2.d. Defences to foreign bribery

205. The Phase 1 Report identified two issues for follow-up: bribes of small value and effective regret.

C.2.d.i. Bribes of small value

206. Bribes of small value do not raise any issues. 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 Phase 2, Croatia referred to two domestic bribery cases in which police officers were convicted for taking bribes of EUR 50 and EUR 60 in return for not enforcing traffic violations.[50]

C.2.d.ii. Effective regret

207. Under CA Art. 294(4), a briber may be released from punishment if he/she reports the offence either before its discovery by law enforcement, or before learning of its discovery by the authorities:

> Art. 294(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

[50] Zagreb County Court (30 Nov. 2023) Kov-Us-58/2023 and (20 Oct. 2023) Kov-Us-80/2023.

> the offence before it is discovered or before he or she finds out that the offence has been discovered may be released from punishment.

208. CA Art. 294(4) does not provide a "defence" in the strict sense. The provision is discretionary even if the conditions in Art. 294(4) are met (Phase 1 Report para. 28). Moreover, the offender escapes punishment but is nevertheless prosecuted and convicted. Confiscation is also imposed when applicable (CA Arts. 5 and 77-78). Croatia stated in Phase 1 that, in applying these provisions, the court considers the circumstances and impact of the offence, and the offender's personal circumstances. Officials and judges reiterate this position in Phase 2 and refer to additional factors such as prior convictions and the motive for reporting the crime. Croatia states that the provision is used infrequently and found only two examples of application.[51] Effective regret can also be a mitigating factor at sentencing instead of a full release from punishment (see para. 245). Both are also available to legal persons (see para. 249).

C.3. Liability of legal persons

209. Corporate liability for criminal offences in Croatia is set out in the Act on the Responsibility of Legal Persons for Criminal Offences (Corporate Liability Law, CLL). The text of selected CLL provisions is in Annex 3 at p. 72. This section focuses on legislative issues concerning the CLL. The lack of enforcement of this law in practice is examined in section C.1.c.iii at p. 32.

C.3.a. Standard of liability

210. Under the CLL, corporate liability is based on the "fault" of a "responsible person" (Art. 5). 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" (Art. 4). Art. 3 describes three categories of "fault". Under Art. 3(1), corporate liability arises if a responsible person commits a criminal offence (a) that violates the duty of the legal person, or (b) by which the legal person obtained or should have obtained a benefit for himself or another. Under Art. 3(2), liability also arises for a criminal offence that was made possible by a failure of supervision or control by a responsible person who leads the legal person's affairs.

211. The Phase 1 Report (paras. 37-38) concluded that the CLL on its face meets the requirements of the Anti-Bribery Recommendation Annex I.B.3. A "responsible person" includes an individual "who manages the affairs of a legal person". This corresponds to a person with the highest-level managerial authority in the legal person. A senior corporate officer who bribes a foreign official commits an 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. Both cases would trigger corporate liability under CLL Art. 3(1) (assuming other requirements for liability are met). A "responsible person" also includes an individual who is "at any level" entrusted with the performance of the legal entity's activities. A lower-level person who commits foreign bribery can therefore lead to corporate liability under Art. 3(1). Furthermore, if the lower-level person's bribery is the result of a failure of supervision or control by a person who manages the affairs of the company, then corporate liability also arises under Art. 3(2).

212. The Working Group has decided to follow up whether a senior corporate officer's lack of supervision or control can be established by a failure to implement adequate internal controls, ethics and compliance programmes or measures (Phase 1 Report paras. 38 and 129). In Phase 2, Croatia answers this question in the affirmative. However, there is no case law on this issue. This is understandable since the provision was enacted only in 2023.

213. There are concerns that the *mens rea* (i.e. the mental state) required for liability due to a failure of supervision or control under CLL Art. 3(2) is unclear and too onerous. The CLL is silent on the requisite mental state. Nevertheless, the failure of supervision or control must be intentional, says one Croatian official. But another official states that negligence suffices. After much internal discussion, the officials

[51] Zagreb County Court (4 Mar. 2021) K-Us-13/19; Split County Court (29 Oct. 2019) Kov-Us-13/2019.

settle on strict liability (i.e. proof of mental state is not necessary at all) given that corporate liability is triggered by the criminal act of a lower-level person. However, one prosecutor believes that proof of intent is required. Lawyers and academics are split between intent and negligence. Judges opt for strict liability but acknowledge that there is no practice on this issue. The MOJ adds that Croatian criminal law requires proof of *"*guilt*"* as a condition of liability. CA Art. 23 recognises both intention and negligence as sufficient forms of "guilt".[52]

Commentary

The lead examiners are concerned about the standard of proof required for corporate liability for bribery resulting from company management's failure of supervision or control. The CLL does not stipulate the mens rea required for such liability. Some Croatian practitioners opine that such failure must be intentional to attract liability. This would be too onerous and overlooks management's inherent responsibility to supervise and control its employees within the sphere of the company's operations. Other practitioners believe that liability could be based on negligence or strict liability which would be more acceptable.

The lead examiners therefore recommend that the Working Group follow up whether corporate liability for foreign bribery that was made possible by company management's failure of supervision or control requires proof that the failure was intentional. They also recommend that the Working Group continue to follow up whether a senior corporate officer's lack of supervision or control can be established by a failure to implement adequate internal controls, ethics and compliance programmes or measures.

C.3.b. Liability for bribery committed by a related or successor legal person

214. In Phase 1 (paras. 41, 44 and 129(b)), the Working Group decided to follow up corporate liability for bribery committed by a related legal person. This includes cases where bribery committed by a subsidiary benefits a parent company and *vice versa*. In Phase 2, Croatia explains that the parent company becomes liable if a responsible person in the company breaches a duty to supervise or control the subsidiary which leads to the bribery. An example is where the responsible person approves a fake invoice issued by the subsidiary which hides a bribe payment. The responsible person is thus a co-perpetrator in the bribery, and this offence provides the basis for holding the parent company liable. The bribery must also achieve or should have achieved an advantage for the parent company, as required by CLL Art. 3(1). However, there is no case law supporting this position.

215. 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". In Phase 1 (para. 48), Croatia explained that a "general legal successor" is an entity resulting from forms of corporate reorganisation governed by the Companies Act. It adds in Phase 2 that a legal person subject to bankruptcy proceedings shall be punished for offences committed before or during the proceedings. This provision is therefore not relevant because it addresses the liability of the legal person, not its successor.

Commentary

The lead examiners recommend that the Working Group continue to follow up corporate liability in Croatia for bribery committed by a related legal person.

[52] CA Art. 23 reads "Ingredients of guilt: Guilty of a criminal offence is the perpetrator who was countable at the time of the commission of the criminal offense, who acted intentionally or negligently, who was aware or was obliged and could have been aware that his act was prohibited, and there is no excusing reason."

C.3.c. Proceedings against the legal person and the natural person

216. On its face, the CLL does not restrict corporate liability to cases where the natural person who committed the offence is prosecuted or convicted. In Phase 1 (para. 46), Croatia stated that CLL Art. 5(1) provides 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". "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 unidentified. In such cases, proceedings are conducted against the legal person alone (CLL Art. 23). Nevertheless, the court must still "determine the illegal act", explained Croatia.

217. In Phase 2, Croatia provided one court decision demonstrating that a legal person can be liable in the absence of a natural person conviction.[53] A company was charged with a public safety offence because of an improperly maintained building. Charges against a natural person defendant were dropped because she was not responsible for the building's maintenance. The person who was ordinarily responsible for maintenance could not be held liable because he was on long term sick leave at the time of the offence. The evidence was not sufficient to determine who his replacement was. A responsible natural person was therefore not identified. Nevertheless, the company was held liable because it owned the building and was hence responsible for the building's maintenance. A defence lawyer participating in this evaluation adds that she has had cases in which a company CEO died but the proceedings were nevertheless continued against the company.

218. However, another court decision throws this issue back into doubt. An academic article states that corporate proceedings in one case "were discontinued due to the death of the responsible person during the trial."[54] Croatia was requested but could not provide further information about this case. The author of the article states that he cannot find the actual decision but recalls that the case was decided by a lower court. He believes that the decision was a "bad case".

Commentary

The lead examiners recommend that the Working Group follow up whether corporate liability in Croatia is restricted to cases where the natural person who committed the offence is prosecuted or convicted.

C.4. Jurisdiction

C.4.a. Jurisdiction over natural persons

C.4.a.i. Territorial jurisdiction over natural persons

219. 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 stated in Phase 1 (para. 65) that "the place where the criminal offence was committed [is] the place where the perpetrator promised or offered a bribe." Croatia added 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". However, bribery is not considered to have been committed at a place where the crime's consequence occurred, since consequence is not an element of the offence (Phase 1 Report para. 66).

220. The application of these rules to specific situations of bribery may show that the scope of territorial jurisdiction is quite narrow. The MOJ states that there is no territorial jurisdiction if a briber emails a foreign

[53] Zadar Municipal Court (16 Nov. 2018) K-158/2017; affirmed Varaždin County Court (26 Nov. 2019) Kž-401/2019.
[54] Vuletic, I. (2023), Corporate Criminal Liability: An Overview of the Croatian Model after 20 Years of Practice, p. 8.

public official while in Croatia to set up a meeting, and later goes abroad to meet the official and pay the bribe. The same is true if the briber withdraws cash while in Croatia, and later goes abroad to meet a foreign public official and delivers the cash as a bribe. In both cases, only "preparatory actions" are taken in Croatia. Territorial jurisdiction requires the email sent from Croatia to specifically offer or promise a bribe, for example. Lawyers and academics participating in this evaluation unanimously agreed with the MOJ's views. Judges opined that there could be jurisdiction in some of these scenarios if the intent to bribe was formed in Croatia. But there is no case law to support this position.

221. That territorial jurisdiction requires the offer, promise or giving of a bribe to occur in Croatia raises two concerns. First, the approach may be inconsistent with Convention Art. 4(1) which requires a country to have jurisdiction over foreign bribery committed not only "in whole" but also "in part" in its territory. Commentary 25 adds that "the territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required". If Croatian law requires the offer, promise or giving of the bribe (i.e. the bribery act) to occur on Croatian soil, then it would arguably lead to several concerns. For example, there would be territorial jurisdiction if the briber emails a bribe offer from Croatia but does nothing else in the country to further the crime. But there would not be jurisdiction if the briber does virtually everything to facilitate the crime in Croatia short of offering the bribe, e.g. contacting the foreign official to set up a meeting, making travel arrangements, withdrawing cash for the bribe payment, and drawing up false contracts and accounting documents to hide the bribery.

222. After reviewing a draft of this report, Croatia largely reiterates its earlier position. It states that Croatia has jurisdiction over "anyone who commits a criminal offence on its territory" (CA Art. 10). The offence of bribery is committed "when the perpetrator bribe-giver offers, gives or promises a bribe to an official" (CA Art. 294). Hence, "if the criminal offence of bribery is committed by offering, giving or even promising a bribe, in the Republic of Croatia, therefore it has jurisdiction. […] We believe that this is in accordance with Article 4, paragraph 1 of the Convention." Acts such as withdrawing the bribe money from a bank account are "outside the legal description of the criminal offence of bribery". They are therefore not relevant to the determination of territorial jurisdiction.

223. CA Art. 16 provides for universal jurisdiction, but Croatia states that this does not apply to offences committed on Croatian territory. The provision therefore does not resolve concerns about the narrow scope of territorial jurisdiction.

Commentary

The lead examiners consider that Croatia's rules on territorial jurisdiction may not comply with Convention Art. 4(1) and Commentary 25. They therefore recommend that the Working Group follow up as case law and practice develop whether Croatia has jurisdiction over foreign bribery committed in whole or in part in its territory, and territorial jurisdiction does not require an extensive physical connection to the bribery act.

C.4.a.ii. Nationality jurisdiction over natural persons

224. Convention Art. 4(2) provides that "[e]ach Party which has jurisdiction to prosecute its nationals for offences committed abroad 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.

225. 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)). Dual criminality is required. Croatia adds 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" (Phase 1 Report para. 68). The Croatian national must also be in Croatian territory

when jurisdiction is exercised (Art. 18(7)). Croatia cannot seek the extradition of a national who has committed extraterritorial foreign bribery unless proceedings had been commenced earlier when the national was in the country, explain Croatian authorities.

C.4.a.iii. Universal jurisdiction over natural persons

226. The Convention does not require universal jurisdiction to prosecute foreign bribery. Nevertheless, Croatian authorities, practitioners and judges assert that Croatia has universal jurisdiction to prosecute anyone in Croatia for foreign bribery committed anywhere in the world. CA Art. 16 provides for such jurisdiction over listed offences and offences that Croatia is obliged to punish under an international treaty:

> Art. 16. The criminal legislation of the Republic of Croatia applies to anyone who outside its territory commits a criminal offence from Article 88, Article 90, Article 91, Article 97, Article 104, Article 105 and Article 106 of this Act, as well as a criminal offence which the Republic of Croatia is obliged to punish according to the international agreement, even when it was committed outside the territory of the Republic of Croatia.

227. CA Art. 18(7) adds that proceedings based on Art. 16 can be commenced only if the perpetrator is in Croatia. Croatia states that it cannot seek the perpetrator's extradition from a foreign state since extradition requires criminal proceedings against the perpetrator to first be opened.

228. The Ministry of Justice adds two qualifications. First, it states that universal jurisdiction is a "subsidiary principle" and hence would be asserted only "if a criminal offence was committed outside the jurisdiction of any state". Second, universal jurisdiction under Art. 16 applies to foreign bribery because of the "general clause principle". Art. 16 provides for jurisdiction "over a criminal offence which the Republic of Croatia is obliged to punish according to [an] international agreement". This "general clause" covers not all offences in international treaties but only those "of equal severity" as one of the crimes listed in Art. 16. Foreign bribery qualifies because it is punishable by imprisonment of six months to five years, which is the same one of the listed offences, namely the offence under CA Art. 105(2).

229. Until proven by case law, there may be doubts whether Croatia indeed has universal jurisdiction over foreign bribery. Apart from the Anti-Bribery Convention, Croatia is party to numerous other criminal law treaties.[55] Croatia's interpretation of Art. 16 would thus require it to prosecute all manner of offences from street-level drug trafficking to low value bribery of traffic police and Internet fraud, regardless of where these offences occur or the perpetrator's nationality. Given the resulting enforcement burden, Croatian prosecutors and courts might interpret Art. 16 more restrictively. They might assert universal jurisdiction only to crimes of *jus cogens*, i.e. peremptory norms under international law that are accepted by the international community of states from which no derogation is permitted. Examples of such crimes include genocide, crimes against humanity and torture. Many other countries take this approach to universal jurisdiction. That the listed offences in Art. 16 are all *jus cogens* crimes reinforces this interpretation.[56]

C.4.b. Jurisdiction over legal persons

230. The Corporate Liability Law (CLL) stipulates that it applies to any entity which possesses legal personality under Croatian law (Art. 1). 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). This exception does not apply to state-owned enterprises.[57] The CLL also expressly covers "foreign entities that are considered as legal persons under Croatian law" (CLL Art. 1(2)). This applies to a foreign company

[55] For example, Croatia is party to the UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Drugs Convention), Corruption, Transnational Organized Crime, as well as Council of Europe Conventions against Cybercrime and Money Laundering.
[56] The offences listed in CA Art. 16 are genocide (CA Art. 88), crime against humanity (Art. 90), war crime (Art. 91), terrorism (Art. 97), torture (Art. 104), slavery (Art. 105) and human trafficking (Art. 106).
[57] E.g. see Čakovec Municipal Court (3 Nov. 2021) K-218/2021-2 (CLL conviction of Croatia's state-owned electricity provider).

validly incorporated under the law of the country of its registered office (Companies Act Art. 611; Phase 1 Report para. 33).

231. Much less clear are the acts that are subject to CLL jurisdiction. The MOJ asserts that jurisdiction over a legal person arises whenever Croatia also has criminal jurisdiction over the act of the natural person perpetrator (Phase 1 Report para. 70). Croatia explains that this is because the liability of a legal person is based on the fault of a responsible person in the legal person (CLL Art. 5; see also para. 210). The CLL "does not prescribe special provisions on [the] application of criminal legislation (jurisdiction rules)". Hence, the "general principles prescribed by the Criminal Act (including rules on territorial jurisdiction) apply to legal persons (by virtue of CLL Art. 2)".[58]

232. This raises concerns about jurisdiction over a Croatian company for foreign bribery committed abroad by a non-Croatian employee. In such a case, Croatia would not have territorial or nationality jurisdiction over the employee. The MOJ argues that universal jurisdiction under CA Art. 16 would apply, but that is true only if the employee is in Croatia (see para. 227) which is often not the case. It is also questionable whether this provision applies to foreign bribery at all (para. 228). The MOJ further argues that it would have jurisdiction over the employee under CA Art. 17(1). This provision confers jurisdiction over a non-Croatian individual who commits an act that is punishable in Croatia by at least five years' imprisonment. But several conditions may also preclude jurisdiction under this provision in a particular case: (a) the natural person must again be in Croatia (CA Art. 18(7)); (b) the act must be a crime where it occurred, i.e. dual criminality; and (c) the individual must be extraditable to Croatia but was not actually extradited. The MOJ adds even more confusion by stating that the Croatian company can be liable even if the non-Croatian employee cannot be prosecuted (CCL Arts. 5(2) and 23(2); see section C.3.c at p. 52). Jurisdiction over the company would then be based on *nationality jurisdiction* under CA Art. 14(1), presumably because the company is Croatian. But reliance on nationality jurisdiction completely contradicts the MOJ's initial proposition that legal person jurisdiction derives from jurisdiction over the responsible natural person. There is no case law to support any of the MOJ's positions.

233. The notion that natural person jurisdiction determines corporate jurisdiction raises two further issues. First, it is unclear whether and how corporate jurisdiction could be determined if the responsible natural person is unidentified. Croatia states that under CLL Art. 5(2) corporate liability does not depend on the prosecution or conviction of a natural person (see section C.3.c at p. 52). But this provision concerns substantive liability, not jurisdiction. Second, a company can be liable if a responsible person's failure of supervision or control results in a criminal offence committed by a second responsible person (CLL Art. 3(2); see para. 210). It is unclear jurisdiction over which responsible person (or both) would determine corporate jurisdiction. CLL Art. 5 states that corporate liability is based on the fault of "a responsible person"; no preference is expressed for which one. Relying on the jurisdiction of the responsible person who fails to supervise or control could be problematic since such failure is not a crime. The Criminal Act and its jurisdictional rules are thus not applicable.

234. To further confuse matters, non-governmental Croatian representatives participating in this evaluation put forth theories of jurisdiction that are totally different from the MOJ's. Prosecutors and one lawyer state that there is jurisdiction if the Croatian legal person obtains a benefit from the crime. Judges instead believe that the question is whether there is "a connection between the natural and legal persons". An academic states that the principle of "active personality" applies, but a lawyer questioned this position. The academic also acknowledges that this was his personal interpretation of the legislation and that "it would be better if the legislation prescribed how to use these provisions". Indeed, none of the positions expressed in this evaluation is explicitly reflected in the CLL.

[58] CLL Art. 2 states that "Unless otherwise prescribed by [the CLL], the provisions of the […] Criminal Act shall apply to legal entities."

Commentary

The lead examiners are seriously concerned that the CLL does not clearly stipulate the acts over which Croatia has jurisdiction. Consequently, the government, lawyers, prosecutors and academics have widely divergent views on the applicable rules. For its part, the MOJ believes that legal person jurisdiction depends on jurisdiction over the natural person perpetrator. If true, this position would directly contradict Anti-Bribery Recommendation Annex I.B.4.c which requires countries to have "appropriate jurisdiction over legal persons regardless of whether they have jurisdiction over the natural person who committed the bribery of a foreign public official."

For these reasons, the lead examiners recommend that Croatia amend the CLL to explicitly set out the acts that are subject to Croatian jurisdiction, and ensure that such jurisdiction is sufficiently broad for combatting foreign bribery, particularly extraterritorial foreign bribery committed by a legal person's employee who is not a Croatian national.

C.5. Offence of money laundering

235. Croatia's money laundering offence is in CA Art. 265 (Phase 1 Report paras. 87-92). All criminal offences qualify as predicate offences. The provision defines four modes of the offence: converting, transferring, exchanging etc. the proceeds of crime; concealing or misrepresenting the nature, source, location etc. of the proceeds; acquiring, possessing or using the proceeds of a crime committed by another person; and instructing, advising, facilitating etc. another person to launder proceeds. Natural persons are punishable by imprisonment of six months to five years, which is increased to one to eight years in aggravated cases. A maximum fine of EUR 2.5 million can be imposed for an offence "committed out of greed" (CA Art. 40(2) and (5)). Legal persons are subject to the same maximum penalties as those for foreign bribery, i.e. a EUR 10 000 to 15 million fine which can be increased to up to 10% of the legal person's turnover in the business year preceding sentencing (see section C.7.b at p. 59).

236. Croatia has implemented a recommendation in the Phase 1 Report (paras. 90 and 132) to eliminate a dual criminality requirement for the money laundering offence. Previously, Croatia's money laundering offence only applied if the predicate offence was "a criminal offence according to the law of the state in which it was committed" (Art. 265(7)). In April 2024, this provision was amended to extend the money laundering offence to the laundering of the proceeds of foreign predicate offences that are "not punishable under the law of the country in which it was committed."

237. Of greater concern is the actual enforcement of bribery-related money laundering. According to statistics provided by Croatia, there were no investigations, prosecutions or convictions of money laundering predicated on bribing a foreign or domestic public official (active bribery) in 2019-2023. Enforcement of money laundering predicated on bribe-taking (passive domestic bribery) is also extremely low, with just 4 investigations, 2 prosecutions and 3 convictions of natural persons, and none of legal persons. This compares with 165 and 96 convictions of active and passive bribery respectively over the same period.

238. Under-enforcement may in fact extend to money laundering predicated on other offences. In 2019-2023, Croatia had an approximate annual average of just 18 investigations, 19 indictments and 9 convictions for money laundering (predicated on any crime). In 2021, Monveyval considered data from 2015-2020 and found that almost all money laundering convictions were predicted on computer fraud, not major risk areas such as corruption. It therefore concluded that "the actual results (investigations, prosecutions, and convictions for [the money laundering] offence) are achieved to a negligible extent since the focus is on the establishment of the predicate offences." Money laundering predicated on offences such as corruption is also "not pursued on a systematic basis".[59]

[59] Moneyval (2021), Mutual Evaluation Report: Croatia, paras. 262 and 284. See also pp. 23 and 61.

239. When asked about the lack of enforcement, Croatian prosecutors state that not all acts of bribery would have resulted in the laundering of proceeds. This is certainly true, but the almost total lack of bribery-related money laundering enforcement suggests that enforcement of this offence is systematically not pursued. Croatian prosecutors also repeatedly state that the proceeds of bribery are confiscated even if money laundering is not charged. Even if this is true, confiscation is only imposed against bribed officials and almost never against bribers (see section C.7.c at p. 59). After reviewing a draft of this report, Croatia disagrees that there is a lack of enforcement by referring to two judgments in 2022 and 2023.[60] However, both cases concern money laundering predicated on passive and not active bribery. More importantly, two examples are hardly sufficient to rebut the clear conclusion seen from the statistical data in para. 237 above. Croatia also argues that the Financial Action Task Force acknowledged that "Croatia improved its measures to combat money laundering".[61]

Commentary

The lead examiners commend Croatia for repealing the dual criminality requirement for the money laundering offence. However, they are seriously concerned about the absence of enforcement of the laundering of the proceeds of bribery. They recommend that Croatia take steps to ensure that foreign bribery-related money laundering is investigated and prosecuted whenever appropriate.

C.6. Offence of false accounting

240. The Phase 1 Report (paras. 97-98) did not express concerns with Croatia's false accounting offences. Two Criminal Act (CA) provisions apply:

(a) CA Art. 248 covers (i) failing to keep commercial or business records required by law; (ii) keeping records in a manner that makes it difficult to render the transparency of business dealings or financial situation; and (iii) destroying, concealing, damaging or making unusable such records.

(b) CA Art. 279(1) covers a public official or responsible person who (i) enters false or omits to enter important information in an official or business document, or (ii) certifies or enables certification of a document with such information. CA Art. 279(2) covers using such a document as 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)).

241. The offences are punishable by up to three years' imprisonment 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). A legal person can be fined up to EUR 10 or 15 million, respectively, or up to 10% of its turnover in the preceding business year (CLL Art. 10). Dissolution and administrative sanctions are also available (see section C.7.b at p. 59).

242. In Phase 1 (para. 98), Croatia referred to additional false accounting misdemeanours that are of lesser importance. This includes Accounting Act Art. 42(1)(1)(2) which imposes a maximum fine of only EUR 13 270 for an entrepreneur and EUR 2 650 for its responsible person.

243. The issue, however, is once again a lack of enforcement. In 2019-2023, Croatia averaged approximately 55 prosecutions and 14 convictions for the CA accounting offences, and 2 098 prosecutions and 1 955 convictions for the Accounting Act offence. None of these cases was related to bribery of foreign or domestic public officials. Croatia gave two examples of false accounting in bribe-giving cases. The first case concerned bribery in the private sector, not of public officials. The case is also ongoing. The second case is prosecuted by the European Public Prosecutor's Office, not USKOK. Other cases mentioned by Croatia are irrelevant because they concern falsification of official documents (not accounting records) committed by Croatian officials who took bribes (not bribe-givers).

[60] Zagreb County Court (4 Sep. 2023) K-Us-8/2018 and High Criminal Court (3 Oct. 2023) Kž-Us-139/2022.
[61] FATF (2024), "Croatia's progress in strengthening measures to tackle money laundering and terrorist financing".

244. Especially concerning is that false accounting appeared to have been involved but was not charged in at least two passive foreign bribery cases. In the first case, bribes were paid via invoices for fictitious work. Croatia argues that company was foreign. But this overlooks the fact that the company's Croatian subsidiaries or intermediaries could nevertheless have falsified accounting documents in Croatia. In the second case, a company paid EUR 5 million in bribes to a Croatian official via fake consulting contracts issued through companies in offshore centres. Croatia contends that a foreign country refused to provide mutual legal assistance to Croatia. But Croatia nevertheless had sufficient evidence to convict an individual of bribe-giving.

Commentary

The lead examiners are seriously concerned that Croatia has not enforced bribery-related false accounting in Croatia. They recommend that Croatia take steps to ensure that foreign bribery-related false accounting is investigated and prosecuted whenever appropriate.

C.7. Sanctions for foreign bribery

C.7.a. Sanctions against natural persons for foreign bribery

245. The Phase 1 Report (paras. 51-53) did not express any concerns about the statutory provisions on sanctions against natural persons for foreign bribery. Bribery for acts or omissions that a foreign official should not perform is punishable by one to eight years' imprisonment, and six months to five years for acts or omissions that an official should perform. 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. A sentence can also be mitigated by "effective regret", i.e. when a briber reports the crime before its discovery or before learning of its discovery (CA Arts. 50(2) and 294(4); see also section C.2.d.ii at p. 49).

246. In Phase 2, Croatia provides statistics on the sanctions imposed in practice in 2019-2023 against natural persons for active and passive domestic bribery (see Annex 4 at p. 74). Of note, imprisonment is fairly uncommon. It was imposed in only 8% of convictions for active bribery and 30% for passive bribery. Many sentences are instead suspended (63% of active bribery and 46% of passive bribery). One passive foreign bribery case may be an exception rather than the norm. An executive of a foreign company promised a EUR 10 million bribe to Croatia's Prime Minister to obtain a controlling interest in a Croatian state-owned enterprise. Half of the amount was eventually paid. The Prime Minister and the executive received jail sentences of six and two years respectively.

247. The statistics also indicate that sanctions for passive bribery are substantially heavier than those for active bribery. As mentioned above, convictions of passive bribery are almost four times more likely to lead to imprisonment than active bribery, and three-quarters less likely to be suspended. In one example,[62] an individual agreed to pay a EUR 50 000 bribe in return for a EUR 13 million contract. At least EUR 10 000 was in fact paid to the official. The official was sentenced to 20 months in prison. The briber only received a 12-month suspended sentence, which seems comparatively light. The offender's age and lack of a prior conviction were considered mitigating factors.

248. A final concern is that fines are available in theory but rarely imposed in practice. CA Arts. 40(2) and (5) provide for a fine of up to EUR 2.5 million as an "ancillary" penalty. Such fines can only be imposed for "offences committed out of greed" which is often the case for bribery offences, according to Croatia in Phase 1 (para. 52). In fact, a fine was imposed in only 11 of the 165 convictions of active bribery in 2019-2023. In the passive foreign bribery case mentioned above, the company executive who bribed the Prime Minister was sentenced to imprisonment but not fined.

[62] Zagreb County Court (25 Mar. 2019) 12 K-Us-13/17.

Commentary

Sanctions against a bribed official are consistently and significantly higher than those against a briber in Croatia. Furthermore, fines are rarely imposed against a briber in domestic bribery cases, and are therefore also unlikely to be imposed in future foreign bribery cases. The lead examiners therefore recommend that Croatia take steps to ensure that (a) sanctions against natural persons who committed foreign bribery are effective, proportionate and dissuasive, and (b) fines as an "ancillary" penalty are routinely imposed against natural persons who committed foreign bribery where appropriate.

C.7.b. Sanctions against legal persons for foreign bribery

249. The Phase 1 Report (paras. 54-55) did not raise any issues regarding sanctions against legal persons for foreign bribery. A fine of EUR 10 000 to 15 million is available for foreign bribery (CLL Art. 10(2)). If such a fine would not achieve "the purpose of punishment", then it may be increased to up to 10% of the legal person's turnover in the business year preceding sentencing (Art. 10(5)). A fine under EUR 20 000 may be suspended and cancelled if the legal person does not re-offend during one to three years (Art. 13). A legal person may also be dissolved if its establishment or predominant activity is to commit offences (Art. 12). Additional administrative sanctions are considered in section C.7.d at p. 61. The "effective regret" provisions for mitigating a sentence against a natural person (see para. 245) also apply to a legal person by reason of CLL Art. 2, according to Croatia.

250. Croatia states that compliance programmes play a role in corporate sanctions. Anti-Bribery Recommendation XXIII.D.iii encourages countries to consider a compliance programme implemented by the company after the offence as a mitigating factor for sentencing. Croatia states that a sentencing court "could take into account" a compliance programme because it "shall assess all the circumstances". It also states that a company can be required to implement a compliance programme as a term of a sentence. CA Art. 62(2)(12) allows a court to impose "other obligations that are appropriate in view of the committed criminal act" that are "useful to eliminate circumstances that favour or encourage the commission of a new criminal offense". No case law is provided to support these positions.

251. The application of sanctions in practice cannot be assessed given the near-total absence of corporate bribery enforcement (see section C.1.c.iii at p. 32). In the lone 2015 conviction, the company entered into a plea agreement and was fined HRK 2.5 million (EUR 330 000).

C.7.c. Confiscation

252. The Phase 1 Report (para. 60) did not raise any issue with the statutory provisions on confiscation. 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. Such "property gain" includes the direct and indirect proceeds of crime (CA Art. 87(22)). If the gain cannot be confiscated, then the court orders the perpetrator to pay an equivalent monetary amount. 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).

253. However, judicial interpretation of these provisions has severely restricted the confiscation of the proceeds of bribery from a briber in practice. In Supreme Court case Kzz-17/2018, the defendant bribed an official to acquire shares in a company. The trial court rejected a plea agreement in part because the agreement did not impose confiscation of the shares. On appeal, the Supreme Court overturned the trial court's decision partly because confiscation could not have been legally imposed. The Court agreed with the appellant prosecutor that the offence of active bribery consists of giving a bribe to obtain an act or omission by a public official. The offence is complete once the bribe is given. The briber's subsequent acquisition of a benefit in return is not an element of the offence. The confiscation of this benefit therefore cannot be premised on the act of bribery. Instead, the Court stated, there must be proof of further illegal

acts committed by the official after he/she has accepted the bribe and which produced the benefits accruing to the briber:

> The criminal offence of giving a bribe in its description does not include the acquisition of any material benefit, as is the case with the criminal offence of accepting a bribe. It was completed by the very promise of a gift, and in this particular example, the gift was actually delivered at the request of the recipient of the bribe, and thus the criminal offence of the accused Ž. Ž. completed. […]
>
> In the provision of Art. 87, paragraph 22, CC/11, which defines the concept of pecuniary benefit, the state attorney is right that it is not included as an element of the criminal offence of bribery. Any benefit to the bribe-giver that would have been achieved by the actions of the person who received the bribe and then took actions that he should not have taken in order to obtain a material benefit to the bribe-giver can be confiscated only after the established commission of a criminal offence by the recipient of the bribe committed with the aim of obtaining an illegal material benefit [for the] bribe giver.
>
> […]
>
> Such a benefit can be subject to confiscation only if it is the result of a proven criminal offence by the recipient of the bribe, where his criminal activity continued in undertaking actions with the aim of obtaining a financial benefit for another person, i.e. the bribe giver.

254. Information on actual bribery cases supports the conclusion that confiscation against a briber is exceedingly rare. In 2019-2023, confiscation was imposed in 81% of convictions of public officials for passive bribery, but just 5% for active bribery against the briber (see Annex 4 at p. 74). In this evaluation, Croatia refers to at least seven bribery cases in which business advantages obtained by a briber were not confiscated.[63] When confiscation was ordered against a briber, the confiscated asset was not a business advantage. In one case,[64] the bribe money intended but yet to be paid to an official was confiscated. In another,[65] the court confiscated from a political party funds that were improperly collected as campaign donations. The confiscated property was thus qualitatively different from the proceeds of a contract obtained by a company through bribery. Judges who participated in this evaluation referred to examples of confiscation but for offences of drug trafficking and tax evasion, not active bribery.[66] Two prosecutors admit that confiscation of the proceeds of a bribery-tainted contract "in practice has never happened in a court". The MOJ claims that such proceeds are always confiscated but concedes that it is not aware of Supreme Court case Kzz-17/2018.

255. Croatia's restrictive approach to confiscation raises two concerns. First, it contradicts the Convention, which requires the proceeds foreign bribery to be confiscated from the briber once the bribery is proven. Proof of further offences by the bribed official should not be required. Second, the bribed official in a foreign bribery case is almost always located in a foreign country and unlikely to be prosecuted in Croatia. Requiring the Croatian prosecutor to prove that the official committed additional illegal acts after accepting the bribe will be extremely difficult.

256. After reviewing a draft of this report, Croatia argues that the Supreme Court's primary focus in case Kzz-17/2018 was not confiscation but the scope of judicial review of plea agreements. But as the quote in para. 253 shows, the Court made a clear, detailed and considered pronouncement on the law of confiscation in active bribery cases. Furthermore, the Court's approach is consistent with the near total absence of confiscation in active bribery cases. Croatia also provides additional examples of confiscation, but all the cases deal with drug trafficking and not bribery. Finally, Croatia argues that CA Art. 77 "already

[63] Zagreb County Court (25 Mar. 2019) 12 K-Us-13/17; Supreme Court (9 May 2018) Kzz-17/2018 and (27 Feb. 2018) Kž-Us 76/2016; Zagreb County Court K-Us-8/2018 and Kov-Us-121/2023; a 2015 conviction of a company for bribery; and a passive foreign bribery case in which a foreign company executive bribed Croatia's Prime Minister.
[64] Zagreb County Court Kov-Us-39/23.
[65] Supreme Court (24 Nov. 2021) I Kž-Us 21/2021.
[66] Zagreb County Court Kov-Us-3/22 and Kov-Us-84/24.

aligns with the OECD Convention", but the absence of confiscation in practice leads to a different conclusion.

Commentary

The lead examiners are seriously concerned that confiscation of the proceeds of bribery from a briber is extremely restricted. They therefore recommend that Croatia ensure that the confiscation of the direct and indirect proceeds of active foreign bribery is applied upon proof of bribery and without requiring proof of further illegal acts which occur thereafter.

C.7.d. Administrative sanctions, including debarment from public procurement

257. The Public Procurement Act (PPA) provides for mandatory debarment for foreign bribery under CA Art. 294 but not bribery of representatives (i.e. legislators) under CA Art. 339 (Phase 1 Report para. 62). Debarment applies to a Croatian entity or its Croatian representative for convictions in Croatia, and a foreign entity or its non-Croatian representative for convictions in Croatia or abroad (PPA Arts. 251(1)). To prove its eligibility, an entity must provide a "certificate of impunity" consisting of an extract from the criminal records registry or equivalent (Art. 265(1)(1)-(2)). Debarment is for five years unless a final judgment specifies otherwise (Art. 255(6)).

258. An entity that meets the criteria for debarment can nevertheless avoid that outcome by proving its "reliability" (PPA Arts. 255(1)-(4); Phase 1 Report para. 63). Reliability can be demonstrated by: (a) compensating for the damage caused by the offence; (b) co-operating with authorities in the investigation; (c) adopting technical, organisational, and personnel measures to prevent further offences. The circumstances of the offence are also taken into account. Procuring authorities contact law enforcement authorities to determine whether the preconditions for the exception are satisfied, according to the Ministry of Economy which is responsible for public procurement policy in Croatia.

259. The Corporate Liability Law (CLL) also allows for administrative sanctions against a legal person including debarment (Phase 1 Report para. 55). CLL Arts. 16-18 provide for additional "security measures" which includes one to three-year bans on performing certain activities; acquiring permits, subsidies etc. issued by state, regional and local governments; and doing business with publicly-financed entities. 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. The "reliability" exception under the PPA does not apply to debarment imposed by a court (PPA Art. 255(5)).

260. Two particular matters are not considered when deciding whether a procurement contract should be granted. First, procuring authorities do not examine a prospective contractor's corporate anti-corruption compliance programme. Second, procuring authorities do not verify whether a multilateral development bank (MDB) has debarred a prospective contractor. Croatia states that this is because MDB debarment is not a ground for debarment in Croatia. But this overlooks that MDB debarment may be relevant to assessing the "reliability" exception described above. That a company has been debarred by an MDB may also justify enhanced due diligence, such as a closer examination of the veracity of the company's certificate of impunity.

261. Statistics and training can also be improved. Croatia does not have statistics on debarment, and thus cannot confirm that debarment for bribery is applied in practice. It states that "training in public procurement in Croatia is recognised in the EU and beyond as one of the best examples in the field." However, Croatia has only trained procuring authorities on preventing corruption in Croatian procurement and not on debarment for foreign bribery.

Commentary

The lead examiners recommend that Croatia (a) encourage procuring authorities to consider a potential contractor's anti-corruption compliance programme, as appropriate, and to consider

whether the entity has been debarred by a multilateral development bank in deciding whether further due diligence is justified, before granting a public procurement contract; (b) maintain statistics on debarment from public procurement imposed in practice, and (c) incorporate into its relevant training courses for procuring authorities debarment for foreign bribery, including the consideration of mitigating factors, in line with Anti-Bribery Recommendation XXIV.

D. Recommendations and issues for follow-up

262. Based on its findings regarding Croatia's implementation of the Convention and related legal instruments, the Working Group makes the following recommendations to Croatia under Part 1 below and will follow up the issues in Part 2 when there is sufficient practice. Croatia will report in writing within two years, i.e. by December 2026, on its implementation of all the recommendations, its foreign bribery enforcement actions, and developments concerning the follow-up issues.

1. Recommendations

Recommendations for ensuring effective prevention and detection of foreign bribery

1. With respect to prevention and awareness-raising, the Working Group recommends that Croatia:

   (a) (i) conduct a risk assessment to identify the sectors and entities that are exposed to foreign bribery, and (ii) develop measures targeting these risk areas, including through awareness-raising, prevention, detection, and enforcement [Anti-Bribery Recommendation III and IV]; and

   (b) further raise awareness of foreign bribery among Croatian companies operating abroad, including SOEs [Anti-Bribery Recommendation IV.ii].

2. Regarding whistleblowing, the Working Group recommends that Croatia:

   (a) amend the WPA to explicitly clarify that the Act covers the reporting of foreign bribery and related offences [Anti-Bribery Recommendation XXII];

   (b) amend the WPA to protect a whistleblower who only reports to the prosecutor's office or police instead of through one of the WPA reporting channels, or who reports to the prosecutor's office or police first [Anti-Bribery Recommendation XXI.ii and XXII];

   (c) (i) take steps to ensure the timeliness of judicial proceedings for the protection of whistleblowers, and (ii) ensure that fines for retaliation against whistleblowers are effective, proportionate, and dissuasive [Anti-Bribery Recommendation XXII.vii and viii]; and

   (d) (i) further raise awareness and provide guidance to employers and potential whistleblowers, and (ii) ensure that the Ombudsperson has sufficient resources for its whistleblowing function [Anti-Bribery Recommendation XXII.i and xii].

3. Regarding detection through media reports, the Working Group recommends that:

   (a) USKOK and the MFEA strengthen their monitoring of domestic and foreign media for allegations of foreign bribery committed by Croatian citizens or companies [Anti-Bribery Recommendation VIII and XXI.iv]; and

   (b) the MFEA establish clear procedures and channels for reporting foreign bribery allegations to Croatian law enforcement [Anti-Bribery Recommendation XXI.i and iii].

4. Regarding export credits, the Working Group recommends that Croatia:

   (a) train HBOR staff on preventing, detecting and reporting foreign bribery [Anti-Bribery Recommendation XXI.iii and vi; Export Credits Recommendation IV.6, VII.1, and VIII.1]; and

(b) encourage HBOR to consider the anti-corruption compliance programmes of applicants for export credits, as appropriate, and ensure that HBOR has the expertise for doing so [Anti-Bribery Recommendation XXIII.D.i].

5. Regarding official development assistance, the Working Group recommends that Croatia:

(a) assess the risk of bribery and corruption in its ODA programme [ODA Recommendation 10(ii)];

(b) ensure that ODA contracts contain sufficient provisions to prevent and detect foreign bribery [ODA Recommendations 6 and 8(i)];

(c) verify whether a potential project partner has been debarred by a multilateral development bank before granting an ODA-funded contract [Convention Art. 3; Anti-Bribery Recommendation IV.ix and XXIV.i; ODA Recommendation 6(iv)];

(d) establish an explicit procedure for ODA officials to report foreign bribery to law enforcement [Anti-Bribery Recommendation XXI.iii; 2016 ODA Recommendation 7.ii];

(e) adopt a written policy on contracting with project partners that have been convicted of foreign bribery or corruption, in line with ODA Recommendation 8 [Anti-Bribery Recommendation XXIV; ODA Recommendations 6 and 8]; and

(f) train ODA officials on the prevention, detection and reporting of foreign bribery [Anti-Bribery Recommendation IV.i and XXI.vi].

6. Regarding foreign diplomatic representations, the Working Group recommends that the MFEA (i) raise awareness of foreign bribery and train officials in diplomatic representations abroad; and (ii) instruct these officials on how to assist Croatian enterprises confronted with bribe solicitation abroad [Anti-Bribery Recommendation XII.ii, XXI.vi, and Annex I.A.3].

7. Regarding taxation, the Working Group recommends that Croatia:

(a) take steps to ensure that (i) prosecutors in bribery cases routinely inform tax authorities of cases where a bribe may be concealed as a fictitious, tax-deductible expense, and (ii) tax authorities routinely examine the tax returns of taxpayers who are investigated or convicted of bribery to determine whether a tax deduction of the bribe has been claimed [Anti-Bribery Recommendation XX.i; Recommendation on Tax Measures for Further Combating Foreign Bribery I];

(b) train tax examiners specifically on detection and reporting of bribery discovered during tax audits [Anti-Bribery Recommendation XXI.iii and iv; Recommendation on Tax Measures for Further Combating Foreign Bribery II]; and

(c) take steps to ensure that the limitation period for auditing a tax return is sufficiently long for detecting bribery or denying the tax deduction of bribes, such as by allowing the period to be suspended while a criminal bribery investigation or prosecution is ongoing [Anti-Bribery Recommendation XX.i; Recommendation on Tax Measures for Further Combating Foreign Bribery I].

8. With respect to accounting requirements, external audit and internal company controls, the Working Group recommends that Croatia:

(a) (i) train auditors to further raise their awareness of foreign bribery risks and enhance their capacity to detect red flag indicators of foreign bribery; and (ii) make training available and consider developing guidance for auditors to clarify which auditors are obliged to report suspected criminal offences to the competent authorities, and to raise awareness of the provisions protecting reporting auditors from legal action [Convention Article 8; Anti-Bribery Recommendation IV.ii and XXIII.B.v];

(b) take steps to encourage companies that receive reports of suspected acts of foreign bribery from an external auditor to actively and effectively respond to such reports [Anti-Bribery Recommendation XXIII.B.iv]; and

(c) engage with business organisations and professional associations to encourage companies operating abroad, including SOEs and SMEs, to implement effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery. Companies should receive concrete guidance reflecting the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance [Anti-Bribery Recommendation XXIII.C.i and ii].

9. Regarding money laundering, the Working Group recommends that Croatia:

(a) include foreign bribery as a specific threat in its next national money laundering risk assessment [Convention Art. 7; Anti-Bribery Recommendation VIII];

(b) (i) provide consolidated and standing written guidance and typologies to STR reporting entities, and ensure that such material specifically addresses money laundering predicated on foreign bribery; and (ii) train reporting entities on the detection of money laundering predicated on foreign bribery [Anti-Bribery Recommendation IV.ii and VIII];

(c) provide more frequent feedback to reporting entities on the outcomes and quality of their STRs [Anti-Bribery Recommendation IV.ii and VIII];

(d) (i) maintain detailed statistics on STRs, including the number of STRs received, used in disseminations, and that led to criminal investigations in foreign bribery cases, as well as the predicate offences concerned; and (ii) take steps to improve the detection of corruption offences (including foreign bribery) through STRs [Anti-Bribery Recommendation VIII]; and

(e) raise awareness among AMLO officials of foreign bribery, including technical issues concerning the laundering of the proceeds of foreign bribery [Anti-Bribery Recommendation IV.i].

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery and related offences

10. With respect to investigation and prosecution of foreign bribery and related offences, the Working Group recommends that Croatia:

(a) take steps to ensure that USKOK (i) acts promptly and proactively so that complaints of foreign bribery are seriously investigated and credible allegations are assessed, and (ii) proactively gathers information from diverse sources to enhance foreign bribery investigations, including by obtaining evidence in Croatia and inquiring with foreign authorities whenever appropriate [Anti-Bribery Recommendation VI.ii and VIII];

(b) take steps, such as training and awareness-raising, to ensure that USKOK investigates and prosecutes legal persons for bribery whenever appropriate [Convention Art. 2; Anti-Bribery Recommendation VI.iii];

(c) as a matter of priority, take further measures to reduce delay in proceedings of foreign bribery and related crimes [Anti-Bribery Recommendation IX];

(d) ensure that USKOK and the courts are sufficiently resourced [Anti-Bribery Recommendation VII; Convention Commentary 27]; and

(e) train USKOK, PNUSKOK and relevant judges on foreign bribery and corporate investigations [Convention Art. 1 and 2; Anti-Bribery Recommendation VI.iii].

11. Regarding investigative tools and techniques, the Working Group recommends that Croatia amend the CPA to make special investigative techniques available in all foreign bribery investigations [Anti-Bribery Recommendation X.i].

12. Regarding non-trial resolutions, the Working Group recommends that Croatia:

    (a) issue updated guidance to prosecutors on the use of plea agreements [Anti-Bribery Recommendation XVIII.i and ii];

    (b) provide clear and publicly accessible information on the framework of plea agreements, criteria regarding their use, and advantages that an alleged offender may obtain by entering into a plea agreement [Anti-Bribery Recommendation XVIII.i and iii]; and

    (c) make public elements of non-trial resolutions of foreign bribery cases, in accordance with Anti-Bribery Recommendation XVIII.iv, and without prejudice to the Criminal Act's rules on the publication of judgments [Anti-Bribery Recommendation XVIII.iv].

13. Regarding MLA and extradition, the Working Group recommends that Croatia:

    (a) take steps to ensure that, when it declines an extradition request in a foreign bribery case solely on the ground of nationality, the case is submitted to its competent authorities for consideration of prosecution regardless of whether Croatia has been asked to do so by the requesting state, or whether the requesting state has initiated a transfer of its criminal proceedings and evidence against the Croatian national to Croatia [Convention Art. 10(3)]; and

    (b) maintain comprehensive statistics on (i) incoming and outgoing MLA requests, and (ii) incoming and outgoing extradition requests and EAWs [Convention Arts. 9 and 10; Anti-Bribery Recommendation XIX.A.ix].

14. With respect to the foreign bribery offence, the Working Group recommends that Croatia:

    (a) train judges and prosecutors to ensure that its foreign bribery offence covers the bribery of a foreign official to act outside his/her competence [Convention Art. 1(4)(c) and Commentary 19]; and

    (b) amend the Criminal Act to ensure its coverage of bribery of a foreign legislative official to perform acts other than voting, including abstaining and absenting from voting, as well as making and refraining from making certain statements in legislative debates [Convention Art. 1].

15. With respect to liability of legal persons, the Working Group recommends that Croatia amend the CLL to explicitly set out the acts that are subject to Croatian jurisdiction, and ensure that such jurisdiction is sufficiently broad for combatting foreign bribery, particularly extraterritorial foreign bribery committed by a legal person's employee who is not a Croatian national [Convention Arts. 2 and 4; Anti-Bribery Recommendation Annex I.B.4].

16. Regarding the money laundering offence, the Working Group recommends that Croatia take steps to ensure that foreign bribery-related money laundering is investigated and prosecuted whenever appropriate [Convention Art. 7].

17. Regarding the false accounting offence, the Working Group recommends that Croatia take steps to ensure that foreign bribery-related false accounting is investigated and prosecuted whenever appropriate [Convention Art. 8; Anti-Bribery Recommendation XXIII.A.iv].

18. Regarding sanctions and confiscation, the Working Group recommends that Croatia:

    (a) take steps to ensure that (i) sanctions against natural persons who committed foreign bribery are effective, proportionate and dissuasive, and (ii) fines as an "ancillary" penalty are routinely imposed against natural persons who committed foreign bribery where appropriate [Convention Art. 3(1); Anti-Bribery Recommendation XV.i]; and

(b) ensure that the confiscation of the direct and indirect proceeds of active foreign bribery is applied upon proof of bribery and without requiring proof of further illegal acts which occur thereafter [Convention Art. 3(3)].

19. Regarding public procurement, the Working Group recommends that Croatia:

(a) encourage procuring authorities to consider a potential contractor's anti-corruption compliance programme, as appropriate, and to consider whether the entity has been debarred by a multilateral development bank in deciding whether further due diligence is justified, before granting a public procurement contract [Anti-Bribery Recommendation XXIV.i and ii and XXIII.D.i];

(b) maintain statistics on debarment from public procurement imposed in practice [Anti-Bribery Recommendation XXIV.i]; and

(c) incorporate into its relevant training courses for procuring authorities debarment for foreign bribery, including the consideration of mitigating factors, in line with Anti-Bribery Recommendation XXIV [Anti-Bribery Recommendation IV.i and XXIV.iv].

2. Follow-up issues

20. The Working Group will follow up the issues below as case law, practice, and legislation develop:

(a) whether under MLACMA Art. 13(1)(1) MLA can be refused solely because a criminal proceeding against the defendant in Croatia has been discontinued on grounds other than the merits [Convention Art. 9(1)]

(b) the application of indirect intent in foreign bribery cases [Convention Art. 1];

(c) whether the definition of a foreign public official requires proof of foreign law [Convention Art. 1(4)(a) and Commentary 3];

(d) whether corporate liability for foreign bribery that was made possible by company management's failure of supervision or control requires proof that the failure was intentional [Convention Art. 2; Anti-Bribery Recommendation Annex I.B.3];

(e) whether a senior corporate officer's lack of supervision or control can be established by a failure to implement adequate internal controls, ethics and compliance programmes or measures [Convention Art. 2; Anti-Bribery Recommendation Annex I.B.3];

(f) corporate liability for bribery committed by a related legal person [Convention Art. 2; Anti-Bribery Recommendation Annex I.C.1];

(g) whether corporate liability in Croatia is restricted to cases where the natural person who committed the offence is prosecuted or convicted [Convention Art. 2; Anti-Bribery Recommendation Annex I.B.2]; and

(h) whether Croatia has jurisdiction over foreign bribery committed in whole or in part in its territory, and territorial jurisdiction does not require an extensive physical connection to the bribery act [Convention Art. 4(1) and Commentary 25].

Annex 1. Onsite visit participants

Public Sector

Ministry of Justice, Public Administration and Digital Transformation
- Criminal Law Directorate
- Minister's Cabinet
- General Secretariat
- Organisation of the Judiciary Directorate
- International Legal Aid and EU Judicial Co-operation Sector
- Anti-Corruption Sector

Ministry of Foreign and European Affairs
- Development and Humanitarian Co-operation Sector

Ministry of Economy
- Investment Sector
- Trade and Public Procurement Policy Directorate

Ministry of Finance
- Anti-Money Laundering Office
- Corporate Governance Sector
- Banking Sector
- EU and International Financial Relations Sector
- Concessions and State Aid Sector

Tax Administration

National Bank of Croatia

Financial Services Supervisory Agency

Agency for SMEs, Innovations and Investments

FINA

Ombudsperson's Office

Croatian Bank for Reconstruction and Development

Judiciary

County Courts of Osijek, Rijeka and Zagreb

State Judicial Council

Judicial Academy

Association of Judges

State Attorney's Council

Prosecutors and law enforcement agencies

Office for Suppression of Corruption and Organised Crime

General State Attorney's Office

National Police Office for Suppression of Corruption and Organised Crime

Independent Sector for Financial Investigations

Parliamentarians

Phd Ivan Malenica

Mirela Ahmetović

National Council for Monitoring Anti-Corruption Strategy Implementation

Office for International and European Affairs

Private Sector: Private Enterprises

Adris Grupa
Boost LLC
Croatia Osiguranje
Croatia Airlines
Croatian Exporters
Erste Banka
HEP Grupa
Hrvatska Poštanska Banka
INA
JANAF
KONČAR Group
Pliva
Podravka
Privredna Banka Zagreb
Prvo Plinarsko Društvo
Zagrebačka Banka

Private Sector: Business Associations

Croatian Employers' Association

Croatian Chamber of Economy

Croatian Banking Association

Lawyers and legal academics

Croatian Bar Association
Čogurić & Matak
University of Osijek
University of Zagreb

Accounting and auditing profession

BDO Croatia d.o.o.
Deloitte
EY
KPMG
Kulić & Sperk d.o.o.
PKF Fact revizija d.o.o.
PwC
Croatian Chamber of Auditors
Croatian Association of Accountants and Financial Experts

Civil Society and media

Gong

Centre for Democracy and Law Miko Tripalo

POMAK Association

Association of Croatian Trade Unions

Trade Union of Croatian Journalists

Croatian Journalists' Association

Croatian Radio and Television

Globus Jutarnji List

HINA

Novi List

Poslovni dnevik

Telegram

Annex 2. List of abbreviations and acronyms

AMLFTA	Anti-Money Laundering and Terrorist Financing Act
AMLO	Anti-Money Laundering Office
Art.	article
CA	Criminal Act
CLL	Corporate Liability Law (Act on the Responsibility of Legal Persons for Criminal Offences)
CPA	Criminal Procedure Act
EAW	European Arrest Warrant
EC	European Commission
ECA	export credit agency
EIO	European Investigation Order
EU	European Union
EUR	euro
GTA	General Tax Act
Hanfa	Financial Services Supervisory Agency
HBOR	Croatian Bank for Reconstruction and Development (*Hrvatska banka za obnovu i razvitak*)
HSFI	Croatian Financial Reporting Standards
IFRS	International Financial Reporting Standards
ISA	International Standards on Auditing
ITA	Income Tax Act
JCCMEUA	Judicial Co-operation in Criminal Matters with the Member States of the European Union Act
MFEA	Ministry of Foreign and European Affairs
MLA	mutual legal assistance
MLACMA	Mutual Legal Assistance in Criminal Matters Act
MOJ	Ministry of Justice, Public Administration, and Digital Transformation
NGO	non-governmental organisation
OA	Ombudsperson Act
ODA	official development assistance
PIE	public interest entity (Accounting Act)
PNUSKOK	National Police Office for the Suppression of Corruption and Organised Crime (*Policijski nacionalni ured za suzbijanje korupcije i organisiranog kriminaliteta*)
PPA	Public Procurement Act
PTA	Profit Tax Act
SAC	State Attorney's Council
SACA	State Attorney's Council Act
SAO	State Attorney's Office
SAOA	State Attorney's Office Act
SAOR	State Attorney's Office Rules of Procedure
SJC	State Judicial Council
SJCA	State Judicial Council Act
SME	small or medium-sized enterprise
SOE	state-owned or controlled enterprise
UNCAC	United Nations Convention against Corruption
UNTOC	United Nations Convention against Transnational Organised Crime
USKOK	Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organisiranog kriminaliteta*)
USKOKA	USKOK Act
WPA	Whistleblower Protection Act

Annex 3. Excerpts of relevant legislation

Criminal Act: Bribery offences

Article 87 Chapter eight (VIII) Meaning of terms in this law

[…]

(3) An official person is a state official or official, an official or official in a unit of local and regional (regional) self-government, a holder of judicial office, a lay judge, a member of the State Judicial Council or the State Bar Council, an arbitrator, a notary public and an expert worker who performs tasks from activities of social care, upbringing and education. An official person is also considered a person who, in the European Union, a foreign state, an international organization of which the Republic of Croatia is a member, an international court or arbitration whose jurisdiction is accepted by the Republic of Croatia, performs the duties entrusted to the persons from the previous sentence.

[…]

(6) A responsible person is a natural person who manages the affairs of a legal entity or is expressly or actually entrusted with the performance of affairs in the field of activity of a legal entity or state bodies or bodies of local and regional (regional) self-government units.

Article 291 Abuse of position and authority

(1) An official or responsible person who takes advantage of his position or authority, exceeds the limits of his authority or fails to perform his duty and thus obtains a benefit for himself or another person or causes damage to another, shall be punished by imprisonment from six months to five years.

(2) If the criminal offense referred to in paragraph 1 of this Article has resulted in the acquisition of a significant material benefit or caused significant damage, the perpetrator will be punished with imprisonment from one to twelve years.

Article 293 – Accepting a bribe

(1) An official or responsible person who demands or receives a bribe, or who accepts an offer or promise of a bribe for himself or another to perform an official or other act that should not be performed, or to not perform an official or other act within or beyond the limits of his authority an action that would have to be done, shall be punished by imprisonment from one to ten years.

(2) An official or responsible person who demands or receives a bribe, or who accepts an offer or promise of a bribe for himself or for another to perform an official or other action that should be performed within or beyond the limits of his authority, or to not perform an official or other action an action that should not be done, shall be punished by imprisonment from one to eight years.

(3) An official or responsible person who, after performing or not performing an official or other action specified in paragraphs 1 and 2 of this Article, and in connection with it, demands or receives a bribe, shall be punished by imprisonment for up to one year.

(4) In cases of committing a criminal offense from paragraph 1 or 2 of this article, when a bribe is offered, given or promised to an official, a foreign public official is also considered an official. A foreign public official is an appointed or elected holder of a legislative, executive, administrative or judicial office or office of the European Union or a foreign country, as well as a person who performs or is expressly or actually entrusted with the performance of public service duties for the European Union or a foreign country, including for a legal entity that was founded on the basis of public law with the aim of performing tasks of public interest or for a business entity in which a foreign state has a direct or indirect predominant influence, and an official or official of an international public 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 organized foreign territory.

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 offence 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 organisation or any person authorised by such an organisation to act in the name and on behalf of that organisation. A foreign country includes all levels of government of that country or of an organised 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 organisation or councillor 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 organisation 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 organised foreign area.

Criminal Act: Jurisdiction

Article 9. The place where the crime was committed

(1) The criminal offence was committed in the place where the perpetrator worked or was obliged to work and in the place where the consequences from the legal description of the criminal offence occurred in whole or in part or, according to his idea, should have occurred.

(2) In cases of participation, the criminal offence was committed in the place specified in paragraph 1 of this Article and in the place where any of the participants worked or was obliged to work or where, according to his idea, the consequences of the legal description of the criminal offence should have occurred.

Article 10. Application of criminal legislation for criminal offences committed on the territory of the Republic of Croatia

The criminal legislation of the Republic of Croatia applies to anyone who commits a criminal offence on its territory.

Article 11. Application of criminal legislation for criminal offences committed on a ship or aircraft of the Republic of Croatia

The criminal legislation of the Republic of Croatia also applies to anyone who commits a criminal offence on a domestic ship or aircraft, regardless of where the ship or aircraft is located at the time the criminal offence is committed.

Article 12 Specifics regarding the initiation of criminal proceedings for criminal offences committed on the territory of the Republic of Croatia, its ship or aircraft

When, in the case of the application of the criminal legislation of the Republic of Croatia according to the provisions of Article 10 and Article 11 of this Act, the criminal proceedings have been legally concluded in a foreign country, the criminal proceedings in the Republic of Croatia shall be initiated upon the approval of the Attorney General.

Article 13. Application of criminal legislation for criminal offences committed outside the Republic of Croatia against its legal interest

The criminal legislation of the Republic of Croatia applies to anyone who commits outside its territory:

1. criminal offence against the Republic of Croatia from Title XXXII. of this Act,

2. the criminal offence of forgery of money, securities and signs for the value of the Republic of Croatia from Article 274, Article 275 and Article 276 of this Act,

3. a criminal offence against a Croatian state official or official in connection with his service,

4. the criminal offence of giving a false statement from Article 305 of this Act, if the false statement was given in proceedings before the competent Croatian authorities,

5. criminal offences against voting rights from Title XXXI. of this Act,

6. a criminal offence from Article 193, Article 194, Article 196, Article 197 and Article 198 of this Act when committed in a protected ecological-fishing zone, continental shelf or in the open sea.

Article 14 Application of criminal legislation for criminal offences committed outside the territory of the Republic of Croatia by its citizens

(1) The criminal legislation of the Republic of Croatia applies to Croatian citizens and persons residing in the Republic of Croatia, who commit any other criminal offence outside the territory of the Republic of Croatia except those covered by the provisions of Article 13 and Article 16 of this Act, if it is a criminal offence punishable under the law of the State in which it was committed.

(2) The provision of paragraph 1 of this Article shall also be applied when the perpetrator acquires Croatian citizenship after the commission of the criminal act.

(3) In the cases referred to in paragraphs 1 and 2 of this Article in criminal offences referred to in Article 115, paragraphs 3 and 4, Article 116, Article 153, Article 154, Article 158, Article 159, Article 161., Article 162, Article 163, Article 164, Article 166 and Article 169 of this Act and other criminal offences for which this is stipulated by an international treaty to which the Republic of Croatia is a party, the criminal legislation of the Republic of Croatia shall also be applied when criminal the act is not punishable under the law of the country where it was committed.

(4) When Croatian citizens participate in peacekeeping operations or other international activities outside the territory of the Republic of Croatia and commit a criminal offence in such operations or activities, the application of the legislation of the Republic of Croatia shall be governed by the provisions of this Act, unless an international treaty to which the Republic of Croatia is a party provides otherwise.

Article 15. Application of criminal legislation for criminal offences committed against citizens of the Republic of Croatia outside its territory

(1) The criminal legislation of the Republic of Croatia applies to a foreigner who, outside the territory of the Republic of Croatia, against a citizen of the Republic of Croatia, a person residing in the Republic of Croatia or a legal entity registered in the Republic of Croatia, commits any criminal offence that is not covered by the provisions of Article 13 and Article 16 of this Act, if that criminal offence is punishable under the law of the country where it was committed.

(2) In the case referred to in paragraph 1 of this Article, the court cannot impose a heavier sentence than that prescribed by the law of the country where the criminal offence was committed.

Article 16. Application of criminal legislation for criminal offences against values protected by international law committed outside the territory of the Republic of Croatia

The criminal legislation of the Republic of Croatia applies to anyone who outside its territory commits a criminal offence from Article 88, Article 90, Article 91, Article 97, Article 104, Article 105 and Article 106 of this Act, as well as a criminal offence which the Republic of Croatia is obliged to punish according to the international agreement, even when it was committed outside the territory of the Republic of Croatia.

Article 17 Application of criminal legislation for other criminal offences committed outside the territory of the Republic of Croatia

(1) The criminal legislation of the Republic of Croatia applies to a foreigner who commits a criminal offence outside the territory of the Republic of Croatia for which, according to the Croatian legislation, a prison sentence of five years or a heavier sentence can be imposed, and this does not apply to cases from Articles 13 to 16 hereof Of the Act, if the criminal offence is punishable under the law of the country in which it was committed and if the extradition of the perpetrator is permitted by law or international treaty, but has not occurred.

(2) In the case referred to in paragraph 1 of this Article, the court cannot impose a heavier sentence than that prescribed by the law of the country where the criminal offence was committed.

Article 18 Particularities regarding the initiation of criminal proceedings for criminal offences committed outside the territory of the Republic of Croatia

(1) When, in the case of the application of the criminal legislation of the Republic of Croatia according to the provisions of Article 13 of this Act, the criminal proceedings have been legally completed in a foreign country, the Attorney General may waive the criminal prosecution.

(2) In the cases referred to in Article 14 of this Act, criminal proceedings for the application of the criminal legislation of the Republic of Croatia shall not be initiated:

1. if the sentence imposed by a final judgment has been executed or is in the process of being executed or can no longer be executed according to the law of the country where the person was convicted,

2. if the perpetrator in a foreign country has been acquitted by a final judgment or his sentence has been forgiven according to the law of the country where he committed the crime,

3. if the statute of limitations for criminal prosecution has expired.

(3) In the cases referred to in Article 14, paragraphs 1 and 2 of this Act, criminal proceedings for the purpose of applying the criminal legislation of the Republic of Croatia shall not be initiated if the criminal offence is prosecuted under the law of the state in which it was committed by a motion or a private lawsuit, and such a motion or the lawsuit was not filed.

(4) In the cases referred to in Article 14, paragraph 3 of this Act, criminal proceedings for the application of the criminal legislation of the Republic of Croatia shall also be initiated if the criminal offence is prosecuted under the law of the state in which it was committed by a proposal or a private lawsuit, and such a proposal or lawsuit is not submitted.

(5) In the cases referred to in Article 15 and Article 17 of this Act, criminal proceedings for the application of the criminal legislation of the Republic of Croatia shall not be initiated:

1. if the sentence imposed by a final judgment has been executed or is in the process of being executed or can no longer be executed according to the law of the country where the person was convicted,

2. if the perpetrator in a foreign country has been acquitted by a final judgment or his sentence has been forgiven according to the law of the country where he committed the crime,

3. if the criminal offence is prosecuted according to the law of the country where it was committed by a proposal or a private lawsuit, and such a proposal or lawsuit has not been filed, or the statute of limitations for criminal prosecution has expired.

(6) In the case referred to in Article 16 of this Act, criminal proceedings for the application of the criminal legislation of the Republic of Croatia may be initiated if the criminal prosecution has not been initiated before the International Criminal Court or a court of another country or if it cannot be expected that a fair procedure will be conducted before the court of the country in which the a criminal offence committed by a court of the State of which the perpetrator is a citizen or by another court that has jurisdiction over the trial. If criminal proceedings were conducted in another country contrary to internationally recognized standards of fair trial, criminal proceedings can only be initiated with the approval of the Attorney General.

(7) In the case referred to in Article 14, Article 15, Article 16 and Article 17 of this Act, criminal proceedings shall be initiated only if the perpetrator is located on the territory of the Republic of Croatia.

Responsibility of Legal Persons for Criminal Offences Act (Corporate Liability Law)

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 Organised 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 offence.

(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 offences 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.

[…]

Annex 4. Statistics on bribery enforcement against natural persons

Provided by Croatia

Active Bribery CA Art. 294	Investigation	Prosecution	Conviction-Total	Non-Trial Resolutions (Included in Total Convictions)	Imprisonment	Community Service	Fine	Suspended Sentences	Confiscation of Proceeds of Crime		Prohibition to Engage in a Profession, Activity or Duty	Forfeiture
									Number	Amount (EUR)		
2019	23	43	38	32	3	23	0	10	2	692.98		16
2020	14	10	37	31	3	6	1	28	1	199.08		1
2021	28	17	16	10	1	4	0	8	1	354.37		6
2022	255	27	36	24	4	5	3	27				4
2023	20	253	38	31	2	5	7	31	2	9 029.48	1	7

Passive Bribery CA Art. 293	Investigation	Prosecution	Conviction-Total	Non-Trial Resolutions (Included in Total Convictions)	Imprisonment	Community Service	Fine	Suspended Sentences	Confiscation of Proceeds of Crime		Prohibition to Engage in a Profession, Activity or Duty	Forfeiture
									Number	Amount (EUR)		
2019	10	12	16	11	4	7	9	5	12	799 646.82		
2020	16	8	14	4	7	4	4	3	8	5 038 737.24		
2021	10	8	8	4	3	4	3	1	7	52 000.79		
2022	14	17	39	8	9	6	28	24	34	233 895.02	4	
2023	10	19	19	6	6	2	10	11	17	157 786.74		

Annex 5. Statistics on delay in cases of corruption and other economic crime

Provided by Croatian authorities. Data on duration of investigations, indictment and appeal stages of proceedings in cases of (a) corruption offences conducted by USKOK (CA Arts. 293-295 and 339), and (b) other economic crimes conducted by other prosecutors (CA Arts. 246-247, 256, 258 and 265). Duration is indicated in days.

5.1 Investigation to indictment

		2019	2020	2021	2022	2023
Corruption	Art. 293 Bribe-taking	527	585	748	1386	228
	Art. 294 Bribe-giving	148	123	226	101	143
	Art. 295 Trading in influence	322	113	217	66	137
	Art. 339 Bribery of representatives		386			
Other economic crime	Art. 246 Abuse of trust in business	159	148	130	136	127
	Art. 247 Fraud in business	165	166	165	244	197
	Art. 256 Tax evasion	130	212	201	149	182
	Art. 258 Subsidy fraud	210	81	260	53	163
	Art. 265 money laundering	322	278	211	261	151

5.2 Indictment to conclusion of trial

		2019	2020	2021	2022	2023
Corruption	Art. 293 Bribe-taking	1457	1731	1865	2226	2142
	Art. 294 Bribe-giving	726	413	802	837	695
	Art. 295 Trading in influence		768	56	740	878
	Art. 339 Bribery of representatives	2247	1707	2686		1295
Other economic crime	Art. 246 Abuse of trust in business	530	646	727	801	815
	Art. 247 Fraud in business	732	874	971	857	1137
	Art. 256 Tax evasion	715	818	861	758	1016
	Art. 258 Subsidy fraud	347	587	936	569	530
	Art. 265 money laundering	390	743		597	771

5.3 Appeal

		2019	2020	2021	2022	2023
Corruption	Art. 293 Bribe-taking	159	225	236	255	221
	Art. 294 Bribe-giving	284	466	371	236	120
	Art. 295 Trading in influence	60	1020	88	322	97
	Art. 339 Bribery of representatives	139	9	124		113
Other economic crime	Art. 246 Abuse of trust in business	368	326	398	354	289
	Art. 247 Fraud in business	135	136	168	187	240
	Art. 256 Tax evasion	130	168	193	141	156
	Art. 258 Subsidy fraud	225	62	566	283	258
	Art. 265 money laundering	24	45	173	233	55