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Group of States against corruption

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First Evaluation Round

Evaluation Report on Croatia

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I. INTRODUCTION

1. Croatia was the twenty-third GRECO member to be examined in the first Evaluation round. The GRECO evaluation team (hereafter: "GET") was composed of Mr. Ljubomir JOVANOVIC, Head of the Organised Crime Department, General Police Directorate, (Slovenia, law enforcement expert), Mrs. Magdolna HAJDU, Public Prosecutor, General Prosecutor's Office (Hungary, criminal justice expert) and Mr. Markku RYYMIN, Head of Criminal Intelligence Division, National Bureau of Investigation (Finland, general policy expert). This GET, accompanied by a member of the Secretariat, visited Zagreb from 3 to 7 December 2001. Prior to the visit the GET experts were provided with a reply to the Evaluation questionnaire (document Greco Eval I (2001) 46E).

2. The GET met with officials from the following Croatian Governmental organisations: Supreme Court of the Republic of Croatia (including the representative of the Investigation Department of Zagreb County Court), Croatian Parliament (Committee on Mandates and Immunities), Ministry of Justice and Local Self-Governments, Public Prosecutor's Office, Ministry of Finance (Tax, Custom and Anti-Money Laundering Department, Office for Public Procurement), Agency for Market Competition Protection, State Auditor's Office, Office for Associations & Non-profit Organizations, Ministry of Interior (including General Police Directorate, Department for Economic Crime and Corruption, and Office for Internal Control), and Office of the Ombudsman.

3. Moreover, the GET met with members of the following non-governmental institutions: National Chapter of Transparency International, Croatian Chamber of Commerce, Croatian Independent Unions, and Croatian Press Association.

4. The GET wishes to observe that their work had, to a certain extent, been hindered by the insufficiently complete replies provided by the Croatian authorities to the mutual evaluation questionnaire. The GET welcomed the efforts of the Croatian authorities to overcome this problem after the visit as well as the difficulties that arose in the practical and organisational aspects of the visit, in particular the inadequate substance of some scheduled meetings.

5. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001[1], and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:

   - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
   - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
   - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).

6. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations and proposals for recommendations, on the basis of which the present report has been prepared.

7. The principal objective of this report is to evaluate the measures adopted by the Croatian authorities, and wherever possible their effectiveness, in order to comply with the requirements

[1] At its 7th Plenary Meeting (December 2001) GRECO decided to extend the First Evaluation Round until 31 December 2002.

deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Croatia, the general anti-corruption policy, the institutions and authorities in charge of combating it -their functioning, structures, powers, expertise, means and specialisation- and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Croatia is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Croatia in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a. The phenomenon of corruption and its perception in Croatia

i. General information on the country

8. The Republic of Croatia, which declared its independence on 25 June 1991, is one of the successor states of the former Yugoslavia. It is a relatively small State (area of 56,610 km^2 and estimated population in 2001 at 4,335,142 inhabitants) neighbouring Slovenia to the north, Hungary to the east, and the Federal Republic of Yugoslavia and Bosnia and Herzegovina to the south-east. To the west, Croatia has 5,835 km of coastline on the Adriatic Sea. The GDP per capita in 2000 was 4.179 US$ which represented 30% of the European average. Unemployment in 2000 was at 21,1% of active population. Croatia became a member of the World Trade Organization (WTO) at the end of year 2000.

9. The country is a parliamentary democracy and has an European continental legal system. Since the independence and particular within the recent two years, the country has invested significant efforts in legislative and institutional reform. In 2001, Croatia signed and ratified a Stabilisation and Association Agreement with the European Union, and has showed strong commitment to becoming a full member the EU in the future.

ii. Trends and perception of corruption

10. After gaining independence, Croatia has experienced a slow transition to a free market economy and to a genuine democracy during the past ten years. This was significantly contributed by the fact that the country was struck by a war from 1991 to 1995, during which one third of the Croatian territory was not under the effective control of the Government. Relatively few administrative reforms were carried out before 1999 and the media remained closely controlled. Political and administrative powers were highly centralised and the lack of transparency of the privatisation process of former public property contributed to a favourable political and economic environment for corruption practices. However, political changes that took place in 2000 signalled the beginning of a new transition period in Croatia. Also there are clear indications that the government authorities and the civil society in Croatia have, especially during the recent two years, granted a high priority to the efforts against corruption.

11. Corruption in Croatia is, in general, perceived as being a real problem and a serious threat. This was emphasized during the GET visit not only by the representatives of the Civil Society but also by many public officials that the GET met. In the preface to the National Programme for the Fight against Corruption it is stated that according to public surveys, 65.8% of the population believe that corruption is very widespread and 32.9% say that it does exist. A high percentage of the population condemns corruption - from 54% to 82%.

12. According to the Transparency International 2001 Corruption Perception Index, Croatia is ranked 47 (out of 91, score 3.9 out of 10, a country in the middle among the countries of Central and Eastern Europe). While this is an important improvement from year 1999 (when Croatia was at the 74th place), it is notable that the ranking of the country in year 2001 has remained nearly the same or slightly improved since 2000 (ranking 51 out of 90, score 3.7 out of 10). World Bank research on corruption (Anti-corruption in Transition - A Contribution to the Policy Debate, World Bank, 2000) also indicates that Croatia ranks among the middle group of transitional countries. The World Bank data indicate a relatively low level of administrative corruption, but a high level of corruption on the level of political decision-making and the judiciary. Public surveys and opinion pools that come mostly from non-governmental organisations also indicate a low level of political and social responsibility and the existence of powerful social groups that are prepared to obstruct social reform.

13. Various public opinion research reports that in spite of the relatively good criminal legislation enabling the detection and prosecution of corruption offences, a vast grey-area of non-reported cases exists and very few cases actually result in conviction. In addition, the sentencing policy is very mild and a predominant number of convictions on corruption charges result in probation sentences.

14. The GET observed that the statistical data on corruption offences provided by the Police, Public Prosecutor's Office and Courts, is somewhat conflicting, which seems to be primarily due to the differences in the applied methodology and in classification of corruption and "corruption-related offences" among different institutions. On the special request of the GET, the Public Prosecutor's Office provided more detailed information to the GET after the visit. According to this information there were altogether 475 cases of corruption reported to relevant authorities in the period 1996 – 2000. Of these, 71 reports were dismissed by the Public Prosecutors and for the rest, criminal proceedings were initiated; 207 cases reached trial stage, of which 171 resulted in conviction. However, in only 11.1% of convictions the Court has imposed imprisonment. The Public Prosecutor's Office also noted that a number of cases were dismissed by courts due to the expiry of the statute of limitation.

15. According to the information provided by the Public Prosecutor's Office 77.7% of crime reports are filed by the police, whilst tax and custom authorities, as well as different inspection services, very seldom report corruption offences.

16. Between 1997 and 2001 the police statistics showed 237,754 criminal offences reported in Croatia, of which only 0.82% were corruption related.

17. A significant disparity exists between the number of offences detected, prosecuted or punished in Croatia and the general perception of quite widespread corruption (which is supported by a number of surveys and opinion polls). The authorities that the GET met acknowledge that most corruption cases processed by the criminal justice system in Croatia are actually milder forms of so-called "street" corruption, while they recognize that the problem is more serious than can be deduced simply from the available data.

18. Finally, there is wide media coverage of corruption cases in Croatia. News media reports, almost on a daily basis, newly detected cases of corruption, in which the highest State bodies, their employees and officials, political parties, ministries, army, security services, powerful social and economic groups linked to the formal regime, and huge commercial state-owned companies are

involved. Even during the GET visit, the newspapers wrote daily about several corruption cases. According to the information provided to the GET, very few of these cases actually result in court proceedings, let alone in convictions.

iii. Law

19. Croatia has ratified the European Convention on Extradition (ETS n° 024) with its additional protocols as well as the European Convention on Mutual Legal Assistance in Criminal Matters (ETS n° 030) with its additional protocol. International co-operation in criminal matters is based on international and bilateral agreements and the Criminal Procedure Code (hereafter: "CPC"). Co-operation takes place on the basis of reciprocity.

20. Croatia is a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS n° 141) and Council of Europe Criminal Law Convention on Corruption (ETS n° 173). It has signed the Council of Europe Civil Law Convention (ETS n° 174) and the United Nations Convention against Transnational Organised Crime of 2000 and the two protocols. The country is also a member of Council of Europe's Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV), the *Ad hoc* Group of Non-members of the OECD Working Group on Bribery in Business Transactions, and the Stability Pact Anti-Corruption Initiative (SPAI).

21. There is no single definition of "corruption" in the Croatian legal system. However, the Croatian Criminal Code (hereafter: "CC"), adopted in 1997 and amended in December 2000, provides for a number of corruption (and corruption-related) offences within the meaning of Council of Europe instruments, in particular the Criminal Law Convention on Corruption (ETS n° 173).

22. Most relevant incriminations are provided for in Art. 347 ("Accepting a Bribe"), Art. 348 ("Offering a Bribe"), Art. 343 ("Illegal Intercession" / "Trading in Influence"), Art. 337 ("Abuse of Office and Official Authority") and Art. 338 (Abuse of Performing Governmental Duties") of the CC. Corruption is criminalised regardless of the form of the bribe; it can be a gift or any other benefit, whether pecuniary or non-pecuniary, real or personal, tangible or not tangible. Bribes given or promised for the purpose of obtaining both acts of commission and omission of public officials are covered. Art. 348(3) of the CC provides that the Court shall remit the punishment of the perpetrator of active bribery who had promised or gave the bribe after being solicited by the public official to do so, providing that such a perpetrator had reported the act to the competent law enforcement authority before the crime was detected.

23. Punishment for active bribery ranges from 3 months to 3 years imprisonment and for passive bribery from 6 months to 5 years imprisonment. The period prescribed by the statute of limitations regarding the institution of criminal proceedings is 3 years for active bribery and 5 years for passive bribery from the date when the offence was committed (the absolute statute of limitation expires when twice the prescribed time lapses).

24. According to Art. 89(3) of the CC the term "official" encompasses public officials or persons performing official duties in bodies of the executive, legislative and judicial branch of the State, including the local self-government and officials elected or nominated to a representative body. The amendments to the CC in year 2000 expanded the definition of an "official" from Art. 89 to criminalise corruption with a foreign element. According to the new definition, a foreign public official would be any person who holds a foreign or international public office in a legislative,

administrative or judicial office or who exercises a public function for a foreign country or international organisation.

25. Passive and active corruption in the private sector (private – private corruption) is criminalized through the term of the "responsible person" in Art. 347 and 348 of the CC. According to the definition in the CC (Art. 89, par. 7 and 8), the "responsible person" would be any person entrusted with particular tasks from the field of activities of a legal entity (enterprises, public companies, funds, institutions, etc.). During the visit the GET was informed that the law enforcement has only recently started to afford attention to detection and investigation of corruption in the private sector.

26. The CC also provides for a set of corruption-related offences related to legal entities: Abuse of Authority in Economic Business Operations (Art. 292), Concluding a Prejudicial Contract (Art. 294), Disclosure and Unauthorised Procurement of a Business Secret (Art. 295). In addition, most of the offences in Chapter 25 ("Criminal Offences Against Official Duty") of the CC can be labelled as "corruption-related" offences.

27. Money laundering has been criminalized as a separate offence in the CC (Art. 279). After amendments in year 2000, the definition of money laundering follows the "all offences" approach and therefore any corruption offence can be a predicate offence to money laundering. The GET noted that the offence of money laundering is criminalised even if conducted by negligence (Art. 279(4)) and that the Court may remit the punishment of the perpetrator who voluntarily contributes to the discovery of such crime (Art. 279(7)). Croatia has already been visited by the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV) and the first evaluation report on the country was adopted in February 2000.

28. Confiscation of proceeds from crime is possible for all criminal offences, including the proceeds of corruption and corruption-related offences. The general confiscation regime is established by Art. 82 (confiscation) and 80 (provisional measures) of the CC. The detailed procedures are set out in the CPC (Art. 463 to 472). Confiscation of proceeds from corruption offences is – at least according to the law – mandatory (except when the perpetrator of active bribery who had been solicited by the public official to give the bribe voluntarily reports the offence before its discovery; in such case, the bribe is returned to him / her; Art. 348(4) of the CC). The system is both property- and value-based. If the benefit to be confiscated is not available, the corresponding value can be confiscated. Confiscation of proceeds from third parties is possible (CC Art. 82(3)). The law also permits confiscation of the pecuniary gain obtained through corruption from a third party (including from a legal entity). Provisional measures may be ordered by a judge at an early stage in criminal proceedings. The new Law on USKOK (see section b1 below) expands the confiscation regime and, among others, prescribes a special regime of freezing of proceeds from crime for future confiscation, when the criminal offences of corruption and organised crime are committed; it also enables the USKOK to propose provisional measures before the criminal procedure formally starts.

29. The existing legislation does not provide for the criminal liability of legal entities and there is currently no administrative liability of legal entities for corruption related cases. Legal entities may only be responsible for economic misdemeanours, which does not include corruption or corruption-related offences. A draft law on Liability of Legal Persons for Criminal Offence is currently in the process of being drafted by the Government.

iv. National Programme and Action Plan for the Fight against Corruption

30. In March 2001, the Croatian Government adopted a National Programme for the Fight against Corruption with an Action Plan for Fighting Corruption.[2] It is notable that these documents had been developed in broad consultation with different governmental bodies and agencies as well as non-governmental organisations (which actually initiated the process) and have been supported by political parties.

31. It is interesting to note that the Programme, which was adopted in order to ascertain the actual picture of corruption in Croatia and to identify possible solutions and improvements basically shows that the institutions for preventing and fighting corruption in Croatia are not sufficiently effective, that the present economic situation in the country encourages the risk of corruption, and that civil society and free media are not powerful enough and therefore cannot bear the full responsibility for fighting corruption.

32. According to the Action Plan there are eight priority areas, that should be addressed simultaneously and in a balanced way, including measures relating to the administration of criminal justice, organisation of public administration, financial responsibility, promoting political and civil responsibility and enhancing international activity.

33. The National Programme and Action Plan include a number of deadlines for the implementation of specific actions. Some of the actions have already been carried out in the prescribed time others are still pending realisation or are overdue. The GET observed that the institution which would oversee and coordinate the implementation of these two important documents has not been designated yet. During the GET visit, discussions were underway to establish a special independent Commission linked to the Parliament to supervise the implementation of the Plan.

b. Bodies and institutions in charge of the fight against corruption

b1. Office for the Prevention of Corruption and Organized Crime (USKOK)

34. A landmark in the efforts to fight corruption and organised crime in Croatia is certainly the adoption of the Law on the Office for the Prevention of Corruption and Organised Crime (hereafter: "Law on USKOK"[3]) that entered into force on 19 October 2001. This law had established a specialised body that is in charge for tackling corruption and organised crime – the Office for the Prevention of Corruption and Organized Crime (hereafter: "USKOK"). Indeed, the USKOK's structure and competencies are designed for it to become the leading state authority in the prevention and repression of corruption in Croatia.

35. The USKOK started its first day of operations exactly on the first day of the GET's visit to Croatia (when the active Head had been appointed for a six months transitional period with the assignment to make the USKOK fully operational). In the meantime the duties of the USKOK will be carried out directly by the General Public Prosecutor's Office. During the visit the GET noted that there is a sincere commitment on the side of the authorities to make the USKOK fully operational in the shortest possible time, but was also informed that they are (and will) face obstacles of a financial nature and in the lack of specialised and trained prosecutors.

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[2] The GET was informed after the visit that this document has been in March 2002 endorsed and enacted by the Croatian Parliament.

[3] "USKOK" is the Croatian acronym for the Office for the Prevention of Corruption and Organised Crime ("Ured za Sprecavanje Korupcije i Organiziranog Kriminala").

36. The USKOK is a special body within the system of the Public Prosecutor's Office. The Head holds the position of Deputy Public Prosecutor General and is appointed by the Public Prosecutor General for a period of 4 years (with a possibility of re-appointment). Prior to the appointment, the Public Prosecutor General must seek an opinion of the Ministry of Justice and the State Council of Public Prosecutions. According to Art. 4(8) of the Law on USKOK security checks and inspections of the property status of the Head, may be performed without his/her knowledge anytime during his/her time in office, and one year after he/she ceased to perform the duties of Head. However, the GET noted that there are currently no guidelines for this procedure. It is not clear who orders, conducts and what is the scope of the mentioned security checks.

37. The USKOK will employ a number of special prosecutors (estimated 10) appointed by the Public Prosecutor General on the proposal of the Head for a period of 4 years (with a possibility of re-appointment). These prosecutors will be subject to the same security checks as the Head (see previous point). The USKOK will also employ a number (estimated 20) of senior counsellors, counsellors and investigative assistants and at least two police officers (the latter will be appointed by the Director of the Police). The number of employees is not limited by law and can be adjusted to the workload of the USKOK. In order to ensure a high level of expertise, capacity and independence in their work, the law prescribes that USKOK may employ only prosecutors who have passed the national judicial examination and have at least 8 years of working experience as judges, prosecutors, lawyers or criminal investigation police officers.

38. The USKOK has intelligence, investigative, prosecutorial and preventive functions. It is also responsible for international cooperation and exchange of information in complex investigations. In accordance with the law, the USKOK will be organised in five units: Investigation and Documentation Department; Anticorruption and Public Relations Department; Department of Public Prosecutors (this department will have local offices in four major County Courts throughout Croatia, namely: Zagreb, Rijeka, Osijek and Split); Secretariat and Supporting Service. The Investigation and Documentation Department shall systematically collect data on corruption and organised crime, organise and run data-bases, and organise and direct cooperation between government bodies. The Anticorruption and PR Department shall inform the public of danger and damage of corruption and organised crime, and co-ordinate the activities from the National Programme and Action Plan against Corruption with other bodies, propose changes in legislation, organise training activities, etc. The Department of Public Prosecutors shall direct the work of the police and other bodies in detecting and investigating corruption and organised crime offences, co-operate with competent authorities in other countries and with international organisations, and initiate procedures relating to the seizure and confiscation of proceeds from crime.

39. The criminal offences under the USKOK jurisdiction are strictly enumerated in Art. 21 of the law on USKOK. In the area of corruption (and corruption related) offences the USKOK has jurisdiction over the following crimes from the CC: accepting a bribe, offering a bribe, trading in influence, abuse in performing government duties, abuse in bankruptcy proceedings, and unfair competition in foreign trade operations. The Office is also responsible for some types of criminal activity which under specific conditions include corruption offences: crimes committed by a group of persons or by a criminal organisation; offences for which a prison sentence in excess of three years is prescribed and the offence has been committed in two or more countries or a significant part of its preparation or coordination has taken place in a foreign country or if the offence has been committed in connection with the activity of a criminal organisation active in two or more countries.

40. While the USKOK has jurisdiction over most corruption offences, there are a number of offences which, according to the internal police classification and to the National Programme against Corruption, are listed as corruption offences, but which do not fall under the jurisdiction of the USKOK. Among these are: abuse of office and official duties, offence of concluding a prejudicial contract, disclosure of an official secret, disclosure and unauthorised procurement of a business secret, etc.

41. Apart from the organisation and functioning of the USKOK itself, the law establishing the Office introduced other measures aimed at improving the capacity of the Croatian authorities to effectively tackle corruption (see below Analysis / Section b1).

b2. The Police

i. Police: general

42. Apart from the USKOK, the Croatian police is the most important authority empowered to prevent, detect and conduct preliminary investigations regarding corruption crimes. Croatia has a single centralised police service, which is responsible for the state of security in the country, for the protection of lives, human rights and safety of the people, for the protection of property, and for prevention, detection and investigation of criminal offences and their perpetrators.

43. The police is organized as a special service (Police Directorate) within the Ministry of the Interior. While the Police Act of year 2001 granted it more autonomy from the rest of the Ministry of the Interior, the Ministry still exercises various supervision and monitoring functions over the police, in particular in relation to budget, human resources, investments, international cooperation, public relations, internal police control, and education.

44. The head of the Croatian police is a Director General of the Police, who also holds the position of Assistant Minister of the Interior. The Director General of the Police is appointed and relieved by the Government on a proposal of the Minister of the Interior.

45. The police service is organised at State, regional (Police Administrations) and local levels (Police Stations). A total number of authorised police officers in Croatia is approx. 19.000 (of which 3.000 are criminal police officers).

46. At State level, the Police Directorate is primarily responsible for co-ordination, direction and supervision of regional Police Administrations (hereafter: "PA"), for international cooperation and education at the Police Academy. In complex cases it also directly co-operates in the investigations carried out by regional PA. The Police Directorate is divided in two main operative administrations - the Police Administration (uniformed officers) and the Criminal Police Administration - and several logistic services, such as the Security Office, Police Operations and Communications Centre, Special Units Command, Criminal Investigation Centre and the Police Academy. Both operative administrations are headed by Directors appointed and relieved by the Minister of Interior on a proposal of the Director General of the Police.

47. The Criminal Police Administration is divided into eight departments: general crime, terrorism and war crimes, organised crime, drug related crime, special criminal operations, criminal analysis, international police cooperation, and economic crime and corruption.

48. The basic work of investigation of criminal offences is conducted at regional level, by one of the 20 regional PA, headed by a Director appointed and dismissed by the Minister of Interior on a proposal of the Director General of the Police, who must first seek the opinion of the County Assembly. In larger regional PAs the criminal police has special sectors or sections responsible for economic crime and corruption, while in smaller PAs this task is performed by general operations departments which include groups or individual officers who are directly responsible for solving economic crime or corruption cases.

49. At local level, the police is organised into Police Stations, generally responsible for preventing, detecting and investigating milder forms of criminal offences, including corruption. Police Stations do not have specialised units.

ii. Departments for Economic Crime and Corruption

50. The Department for Economic Crime and Corruption (hereafter: "DECC") in the Criminal Police Administration was established in May 2001. Prior to that, the responsibility to investigate corruption was divided between the departments for Economic and Organised Crime. The GET was informed that the new organisation was established in order to improve the specialisation and level of expertise of the investigators in the area of financial and economic crime, especially in complex criminal cases.

51. Special anti-corruption units within the DECC have not been instituted and have – according to the information provided to the GET – not been envisaged since (in 2000) only 7.42% of economic crime offences investigated in Croatia are corruption related. However, specialised inspectors for corruption were designated within the DECC, with the task of planning and organising preventive strategies and policies regarding the detection and investigation of corruption, as well as to directly investigate corruption offences or to assist in investigations conducted by the regional PAs.

52. The total number of police officers who work on economic crime and corruption in Croatia was at the time of the GET's visit 254. Of these, two inspectors in the DECC are designated to work exclusively in the anti-corruption area. On a regional level in the five largest PAs another ten inspectors are specialised only in corruption related crime. Specialised criminal investigators for corruption have for now not been envisaged in other PAs.

53. Inspectors designated as specialists for corruption related crime must have a university education and must pass a special national examination. Other special requirements have not been defined, but the GET was told that some of the most experienced and capable persons are selected for those positions.

54. Police officers dealing with corruption cases are subject to the same rules as other police officers. They are, in particular, required to fulfil their duties in accordance with the Constitution and the law and with due respect for human rights. Equally, the rules of hierarchical subordination are fully applicable. The answer to the explicit question posed by the GET on the existence of cases of undue influences on their work in corruption investigation was negative.

55. According to Art. 17 of the new Law on USKOK, the Director General of the Police must appoint at least two senior police officers who will work within USKOK under direct supervision of its Head. The Head of the USKOK must agree on the appointments. In addition, in more complex cases the Director General of the Police must, if so required by the Head of the USKOK, assign

police officers to an expert team which will work under direct supervision of prosecutors, and provide the technical and financial means that will be made available for the execution of the task.

iii. The Office of Internal Control

56. The Office of Internal Control is situated within the Cabinet of the Minister of Interior (and is therefore not part of the police structure and hierarchy). The Office is authorised to prevent, detect and investigate offences and breaches of duties committed by the police and ministerial employees, to process citizens' complaints against the police and to supervise budgetary expenditure in the Ministry.

57. The Office is organised at State level and does not have regional offices. Until recently they were responsible only for processing complaints against police officers lodged by individual citizens. Since the new Regulations on Internal Organisation of the Ministry of the Interior (entered into force in May 2001) they have also been responsible for detecting and investigating offences committed by police employees and for supervision of the budget of the Ministry of the Interior (which includes the budget of the Police). During the year 2000 the Office processed 852 citizens' complaints (158 of them were found justified).

58. The Office has the authority to initiate disciplinary procedures against employees of the ministry and the police. In the year 2000, 194 disciplinary procedures were initiated on the basis of citizens' complaints and on the basis of independently discovered offences. The disciplinary measures passed during year 2000 consisted of 11 reprimands, 25 fines, 2 misdemeanours and 2 removals from the service. Disciplinary courts of first and second instance have been organised within the Ministry for processing disciplinary cases. The Court's President and the members of the panels are all employees of the Ministry.

59. The total number of crime reports filed against the employees of the Ministry in year 2000 was 46 for 108 acts of corruption out of which the Office filed 29 of them (the rest were initiated by the criminal police). About 75% of all the reported employees were police officers of which 25% were criminal police officers. Considering the total number of police officers (19.000) the number of reports is not high. However its percentage in the total number of corruption offences discovered in Croatia is much more significant.

60. Altogether 30 persons are currently assigned to work in the Office, 21 of them on investigations of citizen's complaints. With the aim to improve its effectiveness, the Office plans to set up its own criminal investigation unit by the end of year 2002; they envisaged seven positions, none of which have yet been appointed. The Office has no preventive programme for tackling internal corruption.

b3. Public Prosecution Service

61. Pursuant to the Code of Criminal Procedure ("CPC") criminal proceedings for offences prosecuted *ex officio* (including all corruption and corruption related offences) are instituted and conducted only upon request of the public prosecutor (hereafter: "PP"). The amendments to the Constitution in year 2000 introduced new provisions to strengthen the independence of PPs: *"The Office of the Public Prosecutions is an autonomous and independent judicial body empowered and due to proceed against those who commit criminal and other punishable offences, to undertake legal measures for protection of the property of the Republic of Croatia and to provide*

legal remedies for protection of the Constitution and law." (Art. 124 of the Constitution). The organisation of the public prosecution service, its competencies, and the conditions for appointment and dismissal of PPs are regulated by the Law on the Public Prosecution Service of June 2001.

62. The Public Prosecution Service is hierarchically organised in three levels of jurisdiction that corresponds to the organization of the courts (State, County, and Municipal level). The total number of PPs in Croatia is 470 (73 State, County or Municipal Public Prosecutors and 397 deputies). In addition the service employs 94 counsellors and experts.

63. The Constitution (Art. 124) provides for a special body – the State Council of Public Prosecutions (hereafter: "SCPP"). The SCPP has the final authority over the appointments, dismissals and disciplinary proceedings against PPs. The SCPP has 11 members (7 from the ranks of the PPs, 2 members of the Parliament and 2 professors of law) elected by the Parliament for a four-year term. Head officials of the Public Prosecution Service may not be members of the SCPP.

64. The Public Prosecution Service is headed by the Public Prosecutor General (hereafter: "PPG") who is appointed by the Parliament at the proposal of the Government and with a prior opinion of the Judicial Committee of the Parliament for a four-year term (with a possibility of reappointment). Only a person who has at least 15 years of working experience as a judge, PP, attorney-at-law or law professor can be appointed as a PPG. County and Municipal Public Prosecutors (who are also heads of offices) are appointed by the PPG, subject to a prior opinion by the Minister of Justice, for a four-year term (with a possibility of reappointment). Only a person who has at least 4 or 5 years of working experience as a PP can be appointed as a County or Municipal Public Prosecutor.

65. Deputy PPs are appointed by the SCPP. The vacancies are announced in the Official Gazette. A candidate must have a national judicial exam (which requires 18 months of court clerking) and a prescribed time of working experience (2 years for the Municipal level, 8 year for the County level and 15 years for the State level). On assuming his/her duties for the first time, a PP is appointed for a five-year term and after the renewal of the appointment the office is permanent. The decision on the renewal after the five-year probation period is taken by the SCPP on the basis of yearly evaluation reports on his/her work prepared by the Public Prosecutor in whose jurisdiction the deputy works.

66. The PPG must submit at least an annual report concerning the work of the prosecution service to the Parliament and the Government. In addition every year he/she must submit to the Ministry of Justice a detailed working report, including the report on the criminal proceedings against the judges of the Constitutional Court, members of the Parliament, members of the Government, judges and PPs. The PPG must upon the request of the Minister of Justice submit reports relating to certain types of criminal proceedings or to specific cases. However, neither the Parliament nor the Government or any other individual are allowed to give the PPs instructions or indications on the handling of concrete cases. The Ministry of Justice can initiate disciplinary proceedings against individual PPs, but the disciplinary proceeding itself and the final decision is the prerogative of the SCPP.

b4. The Courts

67. Over the period 1990-2000, the judiciary encountered specific problems, which also involved political interference with judicial independence. According to information provided to GET, over

500 judges (almost 1/3 of all judges in Croatia) had left the office or were not re-appointed to their posts by 1996. Political influence in removal and appointment procedures continued until 2000, especially in regard to the presidents of the different courts (there was one notorious case of political removal of one of the Presidents of the Supreme Court). The GET was informed that all Presidents of Courts were dismissed from office in year 2000, and currently new appointment procedures are ongoing under new rules. As a result of past practices, Croatia has a relatively high number of very young judges with limited professional experience. In addition, the constantly rising number of unresolved cases puts high pressure on the courts and the delays in the administration of justice continue to undermine the confidence of citizens in the fairness and efficiency of the judiciary.

68. The organisation of courts, their scope of work and competencies, the manner of appointment of the President of the Supreme Court, court presidents, judges, the dismissal of judges and the issues of disciplinary responsibility of judges are regulated by the amendments to the Constitution in year 2000, the Law on Courts and the Law on State Judicial Council. In accordance with the constitutional principles of the separation of powers, the judiciary in the Republic of Croatia is independent and autonomous and the judicial office is permanent.

69. The uniform judicial system of Croatia includes courts of general and specialized jurisdiction.

70. The first instance courts of general jurisdiction are Municipal and County Courts. Municipal Courts (114 of them) have jurisdiction over criminal offences for which a punishment of less than 10 years imprisonment is prescribed, civil cases concerning claims for damages or property rights up to a certain value, probate and other non-litigious matters, civil enforcement etc. They also undertake urgent investigative actions in pre-trial criminal proceedings. County Courts (21 of them) have appellate jurisdiction over the Municipal Courts and first instance jurisdiction over criminal and civil cases which exceed the jurisdiction of Municipal Courts. They decide on appeals against rulings of the investigative judge, conduct procedures for the extradition if the law does not prescribe the jurisdiction of the Supreme Court, administer matters of international legal assistance, *etc.*

71. Criminal cases at first instance are tried – depending on the severity of the offence - by an individual judge, a panel consisting of one professional judge and two lay judges or a panel of two professional judges and three lay judges.

72. Croatia has the institution of Investigative Judge (Investigative Departments are located at County Courts). The Investigative Judges (hereafter: "IJ") are responsible for ordering and conducting judicial investigations and collection of evidence in the pre-trial stage of the proceedings. They also decide on pre-trial detention and alternative measures and authorise the use of investigative measures, which could affect the exercise of fundamental rights and freedoms of the suspect (such as searches of premises and persons, use of special investigative means, etc.).

73. Courts of specialized jurisdiction in Croatia are Misdemeanours Courts (114 of them), a High Misdemeanour Court, Commercial Courts (13 of them), a High Commercial Court, and the Administrative Court.

74. The highest Court in Croatia is the Supreme Court (hereafter: "SC"). It has appellate jurisdiction in criminal and civil cases, in commercial lawsuits, in labour and social security disputes and in administrative review. In most cases, the SC is the court of the third instance and also decides on

extraordinary judicial remedies. The SC is, however, not empowered to decide on the constitutionality of the legal provisions of statutes, regulations and by-laws, or to receive individual complaints on violation of the constitution by individual acts infringing human rights and fundamental freedoms. These matters are under the jurisdiction of the Constitutional Court of Croatia.

75. The total number of serving judges in Croatia is approx. 1380. The GET was told that almost 17% of the judicial posts are still vacant.

76. The Constitution (Art. 123) provides for a special body – the State Judicial Council (hereafter: "SJC") which has the final authority over the appointments, dismissals and disciplinary proceedings against judges. The SJC consists of 11 members elected by the Parliament for a four-year term, from among notable judges (7 members), attorneys-at-law (2 members) and university professors of law (2 members). Presidents of courts cannot be elected as members of the SJC. Each County Court has a separate judicial council consisting only of judges and elected by judges of that court. Such councils participate in the process of appointment and dismissal of judges by submitting evaluation reports and opinions on candidates.

77. The President of the SC is appointed and dismissed by the Parliament, subject to a preliminary opinion of all serving judges of the SC and the Judicial Committee of the Parliament, upon the proposal of the President of the Republic. He/she is appointed for a period of four years (with a possibility of reappointment). Presidents of lower courts are appointed and dismissed by the Minister of Justice among the candidates proposed by the judicial council of a particular court.

78. Individual judges are appointed and dismissed by the SJC, which also decides on all matters concerning their disciplinary responsibilities. The general requirements (national judicial exam, work experience etc.) for becoming a judge are the same as for the public prosecutors (see above, point 65).

79. In the process of appointment and relief of judges the SJC has to obtain the opinion of the Judicial Committee of the Parliament. On assuming their duties for the first time, judges are appointed for a five-year term and after the renewal of the appointment their office is permanent. The decision on the renewal after the five year probation period is taken by the SJC on the basis of yearly evaluation report on his/her work submitted by judicial council of the court in which jurisdiction the judge works.

80. The Ministry of Justice exercises limited administrative power of control over courts. The Ministry of Justice can initiate disciplinary proceedings against individual judges, but the proceedings itself and the final decision is the prerogative of the SJC. The provisions of the Constitution and the implementing legislation prohibit any interference in the independent functioning of the justice system and the use of public powers for the purpose of influencing the impartial and independent work of the courts. No one is allowed to exercise any kind of influence on judges in the handling of individual cases. The GET was told that judge are obliged to file a report on any initiative of undue influence.

81. Until recently, all corruption offences fell under the jurisdiction of the Municipal Courts (since the prescribed punishment for all these offences is below 10 years imprisonment). This has changed with the adoption of the Law on USKOK. The law stipulates that all criminal offences that come under the jurisdiction of USKOK (including most corruption offences) will be adjudicated by four major County Courts (Zagreb, Rijeka, Osijek, Split).

82. The law on USKOK also requests the designation of specific IJ to deal with cases under the USKOK jurisdiction and establishment of special trial panels, consisting only of professional judges. These judges will be appointed by the presidents of individual County Courts for a term of 4 years. Under the law the IJ who will work with USKOK cases are obliged to file a declaration of their assets and are subject to background security checks. The GET was informed that judges have challenged the constitutionality of this provisions of the Law on USKOK before the Constitutional Court, because in the opinion of the judges the provision is too vague (it is not clear who orders, conducts and what is the scope of the security checks) and on the other hand it leads to discriminatory treatment of judges (since it only applies to IJ and not all judges or even judges which will sit in panels adjudicating the USKOK cases). The GET also heard reservations and concerns from the judiciary (and certain representatives of civil society) regarding the "establishment" of special(ized) Courts to conduct investigations and adjudicate in USKOK cases.

83. The problem with an overwhelming number of cases before courts and the subsequent delays in the administration of (criminal and civil) justice was repeated to the GET on a number of occasions. Some of the reasons for this situation can be found – according to information provided to GET – in the continuously increasing number of new cases; changes in legislation (especially in the area of commercial law); a higher number of complex cases, especially the ones connected to privatisation; large number of young judges with limited working experience; etc. Furthermore, the GET received conflicting information about the commitment of various stakeholders to address these problems and got no information about the existence of a comprehensive national program to address this issue. The Ombudsman's Office has reported that the judiciary is unreceptive to outside criticisms in cases of undue delays or possible breaches of duties (in the wording of one of the officials met by the GET: *"the courts have "rediscovered" their independence"*).

b5. Criminal investigations of corruption cases

i. General

84. The criminal justice system in Croatia is based on the principle of mandatory prosecution and the PPs are bound by the legality principle. Pursuant to Art. 2(3) of the Code of Criminal Procedure ("CPC") *"[t]he Public Prosecutor shall be bound to institute the prosecution when there is reasonable suspicion that a certain person committed an offence which is subject to public prosecution and when there are no legal obstacles to the prosecution of that person."* There are, however, exceptions where certain discretion of PP is allowed. Art. 175 of the CPC allows the prosecutor to postpone the initiation of the criminal proceedings when the crime report is submitted for milder offence, the absence or insignificance of the damaging consequences do not justify a criminal prosecution and the suspect agrees to fulfil certain obligations prescribed to him/her by the PP. Moreover, Art. 176 of the CPC introduced "immunity from prosecution" in organised crime cases by authorising the PP to withdraw from prosecution of a member of criminal organisation if this is of importance for the discovery of other members of the criminal organisation and the offences committed by them. In making this decision, the PP is bound to take into consideration the gravity of the offences committed and the importance of that person's statement. Art. 404(2) of CPC furthermore provides for a safeguard against possible abuses of these discretionary powers of the PP. Criminal proceedings which were discontinued may be reopened if the PP is proven to have misused his discretionary powers.

85. In accordance with Art. 299 and 300 of CC, "failure to inform of the preparation of a crime" and "failure to provide information of a committed crime" are criminal offences. The former creates an obligation for every citizen to inform the authorities about the preparation of an offence for which imprisonment of more than 5 years could be imposed. The latter imposes upon officials and responsible persons in all legal entities the duty to inform the competent authorities about any offence which comes to their knowledge in the performance of their duties. The law furthermore prescribes an obligation for all state authorities and all other legal entities to report criminal offences subject to official prosecution (CPC Art. 171). When submitting a crime report those institutions or individuals have to indicate evidence known to them and also undertake measures to preserve traces of the offence.

86. According to the CPC (Art. 177) the police authorities are obliged to take all necessary measures aimed at discovering the perpetrator, preventing him/her from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value as well as gathering information which could be useful for conducting successful criminal proceedings. To fulfil this obligation the CPC grants the police a number of powers in the so-called pre-investigation proceedings (preliminary as opposed to judicial investigation). However, while gathering information, the police are prohibited to examine individuals as defendants, witnesses or expert witnesses and such information cannot be used as evidence in Court; an exception is a statement given to the police by a suspect with a defence counsel present (CPC Art. 177(5)). For investigating corruption offences it is important that the Law on USKOK makes a further exception to the CPC in this regard and allows statements of witnesses and suspects given to the Police or PP in the pre-trial stage to be used as evidence in Court.

87. According to Art. 42 of the CPC, the Public Prosecutor is competent to undertake the necessary measures aimed at discovering the commission of offences and perpetrators, and request that a judicial investigation and specific investigative actions be ordered and carried out. The PP is empowered to demand explanations at any time on any case from the police, to request them to undertake certain measures, and to decide on any complaint relating to police work in the pre-trial criminal proceedings. Moreover, the police have to report to the PP about any criminal offence coming to its knowledge and inform him/her about its findings on the said offence. However in practice the powers of the PP to direct police investigations is limited as both organisations are subject to totally separated hierarchical structures.

88. A number of officials the GET met expressed their view that the weak point of pre-trial criminal proceedings is the judicial investigation which results in duplication of a number of measures to collect evidence (e.g. a witness or a suspect is questioned three times: by the police, by the investigative judge and at the trial).

89. Judicial investigation is ordered and conducted by the IJ upon the request of the PP. The IJ may agree with the motion of the prosecutor not to conduct an investigation if the information obtained in the preliminary investigation provides sufficient evidence to file a direct indictment (CPC Art. 191). However, also in such cases the IJ has to interrogate the suspect before reaching such a decision. The statistical data shows that in approx. half of reported corruption offences prosecutors have filed direct indictment and in the other half they have requested a judicial investigation. It can be expected that with the Law on USKOK which allows more evidence collected by the police and prosecutors to be used in court, a number of direct indictment will be increased. This is important since it significantly shortens the time the individual case needs from a crime report to the trial.

90. During the investigation the IJ collects information and evidence necessary for a decision on whether to file an indictment or to discontinue the proceedings, as well as to secure evidence that may not be possible to repeat at the trial. The IJ also decides upon the pre-trial detention or alternative measures to detention. According to information provided to GET pre-trial detention is rarely ordered for defendants in corruption cases.

91. Upon the motion of the PP, the investigative judge may confer to the police the performance of certain investigative actions in cases related to specified serious offences (CPC Art. 193(4)). However, this provision does not apply to corruption offences (in view of the low-level of prescribed sentences for them), except when such an offence is connected to person(s) abroad, to group of people or to criminal organisation.

ii. Relationships between the police, the public prosecutor and the investigating judge

92. Criminal investigations in Croatia are dominated by the police, the PP and the IJ. The GET was told on several occasions during the visit that the relations and distribution of competencies between competent authorities involved in the pre-trial stage of criminal proceedings are complicated and the level of co-operation not always satisfactory. This can be partially attributed to the provisions of the CPC under which the IJ – and not the prosecutor – is in charge of the investigation and responsible for securing evidence that can be used in court, and partially to the lack of a culture of cooperation between the police and prosecutors, and especially the former recognising the authority of the latter (as one of the officials the GET met mentioned: *"cooperation between police and the PP is more a question of people than of rules"*).

93. The current practice is that the vast majority of the procedures involving corruption are initiated by the police who inform the PP, not immediately after the detection of a suspicion of a criminal offence or receiving the crime report from the citizen, but only after they have finished the preliminary investigation and have finalised the crime report. In this way prosecutors are not sufficiently engaged in the process of collecting information and evidence in the preliminary investigation and do not oversee or direct the police work at this stage of pre-trial proceedings.

94. In the discussions with the representatives of all three institutions, the GET's attention was drawn to the need to overcome the current situation characterized by a lack of cooperation and coordination, especially between the police and the prosecutors. The crucial importance of the relationships between the police, the PP and the IJ in pre-trial proceedings is already manifested by the new regulations of these relationships in the Law on USKOK. These shortcomings have been removed with Art. 15 of the Law on USKOK, which defines that the Prosecutor's Department directs the work of the Police and requests the gathering of information. Additionally, the Director General of the Police must in accordance with Art.16 appoint at least two police officers who will work for USKOK, with the task to improve and facilitate communication with the Police (liaison officers). For more complicated cases the Director General of Police has to appoint a specific number of police officers into expert teams and provide them with the means and equipment for work under the supervision of the Head of the USKOK. Moreover, if need be, USKOK's Prosecutors can independently collect data and question witnesses and suspects (Art. 39 of the Law on USKOK). Additional obligation of reporting and the lead role of the prosecutor in the procedure is provided by Art. 40, which specifies the Police's obligation to immediately notify the USKOK in cases where they initiate a preliminary investigation of suspected offences within the competency of the USKOK.

95. The GET was also informed that in cases under the USKOK's jurisdiction, more attention will be given to cooperation with the IJ. A Special IJ with a higher level of specialised knowledge will be assigned to such cases. They will volunteer for the job in special investigation units at the four largest County Courts.

iii. Special investigative means

96. Special powers of the police in investigating criminal offences are regulated by the CPC. These include special investigative means, such as surveillance and interception of telephone conversations or means of remote technical communication, surveillance and technical recording inside private premises, covert surveillance and technical recording of individuals and objects, use of undercover investigators, simulated purchase of objects and simulated offering of bribery, and supervised transport and delivery of objects. The Law on USKOK stipulates two additional special powers: supplying simulated professional services and concluding simulated legal transactions.

97. Pro-active methods of investigation are successfully used in detecting and investigating corruption related crime, and their use and effectiveness is improving. For example, in 1998 the investigators specialized in corruption offences conducted 4 simulated briberies of which one resulted in criminal indictment. In 1999 seven such actions were undertaken, six resulting in criminal indictment. In 2000, 4 out of 8 such cases were successful, with one still open and in 2001, by the time of the GET's visit, 5 of 7 such cases were concluded successfully and 1 is yet unresolved.

98. All special investigative means must be ordered by the IJ on a proposal of the PP (who receives the initiative from the police). The implementation of those measures can last for 4 months and be extended by a new judicial order for another 3 months.

99. Prior to sending the initiative for the use of special investigative means to the PP, the regional Police Administration must obtain an approval the Criminal Police Administration. After approval the Criminal Police Administration assumes supervision of the application of individual measures. The GET was told, that such centralisation is necessary to exercise internal control of the legality and to ensure the technical possibilities for the implementation of individual measures.

100. After obtaining a judicial order the measures are implemented by the Special Tasks Department, which is situated within the General Police Directorate, although it also operates through four regional offices. Telephone surveillance is conducted by the Criminal Police with the help of the Service for the Protection of Constitutional Order of the Government of the Republic of Croatia (secret service) in the initial technical stage.

101. The GET was told by the police authorities that police access to financial information and bank details in preliminary investigation is very restricted, which in some cases makes it difficult to collect necessary information for the initiation of the judicial investigation. The Law on USKOK aims at improving the situation in this field, by providing strict obligations on the Ministry of Finance and all the Departments within it (such as tax, custom, anti-money laundering, etc.). The USKOK may, in accordance with Art. 39 of the Law on USKOK, request them to check the business operations of legal entities and natural persons and to temporarily, until a final verdict is reached, seize money, securities, items, and documents that can serve as evidence. It can furthermore request tax inspection and information that may serve as evidence of the criminal offence committed or locate proceeds of crime, etc. The failure to act on the request or non-

compliance with the USKOK's request constitutes a serious breach of the official working duty. The GET noted, however, that these provisions again apply only to offences under the USKOK jurisdiction, which does not include all corruption related crime.

iv. Protection of witnesses and confidentiality of investigation

102. Croatian legislation provides for measures for the protection of persons that can be qualified as vulnerable targets in corruption cases. Art. 155(6), 238 and 207 of the CPC include basic provision for the protection of confidentiality of the data about witnesses whose life, health, physical integrity, freedom or substantial property are in danger, including the anonymous testimony. The GET was told that the Ministry of Justice is currently preparing a Law on the Protection of Witnesses, however, the law seems to be in very early stages of the drafting process.

103. The GET noted with satisfaction that the overall confidentiality of investigation of organised crime and corruption cases has been strengthened by the Law on USKOK. According to Art. 57 and 58 all files, documents and minutes of the investigative activities conducted during the preliminary investigation shall be marked as classified pursuant to the provisions of the Data Security Act; The Head and his/her deputies, as well as all other employees of the USKOK, Court, Police and other bodies participating in activities related to USKOK cases, are prohibited from disclosing classified information, notwithstanding the manner in which it came to their knowledge.

b6. Other bodies and institutions

i. Anti-Money Laundering Department

104. The Anti-Money Laundering Department (hereafter: "AMLD") is the Financial Intelligence Unit of Croatia and was established by the Law on Prevention of Money Laundering in December 1997 within the Financial Police (abolished in 2001) of the Ministry of Finance. The AMLD is responsible for gathering and processing reports on suspicious transactions and cash transactions over the threshold of 17.000 EURO emanating from financial and non-financial institutions, which could be indicative of laundering of the proceeds of crime, including proceeds of corruption. The AMLD is organised in two sections – one in charge of suspicious transactions and international co-operation and the other of information, analysis and supervision. In case of the suspicion of money laundering, the AMLD submits the information on suspicious transaction to relevant state bodies, including the PP. However, the AMLD has not competency to take further steps such as gathering information on predicate offence. The GET was informed that amendments to the Law on Prevention of Money Laundering are under preparation to extend the scope of the parties under obligation to report suspicious transactions, and to prolong the time-limit for temporary freezing of suspicious transaction (which was at the time of the visit only 2 hours and is now 72 hours).[4]

105. According to the Law on USKOK the AMLD will work in close co-operation with the new Office. Art. 40 and 48 of the Law on USKOK authorises the USKOK to request from the AMLD information concerning unusual and suspicious financial transactions. Moreover, the AMLD has to inform ex officio the USKOK about any means, proceeds or assets of which it had learnt within the scope of its activities, if there is reason to assume that such means, proceeds or assets result from the criminal offences under the jurisdiction of the USKOK (including corruption offences).

[4] Subsequently, the GET was informed that in January 2002 these amendments were adopted and entered into force.

The GET was furthermore informed that until the USKOK itself employs financial experts, the AMLD will assist it by providing financial expertise.

106. The GET also noted the AMLD's considerable contribution to the process of adopting the National Programme and Action Plan against Corruption and their support for the establishing of the USKOK.

ii. State Audit Office

107. The State Audit Office (hereafter: "SAO") was founded 7 years ago on the basis of the Law on Auditing. It is an independent expert body headed by the Senior National Auditor, who answers to the Parliament, to which it must submit annual reports. The final reports of SAO are generally published and can be accessed on Internet. The SAO is organised in a central office and in 20 regional offices.

108. Annually the SAO performs about 850 audits. They are responsible for auditing the use of public State finances and those of local self-government, including all state-owned companies and major State managed funds (such as health and pension funds).

109. In 2001, the Parliament assigned them a new important task – to look into the past privatisation procedures of all publicly and state-owned companies (approx. 1500 companies). The GET was told that they expect to fulfil this task by the year 2004.

110. Currently SAO employs 281 people of which 200 are authorised auditors with university education and certificates of qualification for auditing. The GET was informed that the additional task regarding the inspection of privatisation process will require them to employ another 38 auditors.

111. The police or the other state authorities, including prosecutors and courts have no competence to ask the SAO to perform an audit of a specific institution (for specific audits the police, the prosecutors or the court may utilise other audit capacities such as different departments at the Ministry of Finance, independent auditing experts etc.) and according to the information provided to GET the final report of SOA as such does not have an evidentiary value in court proceedings.

112. The GET was informed that the SAO has introduced certain preventive measures to avoid risks of corruption, such as adoption of the Code of Ethics and a specific organisational structure for the work of auditors (e.g. rotation of auditors working). According to the information provided, up to the date of the visit, there had been no complaints about the work of auditors, especially none related to corruption; similarly, the auditors had never been faced with suspicions of corruption which would have necessitated a report to the competent authorities.

113. Although the SAO was not involved in the preparation of the National Programme and Action Plan against Corruption, its role in the ongoing evaluations on all cases connecting to privatisation is important in this regard. The final reports on this issue must also be sent to the Public Prosecutor's Office.

iii. Tax Administration

114. The Tax Administration (hereafter: "TA") is an independent service within the Ministry of Finance that operates on a national level in the central office, at regional level in Counties and at local

level in municipalities. Altogether 4200 posts have been systemised and about 3600 are occupied.

115. The TA was completely reorganised in 2001 (when the Financial Police was abolished; according to the information provided to the GET due to the fact that it didn't fulfil the expectations) with a new Tax Administration Law. The Law introduced two new services which could be important for the prevention of corruption. The first are the units for the detection of tax offences that are organised on the central level and in the 4 major regional offices. The other is an independent internal control unit which will operate only on the central level and will have powers to oversee the entire tax administration.

116. Although the GET realised during its visit that tax employees in Croatia are potentially very exposed to the dangers of corruption, special internal control and prevention mechanisms have not been instituted or made operational. However, the GET was told that the TA has already undertaken some measures to avoid inside corruption. However, according to the information provided to GET the only instrument of prevention is the organisation of the work – separate inspections and specific procedures for the approval of reports, team work, and control of inspectors by work co-ordinators. The GET also observed that no Code of Conduct for tax inspectors exists. According to the statistic data only a few individual cases of corruption of tax inspectors were detected and even these were discovered by the police and not the TA itself.

iv. Custom Department

117. The Customs Department (hereafter: "CD") is an independent service within the Ministry of Finance that operates on a national level in the Central Office, 20 regional Customs Houses at the County level and at the local level in offices and border crossings. The CD has 2860 employees, out of which 120 work in the Central Office. The Custom Investigation Department with a limited power on investigation is a division of the Central Office. The whole Department was, at the time of the GET's visit, still undergoing a complex reorganisation.

118. Judging from the available information customs employees are very exposed to the danger of corruption. The Internal Control Service at the central level has been established by the amendments to the Law on Customs Services in 2001, but is not yet fully operational. Internal control services will be established also at regional Customs Houses and will function within the cabinets of the regional directors. They will be commissioned to co-operate with the police and most of all with the USKOK. The situation should be additionally improved by the new authorisations of the Service for Combating Smuggling and Service for Auditing and Supervision that will operate with mobile teams on the entire territory of Croatia.

119. The GET was told by the officials that the current situation in customs is mediocre because of the poor quality of the staff – insufficiently educated customs officers, low quality of the staff that was, also because of the war, often an easy target for organised smugglers, ineffective disciplinary procedures that often end with the re-appointment of workers who were indicted of very serious violations of the work discipline or even corruption. In the past, special programmes for fighting corruption were not implemented and customs officers were not educated and trained in this area. The possibility of corruption was additionally increased by the various government-granted benefits to various categories of the population (participants in the war, war veterans, war invalids) who were exempt from customs duties on consumer goods. These benefits have now been almost completely abolished. The situation should be improved by employing highly trained personnel from the former Financial Police which were terminated in 2001 and its former officers

will occupy posts in departments responsible for fighting smuggling and internal control. Their total number would be about 10% of all the employees, that is 280 to 300.

v. Office for Public Procurements

120. The Office for Public Procurement (hereafter: "OPP") is an independent service within the Ministry of Finance. According to the Public Procurement Law of 1997 they are responsible for dealing with complaints lodged by participants in public bids for public works, services, and procurement of goods from the national budget. The OPP has the power to annul the entire procedure of public procurement or only a part of it. The OPP decision is final and an appeal is possible to the Constitutional Court. Annually they process about 600 complaints. They have the authorisation to inspect any public order, including on its own initiative. The OPP also functions as a regular auditing body.

121. According to the information provided to the GET, the OPP annul about 20% of all the contracts, in most cases because of incorrect procedures. About 5% of the annulments are due to discovered improper connections and the conflict of interest (e.g. concluding transactions with family members).

122. The provisions of the Procurement Law apply to every transaction that exceeds the value of 200,000 HRK (approx. € 27,000), which is a high threshold for the current economic situation in Croatia. These provisions also do not apply for equipment procured for the needs of national defence or for which there exists a special interest specified by the government. The GET was told that so far the OPP has not uncovered a direct case of corruption.

123. A new Law on Public Procurement is being prepared,[5] which will significantly change the structure and authorisation of the OPP. It is supposed to become an independent governmental body separate from the Ministry of Finance. The new OPP will keep a register of all public orders (at the moment they do not have the information on how many public orders are underway in Croatia; there is no central register for public procurement and the announcement are made only through the public media and not through the Official Gazette). The bottom margin of the value of an individual procurement will drop significantly (50,000 HRK = € 6800). The law is already in parliamentary procedure and should be passed by the middle of 2002.

vi. Agency for Market Competition Protection

124. The Agency for Market Competition Protection (hereafter: "AMCP") was established in 1995 with the Law on the Protection of Market Competition but started to work in full capacity in 1997. The AMCP is a separate and independent body. It is governed by the Director who is appointed by the Parliament to whom AMCP annually reports on all processed cases and the state of the market competition. The Director is the executive body of AMCP, but decisions on cases are brought by the Council which is the Agency's professional advisory body. Council decides upon the following matters: whether agreements are in compliance with the law; existence of abuses of monopolistic and dominant market positions; reported concentrations and monitoring of concentration. The Council makes proposals to the Director who then undertakes necessary measures. The AMCP has authority to order discontinuation of practices that are restricting market competition or that are abusing dominant or monopolistic positions and prohibited concentrations.

[5] The GET was informed after the visit that the new Law on Public Procurement was indeed enacted in December 2001.

125. Until now the AMCP processed 900 complaints and in 100 cases it discovered violations which required the initiation of proceedings. An appeal against the decision or procedures of the AMCP can be filed with the Administrative Court. Currently there are 30 complaints underway, of which 18 were solved and of these 17 confirmed the AMCP decisions.

126. The AMCP starts the procedures on a complaint submitted by professional and business associations of entrepreneurs, consumer associations, authorities of the State and any legal or natural person having legal interest. They may also act on their own initiative, which is done in about 30% of the cases. Mostly they react to violations of which they hear via the media or are based on own information (anonymous or confidential letters from citizens and legal persons). The GET was told that in about 20% of the investigated cases they discover anomalies, which could have civil or criminal law repercussions.

127. According to the information provided to the GET so far the AMCP have not had a case which could be regarded as corruption or that such suspicion was forwarded to the competent authorities.

c. Immunities from investigation, prosecution and adjudication for corruption offences

128. According to the Croatian Constitution and several Laws (Law on Courts, Law on the State Judicial Council, Law on the Public Prosecutor's Office, Law on the Government, Rules of Procedure of the Chamber of Deputies) immunities from criminal prosecution are enjoyed by the following entities:

- Members of the Croatian Parliament (*Sabor*);
- President of the Republic;
- Members of the Government (Prime Minister and ministers);
- Justices of the Constitutional Court;
- Members of the State Judicial Council;
- Judges (including lay judges);
- Public Prosecutors.

129. There are two types of immunity attributed to above mentioned categories of persons:

- *Professional immunity*, which is of a material character and provides that its beneficiaries cannot be held legally liable for any opinion expressed in the Parliament session (Members of the Parliament) and they cannot be criminally liable for any opinion expressed in the court proceedings (all judges, lay judges and PP). This type of immunity cannot be lifted and its basic purpose is to guarantee the proper performance of the particular function of its beneficiary.

- *Procedural immunity*, according to which the beneficiaries cannot be detained, nor can any criminal proceedings be instituted against them without prior authorisation of a competent authority. This type of immunity also applies to Members of Parliament, President of the Republic, Government, State Judicial Council, Judges and Public Prosecutors suspected of corruption offences provided in the Croatian Criminal Code.

130. As a general rule, in cases of procedural immunity, a beneficiary may be detained with prior approval of the competent authority only when such person has been caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years.

Since all corruption and corruption-related offences prescribe lower punishments (except of an aggravated offence of Abuse of Office and Official Authority, Art. 337(4) of CC) the arrest, pre-trial investigation, prosecution or conviction for corruption offences is not possible, under any circumstances, without prior lifting of immunity by a competent authority.

131. There are several authorities entitled to lift the immunity. The Parliamentary Committee on Mandates and Immunities which consists of the representatives of all political parties represented in the Parliament, is authorised to prepare an opinion on lifting the immunity for the Members of Parliament (the final decision is in the hands of the Parliament). The GET was told that before 2000 as a rule the immunity of Members of Parliament had never been lifted. This practice changed dramatically in 2001 and the GET was told that the Committee is now decided to honour all the requests for lifting of immunity (except some regarding slander and libel). In its entire existence the Committee has lifted immunity in 5 cases and those cases were usually connected to economic crime. However, the Chairperson of the Committee informed the GET, that there have been, up to now, no requests for the lifting of the immunity in a corruption-related case.

132. The competent authority to lift immunity for members of the Government is the Government itself; the Constitutional Court decides upon lifting of the immunity of the President of the Republic; the State Judicial Council decides upon lifting the immunity of judges, prosecutors and members of the Council. Justices of the Constitutional Court enjoy the same immunity as Members of Parliament. The GET did not receive information about the number of cases where immunity had been lifted for the mentioned categories.

III. ANALYSIS

a. General policy on corruption, risks and threats assessment

133. Corruption is a real problem in the Republic of Croatia. Most governmental and nongovernmental bodies and institutions that the GET met during the visit appeared well aware of the acute nature of this problem. In a young transitional state that was additionally struck by war between 1991 and 1995, during which one third of the Croatian territory was not under the effective control of the Government, corruption seems to spread to all spheres of social life. The GET noted that State authorities and the civil society in Croatia have, especially during the recent two years, granted high priority to this problem. The GET considered that in many aspects the efforts undertaken by Croatia to counter corruption in the last two years are encouraging, especially those connected with the adoption of the National Programme and Action Plan, the Law on USKOK, the amendments to the Criminal Code and the Code of Criminal Procedure, accession to international legal instruments relevant to the fight against corruption, promotion of a stronger involvement of the civil society, establishment of the Departments for Economic Crime and Corruption within the Police, and the reorganisation underway of other important public services (such as Tax and Custom Services).

134. Despite these positive trends the GET noted, however, that the actual implementation of existing laws and interagency cooperation is still relatively weak. In addition, some of the reforms aimed at increasing the efficiency of the administration of criminal justice (especially court proceedings) and in ensuring a higher transparency of political life (like financing of political parties) and preventing conflicts of public and private interests are not always progressing with satisfactory speed.

135. To a large extent, the Croatian economy has completed the process of privatisation (the process of transforming the state- and publicly-owned property). This process seemed to be accompanied by many corrupt practices; indeed, almost all institutions participating in the evaluation expressed their belief that privatisation is the sector where the worst anomalies occur. It is estimated that this, in addition to the four-year war, is the main reason why Croatia is presently in an acute socio-economic crisis indicated by a 22% unemployment rate, 100,000 workers who have not received their wages for several months, and a large number of bankrupt companies. In 2001 the Croatian Parliament authorised the State Audit Office to inspect the legality of the past privatisation processes. While important for a number of reasons, from the perspective of the criminal prosecution, this process is less interesting, since by the time the SAO finishes this work, the prosecution of most offences will be precluded by the statutes of limitation. The GET, however, noted that part of the privatisation process is still underway in key industries, such as energy, the banking and real estate sectors and presents a possible risk of corruption.

136. In spite of the corruption problem reported by different surveys and acknowledged by most representatives of the State and the Civil Society, the GET was struck by a relatively small number of detected corruption offences and of an even smaller number of convictions. A number of possible explanations were provided to GET on this point:

- inflexible provisions in substantive and procedural criminal legislation;
- priority given to the less serious cases, which can be easily solved, due to the overburdened judicial system;
- law enforcement and judicial systems are from the structural, financial, professional, and human resources perspective still inappropriately organised for effective detection and prosecution of the most serious criminal offences of economic crime and corruption;
- weaknesses in the quality of work results of all bodies involved in the criminal proceedings;
- corruption within the bodies of the criminal justice system prevents corruption offences from being detected, prosecuted and tried.

137. The GET during its visit to Croatia actually ascertained most of the above-mentioned possible reasons for the current situation, except for the last one, since the GET saw no evidence to suggest that corruption is widespread among different actors involved in the criminal justice system. Also, the governmental and most non-governmental organizations agreed that corruption is actually not, or at least not to a considerable extent, the main reason for the relative inefficiency of the police and the judiciary. Considering all available information, it seems to the GET that the implementation of the anti-corruption legislation is relatively ineffective (or at least has been in the period presented by the statistical data). The difference between the official statistics on detected cases and the low number of cases leading to prosecution and conviction could, in the GET's opinion, signify a lack of control/monitoring systems of all actors in the chain of justice and ineffective implementation of the existing legal framework, rather than the need for a stronger reform of the basic legislation.

138. The extensive media coverage of corruption cases and the lack of ensuing prosecutions might have contributed to a perception in the public that this phenomena is more widespread than it actually is (a notion shared by some of the officials that the GET met), but it might also reinforce the preliminary observation of the GET regarding the lack of effectiveness in implementing existing legislation.

139. The GET recalls that any attempt to evaluate the effectiveness of the law enforcement and judicial mechanisms' ability to react to the phenomena of corruption assumes the existence of

detailed and harmonised statistic in the field of police, prosecutor service and courts and therefore the GET recommended to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption related offences in all spheres of the Police, Public Prosecutor's Offices, and the Courts on the basis of harmonised methodology, which would enable comparisons among institutions. Moreover, the GET recommended to the Croatian authority to seek to obtain more precise information about the scale of corruption in the country, by conducting relevant research in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and customs services, education and health system.

140. While the GET welcomed the adoption of the detailed and well designed National Anti-Corruption Programme and Action Plan, the GET noted that so far no monitoring mechanisms for its implementation have been set yet. Thus, the GET recommended to the Croatian authorities that further steps be taken to ensure the implementation of the Programme and Action Plan and the continuous monitoring of the implementation of existing legislation in the anti-corruption area. For these purposes, one of the possibilities could be to establish a cross-cutting monitoring Commission (possibly linked to the Parliament, and comprising representatives of the various governmental bodies – including USKOK, civil society and the business community). This commission could also be in charge of the continuous adaptation of the Programme and Action Plan to the progress achieved and/or new problems arising in Croatia.

141. As regard to the criminalization of corruption offences the GET was pleased to find that the recent changes in the Criminal Code expanded the definition of the public official to enable prosecution of corruption with a foreign element (corruption of foreign public officials.) The GET observed, however, that most prescribed punishments and statute of limitation for corruption offences are surprisingly low given the seriousness of the problem in the country, the present lenient sentencing policy as well as the complexity of anti-corruption investigations and the courts' overwhelming case load (and subsequent delays in court proceedings) and therefore recommended to the authorities the increasing of prescribed punishments (and also extending the statute of limitations) for serious types of corruption and corruption-related offences.

142. An important gap increasing the risk of corruption and having a negative impact on the transparency and credibility of high ranked public officials noted by the GET during its visit, is the absence of the efficient prevention of conflicts of interest. Although the current Law on the Rights and Obligations of Civil Servants provides for an obligation for the declaration of assets of certain categories of public officials the GET was told that these provisions are not enforced in practice, due to the fact that no sanctions are provided. The draft Law on the Prevention of Conflicts of Interest in Public Service (initiated and by the Croatian TI national chapter) is undergoing the final stages of the parliamentary procedure. However the GET was informed that it is facing considerable political resistance. A similar worrying fact noted by the GET is that the financing of political parties is only vaguely regulated (in the Law on Political Parties). Accordingly the GET recommended to Croatia that the adoption of the Law on the Prevention of Conflicts of Interest in Public Service as well as the adoption of a General Code of Conduct for Public Officials should be of a high priority for Croatia, and that a special body (or bodies) should be designated to ensure the efficient implementation of obligations prescribed by those documents.

b. Institutions, bodies and services dealing with the prevention, investigation, prosecution and adjudication of corruption offences

b1. Police, Public Prosecutors and the Judiciary

143. The GET observed during the visit a high level of commitment from the law enforcement and prosecutor's community which accompanied the setting up of the USKOK. It is indeed an important step towards more efficient detection and investigation of corruption and organised crime. However, the actual implementation of the provisions of the Law on USKOK and training of its employees remains a great challenge and GET noted that it might still take some time before the USKOK is consolidated and fully operational. Therefore the GET recommended:

- that particular efforts be undertaken in the following months to implement the Law on USKOK;
- that the USKOK's strategic, preventive, coordinating and monitoring functions should not be sidelined in the interest of its primarily law enforcement and prosecutorial activities;
- that the relevant state bodies as well as the civil society should make particular efforts to ensure its implementation with due respect of human rights (given the relatively broad powers of law enforcement bodies and public prosecutors together with the specialised court proceedings newly introduced by the Law on USKOK).

144. The Law on USKOK addresses a number of shortcomings in inter-agency co-operation and distribution of competencies among different actors in the chain of criminal justice. The GET welcomed the adoption of measures which are likely to significantly strengthen the independence and capacity of relevant authorities to effectively tackle corruption:

- police authorities are obliged to inform the USKOK directly and without delay of any case that could fall under its jurisdiction;
- the USKOK has the power to order (e.g. to different departments within the Ministry of Finance such as tax, custom, ...) and coordinate complex financial investigations;
- the law has significantly expanded the possibility for the security measures for seizure and confiscation of proceeds from crime;
- the possibility of the use of special investigative means has been expanded;
- additional measures to ensure the confidentiality of the investigation and pre-trial proceedings have been introduced;
- statements of witnesses and suspects given to the police or prosecutors in the pre-trial stage can be used as evidence in court (which is not the case in regular criminal proceedings);
- special procedures for the collaborators with justice (crown witnesses) have been introduced;
- apart from the police officers who work directly with the USKOK, the police authority is obliged to form additional special expert teams, if so required by the Head of the USKOK (those teams shall work on a specific case under the direct supervision of the USKOK's prosecutors);
- cases under the USKOK jurisdiction will be granted priority in court proceedings;
- judicial investigation of cases under the USKOK jurisdiction will be conducted exclusively by specially designated investigative judges in one of the four largest County Courts;
- cases under the USKOK jurisdiction will be tried by special panels consisting of three professional judges (and not in mixed panels of professional and lay-judges as is the case in other criminal proceedings).

145. All the above mentioned improvements in the Law on USKOK should in GET's opinion improve the specialisation, responsibility, personal engagement and direct cooperation of all the three institutions, especially in cases of the use of special investigative means, provisional measures for seizure of suspected proceeds from crime, and in cases which involve the protection of witnesses.

146. However, the GET observed that it would be crucial to create a similar regulation and atmosphere of cooperation in the pre-trial criminal procedure in general, not only with regard to USKOK cases. Especially, as a number of offences that are, according to the police classification and to the provisions of the National Programme against Corruption, listed as corruption offences, do not fall within the jurisdiction of the USKOK (see section b1 above). Therefore the GET recommended to strengthen the general competencies of the PPs to direct and supervise the work of the police in preliminary investigation stages and to undertake particular efforts to increase general cooperation between the police and prosecutors, e.g. by adapting the Code of Criminal Procedure or adopting a special internal regulation (such as the agreement between the Director General of the Police and the Public Prosecutor General) addressing this area.

147. The GET experts were pleased to learn that the first specialists in investigating corruption offences have been appointed within the police force. For the time being, they have been appointed in the four largest regional police administrations and in Criminal Police Administration on the national level. Thus, the need for specialisation is identified. However, in GET's opinion this only can be a beginning and will have to be adjusted to increase detection and investigation capacities (especially after the USKOK will become fully functional). In the light of the current situation in Croatia the criterion to define the number of specialists working on corruption should not be the past statistical data on the number of reported or discovered corruption offences. The police should consistently measure and monitor other corruption indicators, and accordingly allocate its human and financial resources.

148. While welcoming the first appointments of investigators specialized in corruption cases, the GET is concerned that installing responsibility for anti-corruption activities within the Economic Crime Department might result in corruption offences being lost among other forms of economic crime. In the GET's opinion, the current low number of specialised investigators and the fact that they do not constitute a separate department or sector, does not provide a potential for efficient investigations of complex cases of corruption. Therefore the GET recommended to consider setting up special departments or sectors exclusively responsible for tackling corruption related crime.

149. The Croatian Government has acknowledged that good collaboration between the police and the public prosecutor's office is of key importance for effective investigations, and has addressed this issue by setting up the USKOK. However, the GET observed that these important institutions (the police and the USKOK) do not have a common understanding of which offences should be treated as corruption offences. Presently, the police is monitoring 8 corruption offences, while USKOK has jurisdiction over 6 of which only 4 are in common with the police classification. In the GET's opinion, this discrepancy produces a danger of the sidelining of the detection and investigation of corruption related offences that do not fall under the jurisdiction of the USKOK.

150. The Law on USKOK requires declaration of assets and background security checks for the investigative judges which will work with the USKOK cases. The GET was informed that this rule has been challenged before the Constitutional Court due to its supposed discriminatory nature as it only applies to investigative, and not other, judges. While the GET cannot comment on this

matter, it expressed the view that such measures would have an important preventive effect, and would likely increase the credibility of the judicial bodies. In view of the current situation in Croatia the GET recommended that similar measures (under clear rules) are extended to all judges investigating and adjudicating USKOK cases and consider the introduction of a requirement for the declaration of assets for all prosecutors and all judges.

151. The GET was informed by the Office of the Ombudsman that a relatively large number of total complaints received by the Office is connected to the work of the courts. According to the Ombudsman, a high number of cases before the courts, relatively young and inexperienced judges and low salaries in the judicial sector represent a risk of corruption. In addition structures and methods of alternative (out-of-court) dispute resolution are not in place in Croatia. The GET noted with concern a large number of court cases (i.e. 1.2 million unresolved cases) resulting in delays in the administration of criminal justice, a negative impact on the trust of the public in the judicial system and, moreover, which indicate that a significant number of cases (criminal cases included) will be subject to dismissal because of the expiry of statutes of limitation. While this is a common problem faced by many European countries, the GET did not receive information during the visit about the existence of a comprehensive strategy in Croatia to address this issue. The GET therefore recommended to Croatia to improve the system for supervision of Court management and judicial disciplinary proceedings with due regard to the need of independence of the Judiciary; and in particular to design and implement a national plan in cooperation with all the stakeholders to address the problem of the overburdening of courts.

b2. Sources of information

152. While the GET acknowledged that the Croatian legal system provides for measures for the protection of vulnerable witnesses and for significant incentives for collaborators of justice, it seems that in practice the protection of sources of information in corruption cases remains unsatisfactory. The GET learned about a recent disturbing case involving a public employee who tried to submit to the PP documents indicating abuse of powers by high-ranking officials and was caught in doing so and later subjected to disciplinary proceedings. In addition, the GET was informed about cases when witnesses – civil servants – have withdrawn their testimonies after being threatened with the loss of their jobs. Such information, in GET's opinion, indicates a serious lack of protection of whistleblowers, which calls for immediate attention. Therefore, the GET recommends that the Government undertake measures for the protection of employees in State institutions and other legal entities against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting legislation or regulations on the protection of "whistleblowers" and to launch an appropriate campaign to raise the awareness of those measures among civil servants.

153. During the visit, the GET was informed that the Service for the Protection of Constitutional Order is involved in the initial technical stages of the surveillance and interception of telephone conversations and means of remote technical communication, even for the purposes of criminal proceedings. For a number of reasons, including the effectiveness of investigation, dangers of misuse and the fact that the USKOK has no direct powers over the Service, the GET recommended that the police should in the future obtain the technical means and expertise which would ensure that interception of telecommunications for the purposes of criminal investigation is fully conducted by a public law enforcement agency.

154. The GET also noted that the CPC, while providing for a set of special investigative means, does not allows the application of these measures for all serious corruption offences. The list of

criminal offences for which the special investigative means can be used is includes only three corruption offences (accepting and giving a bribe, and abuse in performing governmental duties). In addition, the law allows only for the measure of simulating the giving, but not the acceptance, of a bribe. In the GET's opinion such limitations significantly restrict the police's pro-active abilities to tackle certain types of corruption offences and the GET recommended that the legal possibilities for the use of relevant special investigative means is extended to all serious corruption and corruption related offences.

b3. Other institutions involved in the fight against corruption

155. The GET acknowledged the Transparency International National Chapter's significant contribution to the anti-corruption efforts in Croatia. Among others, they initiated the National Programme and Action Plan against Corruption and the drafting of the Law on the Conflict of Interests. They seem to be the focal point within civil society for raising awareness of corruption and fighting for transparency and accountability of governmental bodies.

156. The GET also welcomed a high involvement of Trade Unions in the fight against corruption. The Croatian Independent Union, met by the GET, is actively involved in the anti-corruption strategy and has made an important contribution to public awareness of the dangers of corruption. The GET also noted the concern of the Trade Unions with regard to the lack of protection of whistleblowers. On the other hand the GET was, slightly surprised by the lack of awareness and initiative in the anti-corruption field from the side of the Chamber of Commerce which represents a reliable source of information on all business in Croatia, as well as on their international partners and has the ability to contribute to anti-corruption awareness within the business community. The GET was told that they were not involved in the anti-corruption programme or any other activities in this field.

157. According to the information provided by the Public Prosecutor's Office tax and custom authorities, as well as different inspection services very seldom report corruption offences. In addition, the police seems to be the only service that detects internal corruption and reports on it. This, in GET's opinion, indicates a lack of internal control mechanisms in other services where the risk of corruption usually exists (tax and custom departments, inspection services, etc.). The structure of reported offenders follows this assumption (94 police officers, 19 customs officers, 2 financial police officers and a very low number of other public officials). The GET, in addition, observed the disparity in the ratio of reported offences and subsequent convictions when police or customs officers are involved on one hand, and when offences are perpetrated by other persons, on the other hand. For instance, the number of reported corruption offences of customs officers was 19, but only 13 of them were accused and only 2 of them were convicted; the number of reported police officers was 94, of whom 69 were accused, but only 19 convicted.

158. Accordingly and with the view that most above mentioned services are currently undergoing complex reorganisation the GET recommended to the Government to strengthen the internal control mechanisms and capacities within ministerial structures (especially within the Ministry of the Interior and the Ministry of Finance with all its departments, in particular the Tax and Custom Administrations) by finalising the reorganisation of Internal Control Departments, providing them with proper independence and competencies to investigate corruption practices inside their organisations, adopting preventive measures and programs against internal corruption, adopting Codes of Ethics for particular services and by ensuring that those departments have open channels of communication and cooperation with the USKOK.

159. Finally the GET recalled the importance of the continuous specialised training on anti-corruption measures of all actors involved in the prevention and repression of corruption. The GET noted that the Ministry of Justice has in year 2001 established a Centre for the Training of Judges and other Justice Officials, which could also serve as an important forum for anti-corruption training. First efforts to introduce anti-corruption training have already been undertaken by the police, but no such training programs have yet been developed or conducted for the prosecutors, judges and other relevant authorities. Therefore the GET recommended to the authorities to provide proper and continuous training on corruption for police officers, employees of other law enforcement institutions (such as tax, custom and inspection services), public prosecutors and judges.

c. Immunities

160. The GET considered that the current circle of beneficiaries in Croatia, while being relatively broad, especially in regard to the so-called procedural immunity (see section c. in the previous chapter), still falls within the scope of guiding principle 6.

161. However, the GET was of the opinion that the precondition of a penalty of more than 5 years' imprisonment to detain a beneficiary of immunity without prior approval of the competent body is rather high. Especially in the light of the fact that none of the corruption offences fall into this category. Since the 5 years threshold is prescribed by the Constitution and therefore cannot be easily changed the solution would be the increase of punishment for corruption and corruption-related offences which the GET recommended above.

162. The GET also observed another gap, that is the absence of detailed rules or guidelines for the competent bodies who decide on whether or not to lift the immunity in a specific case. Those would, in GET's opinion, be a useful tool to prevent the possible political misuse of the institute of immunity. Such guidelines should recall that, as a rule, immunity should be an exception rather than a rule, and should not be maintained if there is a probable cause that the suspect used his/her official position to gain an undue advantage, or to commit passive bribery. The GET felt especially concerned by the lack of guidelines regarding the lifting of immunity of Members of Parliament and Government. Rules of procedure containing criteria for the Committee on Mandates and Immunities would – in GET's opinion – make the procedure more transparent and ensure that the procedural immunity would be used exclusively in accordance with it purpose. Accordingly the GET recommended to Croatia to adopt clear and transparent rules for the lifting of immunity, especially with regard to Members of Parliament and Government.

163. The GET also noted that there are still some legal uncertainties regarding the scope and duration of immunities of former members of Government in Croatia. The GET considers that immunity for former members of government is incompatible with guiding principle 6.

IV. CONCLUSIONS

164. Croatia has, especially in the past two years invested considerable efforts to open its economic system and to reform State institutions. It is also evident that in recent years Croatia has invested outstanding efforts in anticorruption measures and their introduction in the legislation and practice is accompanied by a growingly effective and constructively critical civil society. Perhaps the most important steps are the adoption of the National Programme and Action Plan for Fighting Corruption and the Law on USKOK. It still remains to be seen how these documents will be implemented in practice.

165. In most countries in transition, legislative turnover is high, as is the reorganisation of different State institutions. This is particularly true of Croatia, where the new round of reforms began only two years ago after the significant change in the political and constitutional systems. The problems of actual implementation of existing legal provisions – due in part to the lack of experienced, trained and specialized staff – remain a major challenge.

166. The GET noticed that some State institutions (presently undergoing complex reorganisation) responsible for areas where the risk of corruption is usually high, still do not have the proper capacities, programmes and (in some cases) awareness, to address the phenomena of corruption. The same applies to the current public procurement system, an area which should be significantly improved by the adoption of the new Public Procurements Act.

167. Finally, the GET was concerned about gaps in the areas of prevention of conflicts of public and private interests and the financing of political parties. The adoption and strict observance of the new legislation in these two areas is of crucial importance for reducing the risk of corruption and enhancing the credibility of senior public officials and political parties.

168. In view of the above, the GRECO recommends to the Republic of Croatia:

i. to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption related offences in all spheres of the Police, Public Prosecutor's Offices, and the Courts on the basis of harmonised methodology, which would enable comparisons among institutions;

ii. to seek to obtain more precise information about the scale of corruption in the country, by conducting relevant research in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and customs services, education and health system;

iii. to take further steps to ensure the implementation of the Programme and Action Plan and the continuous monitoring of the implementation of existing legislation in the anti-corruption area. For these purposes, one of the possibilities could be to establish a cross-cutting monitoring Commission (possibly linked to the Parliament, and comprising representatives of the various governmental bodies – including USKOK, civil society and the business community). This commission could also be in charge of the continuous adaptation of the Programme and Action Plan to the progress achieved and/or new problems arising in Croatia;

iv. to increase prescribed punishments (and also extend the statute of limitations) for serious types of corruption and corruption-related offences;

v. that the adoption of the Law on the Prevention of Conflicts of Interest in Public Service as well as the adoption of a General Code of Conduct for Public Officials should be of a high priority for Croatia, and that a special body (or bodies) should be designated to ensure the efficient implementation of obligations prescribed by those documents;

vi. - that particular efforts be undertaken in the following months to implement the Law on USKOK,

- that the USKOK's strategic, preventive, coordinating and monitoring functions should not be sidelined in the interest of its primarily law enforcement and prosecutorial activities,
- that the relevant state bodies as well as the civil society should make particular efforts to ensure its implementation with due respect of human rights (given the relatively broad powers of law enforcement bodies and public prosecutors together with the specialised court proceedings newly introduced by the Law on USKOK);

vii. to strengthen the general competencies of the public prosecutors to direct and supervise the work of the police in preliminary investigation stages and to undertake particular efforts to increase general cooperation between the police and prosecutors, e.g. by adapting the Code of Criminal Procedure or adopting a special internal regulation (such as the agreement between the Director General of the Police and the Public Prosecutor General) addressing this area;

viii. to consider setting up special departments or sectors exclusively responsible for tackling corruption related crime;

ix. that declaration of assets and background security checks be extended to all judges investigating and adjudicating USKOK cases and that the introduction of a requirement for the declaration of assets for all prosecutors and all judges be considered;

x. to improve the system for supervision of Court management and judicial disciplinary proceedings with due regard to the need of independence of the Judiciary; and in particular to design and implement a national plan in cooperation with all the stakeholders to address the problem of the overburdening of courts;

xi. that the Government undertake measures for the protection of employees in State institutions and other legal entities against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting legislation or regulations on the protection of "whistleblowers" and to launch an appropriate campaign to raise the awareness of those measures among civil servants;

xii. that the police should in the future obtain the technical means and expertise which would ensure that interception of telecommunications for the purposes of criminal investigation is fully conducted by a public law enforcement agency;

xiii. that the legal possibilities for the use of relevant special investigative means is extended to all serious corruption and corruption related offences;

xiv. to strengthen the internal control mechanisms and capacities within ministerial structures (especially within the Ministry of the Interior and the Ministry of Finance with all its departments, in particular the Tax and Custom Administrations) by finalising the reorganisation of Internal Control Departments, providing them with proper independence and competencies to investigate corruption practices inside their organisations, adopting preventive measures and programs against internal corruption, adopting Codes of Ethics for particular services and by ensuring that those departments have open channels of communication and cooperation with the USKOK;

xv. to provide proper and continuous training on corruption for police officers, employees of other law enforcement institutions (such as tax, custom and inspection services), public prosecutors and judges;

xvi. to adopt clear and transparent rules for the lifting of immunity, especially with regard to Members of Parliament and Government.

169. Moreover, the GRECO invites the authorities of the Republic of Croatia to take account of the observations made by the experts in the analytical part of this report.

170. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of the Republic of Croatia to present a report on the implementation of the above-mentioned recommendations before 31 December 2003.

APPENDIX I
Criminal Code of Croatia

Chapter Twenty-One
CRIMINAL OFFENCES AGAINST THE SAFETY OF PAYMENT AND BUSINESS OPERATIONS

Money Laundering:
Article 279

1) Whoever, in banking, financial and economic operations, invests, takes over, exchanges or otherwise conceals the true source of money, objects or rights procured by money which he knows to be acquired by a criminal offence for which imprisonment for five years can be imposed, or by a criminal offence committed as a member of a group or criminal organisation, shall be punished by imprisonment for six months to five years.

2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever acquires, possesses or brings into circulation for himself or for another the money, objects or rights referred to in paragraph 1 of this Article, although at the moment of acquisition he knew the origin of such.

3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 of this Article as a member of a group or a criminal organisation shall be punished by imprisonment for one to ten years.

4) Whoever, committing the criminal offence referred to in paragraphs 1 and 2 of this Article, acts negligently regarding the fact that the money, objects or rights are acquired by the criminal offence referred to in paragraph 1 of this Article shall be punished by imprisonment for three months to three years.

5) If the money, objects or rights referred to in paragraphs 1, 2 and 4 of this Article are acquired by a criminal offence committed in a foreign state, such an offence shall be evaluated pursuant to the provisions of the Croatian criminal legislation taking into consideration the provisions of Article 16, paragraphs 2 and 3 of this Code.

6) The money and objects referred to in paragraphs 1, 2 and 4 of this Article shall be forfeited with the rights referred to in paragraphs 1, 2 and 4 shall be pronounced void.

7) The court may remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1, 2, 3 and 4 of this Article who voluntarily contributes to the discovery of such a criminal offence.

Misuse of Bankruptcy
Article 282

1) Whoever, with knowledge of his own indebtedness or insolvency, stops collecting his claims with an aim to diminish the future bankruptcy estate, spends excessively, gives away property considerably below its value, assumes unreasonable liability, recklessly takes or gives loans, does business with an insolvent person, omits to collect his claim on time, or in some other way which is in obvious contrariety to the requirements of the proper conduct of business decreases his assets, shall be punished by imprisonment for six months to five years.

2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on a responsible person in a legal entity who commits the criminal offence specified in paragraph 1 of this Article.

3) Whoever commits a criminal offence referred to in paragraphs 1 and 2 of this Article by negligence shall be punished by a fine or by imprisonment not exceeding three years.

Abuse of Authority in Economic Business Operations
Article 292

1) A responsible person in a legal entity who, with an aim to acquire unlawful pecuniary gain for his own legal entity or any other legal entity,

- creates or keeps illicit funds with the country or in a foreign state,

- falsely presents the position and flow of funds and the success of business operations by drawing up deeds of untrue content, false balances, estimates or stock inventories, or other types of false representation or concealment of facts,
- puts the legal entity in a more favourable position when obtaining funds or other favours which would not be conceded to the legal entity pursuant to the existing regulations,
- in fulfilling obligations towards budgets and funds, withholds funds due to these,
- uses earmarked funds entrusted to him contrary to their purpose,
- in some other way seriously violates the law or rules of business operations regarding the use and management of property,
- shall be punished by imprisonment for six months to five years.

2) If, by the criminal offence referred to in paragraph 1 of this Article, considerable pecuniary gain is acquired while the perpetrator acts with intent to acquire such gain, he shall be punished by imprisonment for one to eight years.

Fraud in Economic Operations
Article 293

1) Whoever, as a representative or agent of a legal entity, with an aim to acquire unlawful pecuniary gain for this or another legal entity, by use of uncollectible payment orders, uncovered checks, or who otherwise misleads another or keeps such a person in mistaken belief, inducing him to the detriment of his own property or the property of another to do or not to do something, shall be punished by imprisonment for six months to five years.

2) If, by the perpetration of the criminal offence referred to in paragraph 1 of this Article, considerable pecuniary gain is acquired or considerable damage is caused while the perpetrator acts with an aim to acquire such gain or to cause such damage, he shall be punished by imprisonment for one to eight years.

Concluding a Prejudicial Contract
Article 294

1) Whoever, as a representative or an agent of a legal entity in which he does not hold a majority interest, concludes a contract which he knows to be prejudicial to the legal entity, or concludes a contract contrary to the authority given to him, causing thereby damage to the legal entity, shall be punished by imprisonment for six months to five years.

2) If the perpetrator of the criminal offence referred to in paragraph 1 of this Article accepts a bribe for so acting, he shall be punished by imprisonment for one to ten years.

Disclosure and Unauthorized Procurement of a Business Secret
Article 295

1) Whoever, without authorisation, communicates, delivers or in some other way makes accessible to another data which are a business secret, or whoever collects such data with an aim to deliver them to an unauthorised person, shall be punished by imprisonment for one to five years.

2) If data which are a business secret are disclosed or acquired with a view to transmitting them abroad, or if the perpetrator accepts a bribe for so acting, he shall be punished by imprisonment for one to ten years.

3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 by negligence shall be punished by imprisonment not exceeding two years.

Chapter Twenty-Five
CRIMINAL OFFENCES AGAINST OFFICIAL DUTY

Abuse of Office and Official Authority
Article 337

1) An official or responsible person who, with an aim to procure for himself or another non-pecuniary benefit, or to cause damage to a third person, abuses his office or official authority, oversteps the limits of his official authority, or fails to perform his duty, shall be punished by a fine or by imprisonment not exceeding three years.

2) If the criminal offence referred to in paragraph 1 of this Article results in considerable damage or a serious violation of the rights of a third person, the perpetrator shall be punished by imprisonment for three to five years;

3) If pecuniary gain is acquired by the criminal offence referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for six months to five years.

4) If pecuniary gain is acquired by the criminal offence referred to in paragraph 1 of this Article, and if the perpetrator acts with an aim to acquire such gain, the perpetrator shall be punished by imprisonment for one to ten years.

Abuse in Performing Government Duties
Article 338

An official or responsible person in government bodies or units of local self-government and administration, units of local self-government or bodies which perform public services, or an official or responsible person in legal entities whose owner or majority owner is the Republic of Croatia or a unit of local self-government and administration who, for the purpose of acquiring pecuniary gain in his private business or the private business of members of his family, abuses his office or official authority by giving preferential treatment in contracting business, giving, obtaining or contracting jobs, shall be punished by imprisonment for six months to five years.

Negligent Performance of Duty
Article 339

An official or responsible person, who, by violating laws or other regulations, by failing to perform mandatory supervision or in any other way acts in a clearly unconscious manner in the performance of his duty, thus causing a serious violation of the rights of a third person or considerable property damage, shall be punished by a fine or by imprisonment not exceeding three years.

Illegal Intercession
Article 343

1) Whoever accepts a reward or any other benefit to intercede so that an official act be or not be performed, by taking advantage of his official or social position or influence, shall be punished by imprisonment for six months to three years.

2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever, taking advantage of his official or social position or influence, intercedes so that an official act be performed which ought not to be performed, or so that an official act be not performed which ought to be performed.

3) If, for the intercession referred to in paragraph 2 of this Article, a reward or some other benefit is received, while some other criminal offence is not committed for which a more severe punishment is prescribed, the perpetrator shall be punished by imprisonment for one to five years.

Fraud in the Performance of a Duty
Article 344

1) An official or responsible person who, in the performance of his duty, with an aim to procure for himself or a third party unlawful pecuniary gain by submitting a false statement of account, or in some other way, by a false presentation of facts, deceives an authorised person into making an illegal disbursement, shall be punished by imprisonment for three months to three years.

2) If, as a result of the criminal offence referred to in paragraph 1 of this Article, considerable pecuniary gain is acquired, while the perpetrator acts with an aim to realise such gain, the perpetrator shall be punished by imprisonment for six months to five years.

Embezzlement
Article 345

1) Whoever unlawfully appropriates money, securities or other movable property which is entrusted to him in service or generally in his work shall be punished by imprisonment for six months to five years.

2) If the value of the embezzled property is small, or if a small sum of money or securities or property of small value is embezzled, while the perpetrator acts with an aim to appropriate such value, he shall be punished by a fine or by imprisonment not exceeding one year.

3) If a large sum of money is embezzled or securities or property of large value are embezzled, while the perpetrator acts with an aim to appropriate such value, he shall be punished by imprisonment for one to ten years.

Accepting a bribe
Article 347

1) An official or responsible person who solicits or accepts a gift or some other benefit, or who agrees to accept a gift or some other benefit for performing within the scope of his authority an official or other act which he should not perform, or for omitting an official or other act which he should perform, shall be punished by imprisonment for six months to five years.

2) An official or responsible person who solicits or accepts a gift or some other benefit, or who agrees to accept a gift or some other benefit for performing within the scope of his authority an official or other act which he should perform, or omitting an official or other act which he should not perform, shall be punished by imprisonment for three months to three years.

3) An official or responsible person who, following the performance or omission of an official or other act referred to in paragraphs 1 and 2 of this Article, and in relation to which he solicits and accepts a gift or some other benefit, shall be punished by a fine or by imprisonment not exceeding one year.

4) The gift or other pecuniary gain received shall be forfeited.

Offering a Bribe
Article 348

1) Whoever confers or promises to confer a gift or other benefit upon an official or responsible person so that he performs within the scope of his official authority an official or other act which he should not perform, or omits an official or other act which he should perform, or whoever intermediates in so bribing an official or responsible person, shall be punished by imprisonment for three months to three years.

2) Whoever confers or promises to confer a gift or other benefit upon an official or responsible person so that he performs within the scope of his official authority an official or other act which he should perform, or omits an official or other act which he should not perform, or whoever intermediates in so bribing an official or responsible person, shall be punished by a fine or imprisonment not exceeding one year.

3) The court shall remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1 and 2 of this Article, provided that he gives the bribe on the request of an official or responsible person and upon giving the bribe reports the offence before it is discovered or before he realises that the offence has been discovered.

4) The gift or the pecuniary gain given under the circumstances referred to in paragraph 3 of this Article shall be restored to the person who gave a bribe.

Disclosure of an Official Secret
Article 351

1) Whoever, without authorisation, communicates, conveys or otherwise renders accessible to another data which are an official secret or provides such data with an aim to convey them to an unauthorised person, shall be punished by imprisonment for three months to three years.

2) If the criminal offences referred to in paragraph 1 of this Article is committed for personal gain, or if the data referred to in paragraph 1 of this paragraph are classified, or if the offence is committed in order to publish or use abroad data which are an official secret, the perpetrator shall be punished by imprisonment for one to ten years.

3) If the criminal offence referred to in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment not exceeding one year.