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Corruption prevention in respect of members of
parliament, judges and prosecutors

EVALUATION REPORT

CROATIA

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EXECUTIVE SUMMARY

1. On 1 July 2013, Croatia joined the European Union. In the run-up to accession, Croatia made significant efforts to adapt and step up its legislative and institutional frameworks to meet those of its EU counterparts. It is now time to absorb the changes, as well as to effectively embed them in working practices and culture. On the anticorruption front, a dedicated Strategy and Action Plan has been in place since 2008 and continues to be updated and monitored – through joint oversight by Government, Parliament and civil society organisations – on a regular basis. The establishment of the Office for the Suppression of Corruption and Organised Crime (USKOK), in 2001, constitutes a key milestone of the process, which has led to an increasing number of successful prosecutions and asset confiscations, including some of a high political profile.

2. Despite the many encouraging steps taken, and the attention paid to public involvement and scrutiny in the pace of reform, Croatian citizens perceive corruption to be a major problem. This negative perception is particularly troublesome with respect to the judiciary and politicians. The notion of conflict of interest is not always well understood as there is a tendency to associate it with incriminating behaviour. Moreover, there have been some conflict of interest instances which were not, in citizens' eyes, satisfactorily resolved. The Commission for the Prevention of Conflicts of Interest has an important role to play in providing tailored guidance and advice on the applicable rules and the rationale behind them, as well as in promoting self-governance and compliance within distinct areas of public service.

3. Regarding members of the Croatian Parliament (*Sabor*), measures have been introduced to enhance the transparency of their work and public participation in the legislative process. A culture of prevention and avoidance of possible conflicts of interest needs to be fully rooted in the *Sabor*: a code of ethics must be adopted and internal mechanisms for self-control and responsibility must be articulated in-house. Since most of the scandals affecting the *Sabor* have been detected for MPs who were also mayors (and the corrupt deals had taken place in relation to the local mandate), special attention would need to be devoted to integrity matters that may emerge when developing this dual function. Safeguarding an ethical culture in Parliament is crucial for winning citizens' trust in the institution. Completing the ethics infrastructure in Parliament requires continued attention and full adherence to the concepts of political accountability and zero tolerance to corruption. The more attention that is paid to prevention, the less enforcement may be needed in the long run.

4. Judicial reform has substantially improved judicial independence and efficiency. The resolution of the extensive backlog of cases remains an important challenge, particularly given that the economic crisis has triggered an increase in their number (e.g. bankruptcy proceedings). Systematic research on the reasons for public mistrust in the judiciary is lacking although there is no evidence of structural corruption in the system. It is important to identify the roots of this perception gap and to develop targeted measures to tackle it thereafter. This also requires the development, in parallel, of a targeted communication policy, which reflects on the important reforms already introduced and those in the pipeline. The available mechanisms to preserve the independence of the judiciary, not only in law, but also in practice when confronted with political, non-evidence based defamation instances could also be stepped up. Lastly, while both judges and prosecutors have their own codes of ethics and are subject to financial disclosure, there is still room for improvement of the relevant counselling and accountability mechanisms of judges and prosecutors which would make unethical behaviour better to prevent, harder to commit and easier to detect and could ultimately recast public confidence in justice.

I. INTRODUCTION AND METHODOLOGY

5. Croatia joined GRECO in 2000. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in May 2002), Second (in December 2005) and Third (in December 2009) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

6. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

7. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

8. As regards parliamentary assemblies, the evaluation focuses on members of national parliaments, including all chambers of parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

9. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV Rep (2013) 7 REQUEST) by Croatia, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Croatia from 21 to 25 October 2013. The GET was composed of Mr Alastair BROWN, Judge in the Sheriff Court of Tayside, Central and Fife, Sheriff Court, Dundee (United Kingdom); Ms Anca JURMA, Chief Prosecutor, International Cooperation Service, National Anticorruption Directorate, Prosecutors' Office attached to the High Court of Cassation and Justice (Romania); Mr Kenneth KELLNER, Attorney-Advisor, Office of Legislative Affairs, US Department of Justice (United States of America) and Ms Marja TUOKILA, Counsel to the Legal Affairs Committee, Parliament (Finland). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat.

10. The GET held interviews with representatives of the Ministry of Justice, the Commission for the Prevention of Conflicts of Interest, the State Judicial Council, the State Prosecutorial Council, the Government Office for Cooperation with NGOs and the National Council for Monitoring the Implementation of the Anticorruption Strategy. Moreover, the GET held interviews with representatives of the Constitutional Court, judges and prosecutors of the various jurisdiction levels in Croatia (including the Office for the Suppression of Corruption and Organised Crime – USKOK), the Croatian Judges' Association, the Croatian Bar Association and the Judicial Academy. The GET also spoke with members of parliament and representatives of the Secretariat of the parliament as

well as representatives of the Croatian Society of Lobbyists. Finally, the GET met with NGO representatives (Transparency International, GONG, Partnership for Social Development), journalists and academia.

11. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Croatia in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Croatia, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Croatia shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

12. Over the past ten years, Croatia has made praiseworthy efforts in the fight against corruption. A key milestone was the establishment of the Office for the Suppression of Corruption and Organised Crime (USKOK) in 2001 – and the subsequent strengthening of its mandate later on – which has led to an increasing number of successful prosecutions and asset confiscations, including some of a high political profile. In this connection, the conviction of a former Prime Minister in 2012 has given further proof of the political will to deal with corruption. On 15 November 2012, the Minister of Justice announced that about 306 out of the 340 measures (90%) included in the Anticorruption Strategy and its 2008 and 2010 Action Plans had been carried out, and that plans were underway to update the aforementioned policy documents in 2013¹. In the ongoing 2012 Anticorruption Action Plan, Croatia has placed chief importance on transparency as a major tool to prevent corruption. Furthermore, a critical and remarkable strength of the Croatian anticorruption endeavours is the attention paid to public involvement and scrutiny in the pace of reform.

USKOK: Corruption cases statistics²

Year	2011	2012
Requests/orders for investigation	288	283
Indictments	196	286
Verdicts	163	272
Convictions	155	252

13. On 1 July 2013 Croatia joined the European Union. In its latest progress reports paving the way for accession, the European Union recognised the many steps taken by Croatia to meet the *acquis*, including by specifically acknowledging the good progress made in the fight against corruption. GRECO has also valued in former reports the achievements made by Croatia in the anticorruption arena with a compliance rate to date of about 95% (36 out of 38 of the recommendations issued by GRECO in its First, Second and Third Evaluation Rounds have been implemented satisfactorily or dealt with in a satisfactory manner)³.

14. Despite all these encouraging efforts, corruption is still considered to be prevalent in some vulnerable sectors, particularly at local level, and has reportedly occurred in major public companies, universities, public procurement processes and land registry offices⁴. Public perception of corruption in Croatia is also not so positive. According to the 2013 Eurobarometer Survey on Corruption, 94% of the Croatian respondents believe that

¹ The implementation of the Anticorruption Strategy and Action Plan is managed by the Independent Anticorruption Sector of the Ministry of Justice. A Committee for the Monitoring of the Implementation of the Anticorruption Measures was established in August 2012 to overview implementation of anticorruption activities in Croatia. It is composed of several ministries and State institutions (e.g. President of the Supreme Court, Prosecutor General, Auditor General, etc.). In addition, a special committee of Parliament, i.e. the National Council for Monitoring the Implementation of the Anticorruption Strategy (composed of members of parliament, as well as representatives of trade unions, NGOs, professional organisations, academics and media) serves as a forum to provide further oversight and discussion of anticorruption measures by different stakeholders. The Anticorruption Action Plan (as revised in 2012) is available at: http://www.anticorruption-croatia.org/component/docman/doc_download/112-action-plan-with-anti-corruption-strategy-2012.

² According to Article 21 of the Act on the Office for the Suppression of Corruption and Organised Crime (USKOK), the following corruption offences are under its competence: malpractice in a bankruptcy procedure, unfair completion in foreign trade operations, abuse in performing governmental duties, illegal intercession, active and passive bribery in the public sector, active and passive bribery in the private sector, abuse of office and official authority, if the offence was committed by an official person.

³ The Third Round Compliance process with respect to Croatia was closed, with all recommendations implemented satisfactorily, in December 2013.

⁴ 2013 Index of Economic Freedom, Croatia. The Heritage Foundation: <http://www.heritage.org/index/country/croatia>

corruption is widespread in the country⁵. Croatia ranked 57 in Transparency International Corruption Perceptions Index 2013. According to a 2011 report of the United Nations Office on Drugs and Crime (UNODC) on Corruption in Croatia⁶, Croatian citizens rank corruption as the third most important problem facing their country, after unemployment and the performance of government. Bribery prevalence rates were estimated at 11%, with more than half of such bribery incidents having been initiated by citizens themselves, rather than solicited by public officials, in order to speed up a procedure or to receive better treatment (with most bribes paid to doctors, nurses and police officers). Likewise, the latest survey by Ernst & Young shows that, in Croatia, 90% of respondents perceived bribery to be usual practice in business (the European average is 39%)⁷.

15. In terms of the focus of the Fourth Evaluation Round of GRECO, in the Eurobarometer on "Trust in Institutions", 82% of the respondents did not trust Parliament (latest figure May 2013) and 76% expressed mistrust of the judiciary (latest figure November 2010). The Global Corruption Barometer (2013) shows similar low confidence records: 63% of the respondents deem Parliament as corrupt and a slightly larger percentage, i.e. 70%, share the same perception vis-à-vis the judiciary.

16. The results of these international polls appear to be confirmed by a national survey carried out by the Ministry of Justice, in July 2012, prior to the review of the Anticorruption Plan in 2012. According to the results of that online survey, public opinion perceived corruption to be a major problem, particularly at local level, and among politicians and judges.

17. The more nuanced and somewhat less positive picture revealed by opinion polls, as outlined above, calls for continuing attention of the authorities to the phenomenon of corruption. Prevention is key in this respect. On the eve of EU accession, the European Commission urged the Croatian authorities to increase their efforts to establish a track record of substantial results in strengthening prevention measures⁸. Thus, Croatia needs to continue refining its anti-corruption mechanisms and measures to respond effectively to the evolving situation in the country. GRECO trusts that the recommendations issued in this report will further assist the authorities in achieving this.

⁵ Special Eurobarometer No. 397 - 2014 (http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf).

⁶ Corruption in Croatia: bribery as experienced by the population. UNODC (2011): http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Croatia_corruption_report_web_version.pdf

⁷ Ernst & Young's 2013 Europe, Middle East, India and Africa (EMEIA) Fraud Survey, *Navigating today's complex business risks*. The survey was conducted between November and December 2012 on a sample of 3,000 members of management boards, supervisory committees, CEOs and associates in 36 countries.

⁸ Communication from the Commission to the European Parliament and the Council, Monitoring Report in Croatia's Accession Preparations (COM(2013)0171) of 26 March 2013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0171:FIN:EN:PDF>

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

18. Croatia is a parliamentary republic with a multi-party system. The unicameral national parliament (*Hrvatski Sabor*) is elected on the basis of direct, universal and equal suffrage by secret ballot for a term of four years. The imperative mandate is prohibited by the Constitution (Article 75, Constitution). The closed and blocked list election system has led to high levels of party discipline in practice. The internal organisation and conduct of work of Parliament is articulated in its Standing Orders⁹.

19. The latest parliamentary elections were held in December 2011. Parliament is currently composed of 151 deputies. There are 36 women in Parliament (this represents a 23.84% ratio in Parliament's membership).

20. The mandate of an MP who performs incompatible offices enumerated by Article 9 of the 1999 Act on the Election of Representatives to Parliament (*inter alia*, high State positions, the offices of the mayor or the deputy mayor of Zagreb or of a member of a board of directors of a private company, institution or non-budget fund predominantly owned by Croatia) is suspended, and the mandate of an MP ceases if s/he is divested of legal capacity by a final court decision or if s/he is sentenced to an unconditional prison sentence of more than 6 months by a final court decision.

Transparency of the legislative process

21. Legislative provisions are in place to assure transparency of the legislative process; this matter is regulated in detail in the Standing Orders of Parliament (Articles 279-288) as well as the Rules on Public Access to Proceedings in the Croatian Parliament and its Working Bodies¹⁰. Meetings of the *Sabor* are invariably open to the public. Plenary meetings are audio and video recorded. Video recordings are available on the internet and there is dedicated TV coverage provided from 9.30 to 13.30 when in session. Technology is being developed to implement the legal requirement to provide for written transcripts (phonograms) of the relevant sessions. Information about how individual MPs vote is displayed at the time of voting on the screen of the chamber. Secret voting is conducted in election or appointment procedures when the number of candidates is greater than that of the posts to be filled.

22. Meetings of committees are, as a rule, open to the public, unless so decided by the relevant committee; even in that case, pursuant of a decision made by the said committee, a closed committee session may be attended by media correspondents. The composition of parliamentary committees is published on the *Sabor's* website.

23. Information on bills proposed, laws adopted and other parliamentary activity (e.g. speeches, MPs' questions and replies, overviews of matters subject to discussion and opinions expressed in that connection, etc.) is provided through the official bulletin and published on the *Sabor's* website (<http://www.sabor.hr/Default.aspx?sec=713>).

24. Further steps have been taken to open Parliament to citizens and civil society organisations through round tables and thematic discussions on the *Sabor* premises, by establishing public information officers, and by resorting more often to external expertise in the work of parliamentary committees.

⁹ Standing Orders of the Croatian Parliament: <http://www.sabor.hr/Default.aspx?art=2430>

¹⁰ Rules on Public Access to Proceedings in the Croatian Parliament and its Working Bodies: <http://www.sabor.hr/Default.aspx?art=2511&sec=734&dm=2>

25. Moreover, important measures have been introduced in recent years to provide for mandatory public consultation processes when legislation is being prepared. In particular, the Act on Impact Assessment No. 90/11, its implementing Regulation No. 66/12 and the Code of Practice on Public Consultation in Drafting Legal Regulations¹¹ establish a two-step public consultation process (through the submission of written comments and a subsequent public debate) and place a regular obligation for the Government to report on the results of the relevant consultations carried out. Consultation coordinators have been appointed in ministries and government agencies. The Action Plan on Open Government Partnership with a focus on fiscal transparency, public consultations and the right of access to information targets further measures to better assure citizens' involvement in policy development¹². Several EU technical assistance projects have been implemented to enhance civil society engagement in policy development, with specific components on monitoring anticorruption policy and conflict of interest prevention.

26. A number of good disclosure practices exist to enable public access to proposed and then adopted legislation, and to allow for follow-up to committee and plenary sessions of the Croatian Parliament. Croatia should be praised on the many channels it has created to facilitate civil society involvement in shaping up public policy, through public participation models in the legislative process, as well as through the refinement of public monitoring and scrutiny tools.

Remuneration and economic benefits

27. The average gross salary in 2012 in Croatia was 12,571 EUR, representing 8,745 EUR in net terms.

28. MPs receive a salary and have the right to receive benefits and compensation for expenditures in connection with their duties; they do not enjoy any tax exemption. In particular, they receive a salary of 2,200 EUR per month. They also receive additional allowances, including (i) a lump sum in the amount of 1,500 HRK (200 EUR); (ii) reimbursement for housing in Zagreb of up to 2,500 HRK (330 EUR) and an additional 500 HRK (65 EUR) for overhead costs; (iii) a separation allowance of 1,000 HRK (132 EUR); (iv) a travel allowance of 2 HRK (0.26 EUR) per kilometre to and from Zagreb for parliamentary sessions; (v) a life insurance of 700 HRK (93 EUR) a year. MPs are also covered by a pension scheme.

29. Additionally, MPs are entitled to an "end of term" allowance until they start a new job or reach retirement age, as follows: (i) for a period of six months from the day of termination of the parliamentary term, the compensation equals that of the full salary; (ii) for the next six months, this amount is reduced to 50%.

30. Parliamentary parties and individual MPs benefit from public funds for their routine activities in the terms established by the Political Activity and Election Campaign Funding Act Nos. 24/61, 61/11 and 27/13. These allocations are granted to the amount of 0.05% of State budget current expenditure funds for the previous year and are distributed in proportion to the number of MPs representing the parties at the moment when the parliament is constituted. The use of these allocations is subject to disclosure and control. The total amount of donations made by a natural person to a parliamentary party or an individual MP shall not exceed 30,000 HRK (4,000 EUR) a year. Individual donations from legal persons to parliamentary parties may occur insofar as they do not exceed the threshold of 200,000 HRK (26,500 EUR) a year; with respect to individual MPs the annual threshold is capped at 100,000 HRK (13,260 EUR).

¹¹ Code of Practice on Public Consultation in Drafting Legal Regulations:

<http://www.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia.pdf>

¹² Action Plan on Open Government Partnership:

http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/Croatia-OGP-Action%20plan_0.pdf

31. Control over parliamentary allowances is performed by the State Audit. Information on MPs' salaries and additional benefits is public and supplied upon request by virtue of the Act on the Right of Access to Information. The GET was told that, in the last ten years, two members had been sanctioned for abusing the expenses regime¹³. In the interest of ameliorating public confidence in the system, these matters certainly deserve follow-up. In the GET's view, rather than a question of rules, it is critical that the ethical system which governs conduct in-house is stepped up; the recommendations made later in this report are geared towards providing a more solid basis for a culture of integrity among Sabor members, and thereby, building public confidence.

Ethical principles and rules of conduct

32. Notwithstanding the provision made in the Standing Orders for the *Sabor* to enact a set of ethical standards, a code of conduct has not yet been issued for MPs. There are some provisions on conduct contained in the Standing Orders, but these only refer to acting in a respectful manner in the chamber, i.e. to observe parliamentary order, courtesy and discipline. The Chairperson may impose sanctions for infringements of the aforementioned rules, which may entail deprivation of rights (censure, order to withdraw) or temporary suspension (removal from session), pursuant to Articles 237 to 244 of the Standing Orders.

33. The Act on Prevention of Conflict of Interest (hereinafter LCI), which applies to MPs in so far as they are considered to be public officials specifically covered under the *personae* scope of the law, comprises ethical principles, notably, good repute, impartiality, conscientiousness, integrity, dignity, honesty, accountability, objectivity, etc. (Article 5, LCI).

34. The GET notes that, with respect to integrity matters, there is no code of ethics for MPs. Rather, the conduct provisions included in the Standing Orders of the Sabor relate to rules on decorum and debate (e.g. behaving appropriately during official proceedings). Moreover, the LCI applies to MPs and includes important requirements concerning gifts and conflicts of interest, but these requirements are not always adequately tailored to the parliamentary function. Therefore, a culture of prevention and avoidance of possible conflicts of interest needs to be fully rooted in the Sabor.

35. The Standing Orders of the Sabor do foresee the development of an ethical code (Article 17, Standing Orders) and the GET was pleased to hear that there had been some discussion as to the initiation of such a code; MPs themselves confirmed during the on-site visit that they considered this an important matter. There is therefore a recognised and acknowledged need for a sound conduct and ethics regime within the Sabor. The GET is convinced that the design of a Code of Conduct by or with the active involvement of MPs would constitute a further asset in the preventive policy of conflicts of interest. As a matter of fact, there is at present a tendency to look at the notion from a criminal law perspective rather than from its preventive angle. A code, as a soft-law instrument to benchmark self-compliance, could help to re-steer this policy by paying attention to both corruption and reputation risks and thereby increasing public trust in the political system.

¹³ In 2008, a member of the Croatian Parliament requested, on several occasions, reimbursement of the costs incurred by travelling from his place of residence to Croatian Parliament sessions. He did so although aware that he was not entitled to such reimbursement since he used an official vehicle that he had at his disposal as mayor. By receiving the reimbursement, he acquired pecuniary gain in the amount of 11,600 HRK (circa 1,500 EUR) thus damaging the budget of the Republic of Croatia. He was convicted to 8 months' imprisonment, 3 years' suspended sentence for a criminal offence of fraud (in service). The pecuniary gain acquired by committing this criminal offence was not confiscated since the convict voluntarily returned it in the course of the proceedings. In 2004, a member of the Croatian Parliament spent 23,752 HRK (circa 3,100 EUR) for a repayment of a personal loan, although the money was allocated to him for political activities as a member of the parliament. He was convicted on grounds of abuse of power to 8 months' imprisonment, 2 years' suspended sentence, and the pecuniary gain acquired by criminal offence was confiscated.

It would help to build up a culture of integrity, which would complement the existing conflict of interest norms. The main two goals to be pursued when designing such a code would be to provide for greater certainty and guidance for MPs in reconciling their official and private obligations, and to reassure the public that members operate under standards that place the public interest ahead of the private interests of members.

36. The GET is of the view that the drafting of such a code needs to be a participative process, in which MPs themselves are involved. This would undoubtedly facilitate the process of internalisation of ethics as well as the sense of ownership. The Code should contain the ethical principles which all members of the institution should seek to uphold, as well as detailed rules which identify acceptable and unacceptable conduct. In those instances where rules are already in place, the recommendation issued below does not intend to replace the existing requirements, but rather to supplement them through more detailed guidance targeted at the parliamentary function. Furthermore, the GET considers it essential to develop a member-driven culture of accountability rather than solely transferring accountability to an external monitoring authority. That said, it is crucial that improved coordination channels are built up with the Commission for the Prevention of Conflicts of Interest, given the key monitoring and advisory role with which it is entrusted in respect of all categories of public officials, including parliamentarians (see also recommendation ii, paragraph 67). While the system should primarily be oriented towards awareness-raising and internalisation of a parliamentary ethos, sanctions may be used as a last resort measure to enhance professional accountability and to preserve the credibility of the enforcement mechanisms available in the Sabor. **GRECO recommends (i) that a code of conduct for members of parliament be developed and adopted with the participation of MPs themselves and be made easily accessible to the public (comprising detailed guidance on e.g. prevention of conflicts of interest when developing the parliamentary function, ad-hoc disclosure and self-recusal possibilities with respect to specific conflict of interest situations, gifts and other advantages, third party contacts, deontology of dual mandate, etc.); (ii) that it be coupled with a credible supervision and enforcement mechanism.** The specific matters referred to in this recommendation will be examined further in detail in the following paragraphs.

Conflicts of interest

37. The LCI was passed in 2003; it has been amended almost annually since then and is currently undergoing further amendment. It covers approximately 3,000 officials, including MPs. The purpose of the LCI is to lay down standards of performance in public office, to familiarise officials with these standards and to indicate how they are expected to behave, as well as to inform the public on the conduct expected from an official. The provision of advice to public officials whenever they are confronted with a conflict of interest dilemma is further articulated in the Regulation of the Commission for the Prevention of Conflicts of Interest, its Internal Regulation and Procedure. Additional rules on conflicts of interest are contained in the Act on Election of Deputies to the Croatian Parliament, the Public Procurement Act and the Ordinance on Gifts for Public Officials. Guidelines on Conflicts of Interest were issued in September 2011.

38. A conflict of interest is defined in Article 2 LCI as situations in which private interests collide with public ones and put into question the required impartiality of public administration. Situations of real, possible and potential conflicts of interests are covered. Concerns were repeatedly raised on-site highlighting that the concept of conflict of interest is still little understood in Croatian political life, with a tendency to conflate conflicts of interest with criminal behaviour. A recent ruling of the Constitutional Court emphasises that there has been a wrong understanding of the concept of conflict of interest over the past 20 years and that there is a need to distinguish it from criminal conduct. It emerged from the interviews carried out on-site by the GET that there were challenges ahead in the way Article 2 LCI is interpreted and applied in relation to the parliamentary function. Clear guidance on the interpretation of the aforementioned

provision is therefore needed, as well as practical examples of conflict of interest instances that may be encountered by MPs. It is for this reason that GRECO recommends that the advisory role of the Commission for the Prevention of Conflicts of Interest as well as its interaction with MPs is stepped up (recommendation ii, paragraph 67).

39. The LCI bans quid pro quo arrangements for voting in a certain manner or influencing in any improper way decision-making processes; it also prohibits the abuse of office to influence legislative decisions whenever there are personal interests at stake (Article 7, indents e) and i), LCI). The GET was told that ad-hoc disclosure and self-recusal possibilities were not sufficiently developed in the Sabor and there was no established practice in this respect. This is a matter that should be further explored and articulated when implementing recommendation i.

Prohibition or restriction of certain activities

Gifts

40. MPs are prohibited from accepting benefits or gifts – money, items regardless of their value, rights and services provided without compensation – or promises of benefits/gifts in connection with their duties (Articles 7 and 11, LCI). Acceptance of money, any other security (e.g., shares, bonds, etc.) or precious metal is specifically banned. In addition, the LCI provides that officials are only allowed to keep gifts of a symbolic value, i.e. gifts valued under HRK 500 (65 EUR) received from the same donor in a given year. Any gift that exceeds the afore-mentioned threshold has to be reported to the Commission for the Prevention of Conflicts of Interest and subsequently becomes national property; detailed procedures on gifts have been regulated through implementing regulation (Ordinance on Gifts for Public Officials, No. 141/04).

41. When discussing the issue of gifts with the interlocutors met on-site, the GET was told that the law was very strict in this respect. However, practice is at variance. The Commission for the Prevention of Conflicts of Interests indicated that although by law, MPs should be declaring any gift over 500 HKR, including trips abroad, in practice, while they may have provided some information concerning property acquired as a gift in its initial declaration form, they have not made any notification concerning gifts that they may have received during their parliamentary mandate. The GET discussed at length the “ethical standard” which is applied to gifts and how “normal” it could be for politicians to receive them: the GET was told that inside the Sabor, gifts were deemed to be acceptable if they were provided as a personal hospitality; the public, however, perceived that their political representatives viewed gifts of this nature as something to which they were entitled. The GET takes the view that it is paramount for the credibility of parliamentarians to develop specific guidance, encompassing practical examples, which would assist in drawing a clear line between acceptable (those of a social, customary or courtesy nature) and unacceptable gifts, benefits and hospitality and to explain this to the parliamentarians and to the public. The GET advises that the issue of gifts and other advantages, and more particularly the way in which parliamentarians should be guided when implementing the current gift ban across the public service, is specifically addressed in connection with recommendation i. Likewise, while the GET deems the requirements in law to be stringent (as to gifts’ bans and thresholds, as well as to the applicable sanctions if infringements of the rules occur), they must be followed by appropriate enforcement action; the role that the Commission for the Prevention of Conflicts of Interest is to play in this respect is of key importance, in line with recommendation ii.

Incompatibilities and accessory activities

42. The principle of exclusive dedication applies. Derogations to this principle are possible subject to prior approval by the Commission for the Prevention of Conflicts of

Interest (Article 13, LCI). If the Commission establishes a breach of the aforementioned principle, it orders the person concerned to put an end to the secondary activity within a minimum of 15 to a maximum of 90 days.

43. Prior approval of the Commission is not required for the performance of scientific, research, educational, sporting, cultural, artistic and independent agricultural activities for income generating activities based on copyright, patent and related intellectual and industrial property rights and for the acquisition of income and benefits arising from participation in international projects funded by the European Union, foreign countries or international foreign organisations and associations. However, in this case, the officials must report to the Commission any remuneration received for the performance of these activities.

44. Likewise, it is possible to hold a dual-mandate, in particular, a head of a municipality, a mayor (except the mayor of Zagreb or his/her deputy), and the respective deputies may at the same time be members of the Sabor (Article 9, Act on Election of Deputies to the Croatian Parliament and Article 89, Local Elections Law). However, the person holding a dual mandate must opt for one or the other public salary (i.e. the salary of an MP or the salary of a mayor, as per his/her own preference). Since several scandals affecting the Sabor concerned MPs who were also mayors (and the conduct at issue had taken place in relation to the local mandate) special attention would need to be devoted to ethical matters that may emerge when MPs hold dual roles (see also recommendation i).

Financial interests, contracts with State authorities

45. Membership in the supervisory and management boards of business entities is banned. By virtue of their position, it is possible for MPs, individual ministers and certain officials to be members of the supervisory board of the State Agency for Deposit Insurance and Bank Rehabilitation and the Croatian Bank for Reconstruction and Development (these institutions are not public companies, but legal entities *sui generis*). They are however not entitled to receive any remuneration for these positions, except those derived from travel and related justifiable expenses.

46. Whenever an official owns 0.5% or more shares (company capital) in a private company, the relevant management rights must be transferred to another person; this other person cannot be connected to the public official, i.e. management rights cannot be transferred to family members or any other person whose interests may be connected to those of the official (Article 16, in connection with Article 4, LCI).

47. It is not possible for a business entity in which an official holds 0.5% or more of its shared capital to enter into contract (whether as a single contractor or in consortia) with a public authority in which the said official holds office (Article 17, LCI). This restriction is further articulated in detail in the Public Procurement Act, Article 13.

48. Officials are required to inform the Commission for the Prevention of Conflicts of Interest, within 30 days of assuming office, of the name, registration number and seat of the business entities referred to above, as well as to report any related changes, as necessary (Article 17, LCI). Likewise, if the institution in which the official serves enters into contract with a business entity in which a member of the official's family holds 0.5% or more ownership, the official concerned must promptly notify the Commission thereof (Article 18, LCI).

Post-employment restrictions

49. The restrictions set out above (prohibition to influence public decision-making processes – Article 7, LCI; membership in management and supervisory boards –

Article 14, LCI; membership and shares in companies and operating limitations – Article 17, LCI), as well as the obligation to report income and assets (Articles 8 and 9, LCI) continue to apply for one year after employment. Failure by the former public official to observe this cooling-off period entails sanctions consisting of a warning, suspension of salary from 2,000 HR (265 EUR) to 40,000 HRK (5,305 EUR), and publication of the sanctioning decision. Failure by the responsible person in the business entity to respect a cooling-off period consist of fines from 5,000 HR (660 EUR) to 50,000 HRK (6,630 EUR), confiscation of the illegally acquired sums and professional bans of up to one year. The level of sanctions is considerably higher for the business entity itself which enters into a business relation with the former official during the cooling-off period, with fines ranging up to 1,000,000 HRK (132,600 EUR).

Misuse of confidential information and third party contacts

50. MPs have a duty of confidentiality (Article 217 and 281, Standing Orders). The LCI also bans the use of privileged information about the activities of State bodies for personal gain (Article 7(1), indent h), LCI).

51. The EU accession process and its networking dynamics have played an important role in the developing process of the lobbying industry in Croatia. The Croatian Lobbyist Association (HDL) was created in 2008. It gathers more than 100 members from a variety of interest groups. It has adopted a self-regulatory Code of Lobbyists Ethics. A draft Act on Lobbying has been prepared – in close consultation with the Croatian Lobbyist Association, representatives from the private sector, legal professionals, trade unions and non-governmental representatives – and awaits further development. The draft includes a broad definition of lobbying activities and lobbyists (not restricted to commercial activity), the institution of a register of lobbyists to be managed by the Ministry of Justice, the requirement to report on lobbying activities on a regular basis, and finally, sanctions in the event of non-compliance.

52. The GET was told that, in a system in which MPs are generally following party discipline when casting votes, the role played by lobbyists/interest groups, at present, is not prominent. As lobbyists and other interest groups continue to build up their role in the shaping of public policies, the GET considers it important to introduce ethical principles instituting transparency in dealings between third parties and public decision-makers. This is a matter that should be further explored and clarified when developing a code of conduct, as per recommendation i.

Misuse of public resources

53. The misuse of public resources is specifically banned in Article 7, LCI and extends to the misuse of public rights, public salaries and public procurement processes.

Declaration of assets, income, liabilities and interests

54. MPs are required to declare assets and their sources, whether acquired or inherited, and to identify the source of income from professional and non-professional activities. They are also required to declare the assets and income of their spouses and minor children.

Contents of financial declarations

Inherited assets
Details of the type and total value of inherited property and from whom it was inherited
Acquired assets
Real estate (and how it was acquired)
Movable assets (vehicles, vessels, aircraft, operating machinery, hunting weapons, art, jewellery, other personal items used) (and how it was acquired)
Type and value of securities, provided that the total value exceeds 30,000 HRK (3,930 EUR)
Business interests and company shares
Monetary savings (exceeding one year's net salary)
Debts
Obligations and guarantees
Income
Income from secondary employment (including self-employment)
Income from property and property rights
Capital, insurance and other sources of income

55. Declarations are to be submitted to the Commission for the Prevention of Conflicts of Interest within 30 days of an MP's election and within 30 days of leaving office. While in office, MPs must also declare any difference in the value of their income and assets by the end of the year in which the change occurred. The GET was told that the enforcement of the obligation for officials to submit ad-hoc declarations upon a significant change in wealth is a challenging task.

56. Declarations are submitted in hard copy, in person or by mail. The Commission for the Prevention of Conflicts of Interest then transcribes the contents of these forms onto a public website which provides access to aggregated data on income and assets (<http://www.sukobinteresa.hr/posi/ws.nsf/wi?OpenForm&1>). Declarations are publicly available, both online and in person on the premises of the Commission for the Prevention of Conflicts of Interest. The hard copies of declarations are stored at the Commission for ten years after which they are sent to the State archive.

57. The GET is of the view that the disclosure regime laid out in the LCI is very comprehensive. It further notes that the use of financial disclosure forms (of MPS and other public officials) has at times assisted USKOK's investigative action into criminal matters, namely, to establish disproportion between reported and actual assets.

58. The process of transcribing the information received in hard copy onto an electronic online readable file has had, on the one hand, the benefit of detecting gaps and anomalies at an early stage, but on the other hand, it places a burdensome task on the Commission personnel. The GET considers that there should be (non-over-costly) ways to better exploit technology to streamline the filing process, including by requiring on-line submissions and by developing a system that allows for comparability across time of asset and income variations. This can result in improvements in areas such as submission, data management and verification of disclosures. It emerged from the discussions on-site that the Commission intended to develop an electronic filing system.

Supervision and enforcement

59. The Chairperson of the *Sabor* may impose disciplinary sanctions (censure, order to withdraw, temporary removal) for failure to observe proper behaviour in the chamber (see also paragraph 32). The current system will need to be updated once the recommended code of conduct is adopted, as per recommendation i.

60. Main supervision over conflicts of interest rules lies with the Commission for the Prevention of Conflicts of Interest (hereinafter the Commission). It is a standing, independent and autonomous State body, which is composed of five distinguished professionals drawn from business, media, NGOs and academia. The appointment of the

latter follows an open call procedure and candidates are selected on the basis of their professional experience and reputation. The Commission has had long periods of inactivity, partly due to challenges in its former composition, the variance of members' terms of office (the Commission used to be also composed of members of parliament) and its inability to achieve the required quorum to make decisions. The Commission, in its current reformed composition, started to operate in February 2013. The renewed Commission has been rather active in 2013: it held 37 public sessions, issued over 200 opinions upon individual requests of public officials, instituted 120 non-compliance procedures of which 60 were completed (some of them of high profile politicians), and reviewed and published all the asset declarations it had received.

61. More particularly, the Commission is competent for (i) instigating conflict of interest proceedings and rendering decisions on infringements; (ii) adopting its working procedures; (iii) checking financial declarations; (iv) drawing up guidelines on conflict of interest; (v) conducting regular training on conflict of interest; (vi) cooperating with other bodies in implementing conflict of interest prevention policies and proposing recommendations, as necessary; (vii) cooperating with civil society and maintaining international cooperation on conflict of interest related matters; (viii) performing other conflict of interest related tasks. The Commission submits an annual report to Parliament on its activities and expenditures. It may report on its activities to the National Commission for Monitoring the Implementation of the Anticorruption Strategy, if requested by the latter to do so. In its reports, the Commission can recommend changes in the conflict of interest system in response to the type of flaws it identifies when performing its monitoring function.

62. With particular reference to the asset and income disclosure regime, the Commission is responsible for receiving, reviewing and storing financial declarations. The Commission performs two types of checks: (i) pro-forma, including by assessing whether the declaration was filed on time, has been signed by the official and has been correctly and fully completed; and (ii) substantial by cross-checking information with other authorities (e.g. tax officers, land registry, court registries, etc.). In practice, if anomalies or irregularities are spotted in the forms while being processed, the Commission contacts the filer for clarification or correction. Where acts of corruption are suspected or revealed in the course of the Commission's action, the case is referred to the USKOK.

63. The Commission also decides on administrative sanctions for non-compliance with conflict of interest rules. A sanction consisting of a warning may be issued. A suspension of salary payment (a fine) in the amount of 2,000 to 40,000 HRK (265 to 5,305 EUR) can be applied for non-submission, for providing false information, for failure to declare significant changes or for failure to submit a declaration within 30 days of leaving office. Suspension of salary is limited to a maximum period of twelve months and cannot exceed one-half of the monthly salary (i.e. the maximum fine is equivalent to one month's salary docked over a period of three months). All decisions and opinions of the Commission are published on its website. As an additional sanction (if the suspension of salary does not achieve its punitive goal alone), the Commission may decide to publish its decision in a daily newspaper.

64. In November 2012, the Constitutional Court annulled some of the attributions of the Commission, notably, the provision where the banks were due to deliver data on an official's property at the Commission's request, even when they are protected by banking secrecy. The Constitutional Court further held that in some provisions the LCI incorrectly equated conflict of interest with criminal or corruptive behaviour and vested the Commission with attributions which are inherent to prosecution of criminal activity. A Working Group, including the Ministry of Justice and civil society, has been established to consider the necessary amendments to the LCI.

65. The GET notes that the framework for preventing conflicts of interest in Croatia has very much evolved since its inception in 2003 and has introduced significant improvements as weaknesses were being identified with time and experience. The LCI establishes a rather strict and comprehensive regime for the prevention of conflicts of interest and their declaration as they may emerge. The Commission's role is also strong in law. Yet, it would appear that the implementation of the LCI could be improved in practice. The efficiency and credibility of the Commission has been put into question in the past due to vulnerabilities in its independence (nomination of members, lack of budgetary autonomy), as well as because of periods of instability in its membership and isolated conflicts of interest suspicions amidst its leadership (in 2008 the Commission's president resigned due to allegations of conflicts of interest). The GET welcomes the steps taken to modify the composition and appointment process of the Commission. Likewise, the GET was told that amendments were introduced to the LCI to reduce the administrative burden on the Commission by reducing the size of the filing population, i.e. eliminating less-high-ranking local government positions.

66. The GET further notes that, with respect to the available oversight mechanisms, the conflict of interest regime in Croatia places key importance on public information and scrutiny regarding officials' income and assets. Important efforts have been made to improve the verification of declarations: in 2009 amendments were introduced to the LCI to provide for more systematic checks of financial declarations. The GET was told that, to date, the system has been largely reactive with verification having been carried out as triggered by citizens or media complaints. At the time of the on-site visit, the Commission was under-resourced. The Commission is composed of five members, assisted by a staff of 10 persons. The processing (transcribing manually the information received in hard copy onto an electronic online system) and verification of the asset declarations of the approximately 3,000 officials it supervises entails a heavy and intense workload for the Commission's resources. In order to prioritise its action, the new Commission has focused much of its recent activity on ensuring that the rules on shareholding, secondary activities and public contracts are effectively met. The GET was told that an improvement in the human and technical resources of the Commission was foreseen, but had not yet materialised in practice. This is a matter that warrants close attention given the key role played by the Commission in the prevention of conflicts of interests.

67. Public interest has focused more on graft, illicit enrichment and the wealth of high ranking officials rather than on conflicts of interest which was the initial objective for which the law was designed. The Commission needs to persevere in its advisory role and could still be more proactive in this respect. The GET was also told that MPs did not feel fully at ease resorting to the Commission for advice and guidance on conflicts of interest and the Commission confirmed that MPs rarely turn to it for advice. The Commission indicated during the on-site visit that it intended to intensify its role in this area, and more specifically, to analyse conflict of interest related challenges that may be faced when developing the parliamentary function so that tailored guidance for MPs could be developed thereafter. In the GET's view, it is important to enhance communication between the Commission and Parliament concerning the implementation of legislation on conflicts of interest; this is instrumental to the effectiveness of the integrity regime. **GRECO recommends (i) that the technical and personnel resources of the Commission for the Prevention of Conflicts of Interest be reassessed, and that measures be taken as necessary thereafter, with a view to ensuring their adequacy and effectiveness; (ii) that the Commission displays a more proactive approach in its preventive role with members of parliament, notably by further developing communication and advisory channels with Parliament and, in close coordination with the latter, preparing tailored guidance on conflicts of interest that may emerge in carrying out parliamentary functions.**

68. Finally, criminal liability applies pursuant to the provisions on bribery (Articles 293 and 294) and trading in influence (Articles 295 and 296) of the Criminal Code. MPs cannot be prosecuted for any opinion expressed or vote cast during a sitting of the parliament or its working bodies. This type of immunity cannot be lifted and its basic purpose is to guarantee the proper performance of the particular function of its beneficiary. MPs also benefit from procedural immunity; notably, no criminal investigation and prosecution can be undertaken against deputies, without prior authorisation by the House, as proposed by the Parliamentary Committee on Credentials and Privileges. The general rules on lifting immunity are comprised in Articles 23 to 28 of the Standing Orders. An exception exists in the event of *flagrante delicto*, when the offence carries a penalty of imprisonment of more than five years, in which case the beneficiaries of the immunity can be arrested.

69. The GET was told that requests for lifting immunity regarding corruption-related offences are always honoured: virtually all (26 out of 27) of the public prosecution service's requests for lifting immunity have been granted. The GET also learned that there has been no single case in which an MP has been convicted for a corruption-related offence performed in relation to his/her parliamentary functions – when MPs have been convicted for corruption, the corrupt act in question was performed in relation to the dual mandate held by the MP concerned in local government or to his/her position as a minister. The GET considers that the scope of immunity afforded to MPs in Croatia is generally acceptable and, according to the data provided by the authorities, has not constituted an obstacle to the prosecution and subsequent adjudication of corruption offences.

Advice, training and awareness

70. At the start of a new session of Parliament, MPs are informed of their duties to declare interests and activities. When submitting financial declarations, or more generally, whenever confronted with a conflict of interest dilemma, MPs are encouraged to seek advice from the Commission for the Prevention of Conflicts of Interest. Any doubt in relation to a potential conflict of interest can be clarified directly with the Commission which has a maximum delay of 15 days to deliver a response (Article 6, LCI). As indicated above, MPs rarely resort to the Commission for advice. MPs tend to view their obligations in the area of conflict of interest prevention as mainly circumscribed to the filing of asset declarations with the Commission.

71. In 2009, the Commission issued a set of guidelines on the principle of conflict of interest, i.e. Guidelines on Prohibited Conduct for Public Officials. A brochure on conflict of interest prevention, including specific examples of day-to-day situations that may occur in the development of the public function, has also been issued. However, more should be done to tailor the general conflict of interest rules for public officials to the parliamentary function. The relevant anticorruption and integrity tools, including legislation on the prevention of conflicts of interest, guidance materials and all decisions and opinions rendered by the Commission for the Prevention of Conflicts of Interest, are available at its website (www.sukobinteresa.hr).

72. The latest Anticorruption Plan (2012) highlights, as its priorities, the development of targeted training on conflict of interest related provisions for all public officials subject to the law at State, regional and local level (measure 23 of the Anticorruption Plan). A total of 350 officials at local and regional level were trained in 2012. No training for MPs has been held to date.

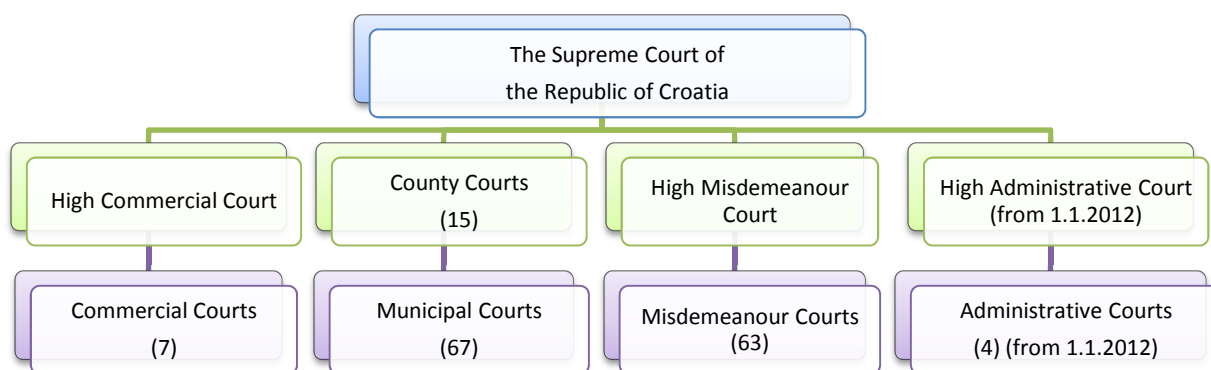
73. It is obvious that little emphasis is placed at present on awareness activities directed towards MPs. A recommendation has already been issued as to the need for the Commission to become more proactive in this area (recommendation ii). That said, the GET takes the view that Parliament itself also needs to take responsibility for better promoting a culture of ethics among its members. The GET is convinced that for an ethics

and conduct regime to work properly, MPs must themselves take a stake in the success of that regime. Putting values into effect needs communication of core standards as well as education and regular training to raise awareness and to develop skills which will assist in confronting and then solving ethical dilemmas. The content of the code of conduct (as per recommendation i) could remain words on paper if not adequately communicated and inculcated. The provision of dedicated counselling (including of a confidential nature) may further assist in making MPs more comfortable with the current system to prevent conflicts of interest and to address integrity dilemmas. The GET attaches key importance to the establishment of adequate avenues to engage in individual and institutional discussions of integrity and ethical issues related to parliamentary conduct. In this connection, the GET encourages MPs to think expansively regarding opportunities for on-going dialogues on issues of ethics and integrity whether through a system of mentors for new members or otherwise. In light of the foregoing, **GRECO recommends that efficient internal mechanisms be developed to promote, raise awareness and thereby safeguard integrity in Parliament, including on an individual basis (confidential counselling) and on an institutional level (training, institutional discussions on ethical issues related to parliamentary conduct, etc.).** These mechanisms should be coordinated with the Commission for the Prevention of Conflicts of Interest, and therefore the implementation of this recommendation is closely connected to that of recommendation ii.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

74. Croatia has a three-tiered judicial system including courts of general and specialised jurisdiction. The first instance courts of general jurisdiction are municipal and county courts; the latter can also function as second instance courts (in civil and criminal matters when the municipal court is the first instance court). The Supreme Court serves as a second instance court (in criminal matters in which county courts are the courts of first instance) and as a third instance court (exceptional appeals, extraordinary remedies). Courts of specialised jurisdiction are misdemeanour, commercial and administrative courts (first instance courts), the High Misdemeanour Court, the High Commercial Court and the High Administrative Court (second instance courts). Other specialised courts may be established by law for specific legal areas, e.g. juvenile courts. There are 1,925 judges of whom 1,328 are women and 597 are men. There is a system of jurors who participate in judicial deliberations; they fall under the rules and obligations for judges as set forth in the Act on Courts (Title XIII, Article 118).



75. The Supreme Court is the highest court in Croatia. It assures the uniform application of laws. The President of the Supreme Court represents the Court and judicial power, performs the duties of court administration and other duties stipulated by law and the Rules of Procedure of the Supreme Court of Croatia (Article 44(3), Act on Courts). The President of the Supreme Court is elected (for a period of four years, which can be renewed and there is no limitation to the number of mandates the President of the Supreme Court may hold) and relieved of duty by the Croatian Parliament at the proposal of the President of the Republic, with the prior (non-binding) opinion of the General Session of the Supreme Court and the Judiciary Committee of the Croatian Parliament. Any person may be appointed as President of the Supreme Court if s/he meets the requirements of the post of judge of the Supreme Court, s/he does not already have to be a judge of the Supreme Court. If the President of the Supreme Court is a person who, prior to the appointment, did not work as a judge in that court, the State Judicial Council shall appoint him/her a judge of the Supreme Court. The GET looked into the system of appointment of the President of the Supreme Court. The Croatian authorities highlighted that the way in which the President of the Supreme Court is selected represents an agreement by all three branches of government. The President of the Supreme Court is vested with a strong role in the system and is not under the Ministry of Justice. The GET did hear however some concerns (also cast by some representatives of the judicial profession itself) regarding political considerations in the appointment of the President of the Supreme Court and lack of sufficient transparency of the process. In this connection, the GET recalls that, although Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, accepts that it is possible for the executive and the legislative powers to be involved in the appointment of judges, it gives preference to an independent and professional body

to make decisions on the appointment and career progression of judges of ordinary (non-constitutional) courts, whose recommendations other powers should follow. The Magna Carta of Judges adds that decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence. The GET believes that the current system could certainly benefit if subjecting the selection and appointment of the President of the Supreme Court to decisive involvement of the State Judicial Council (the latter does not, at present, play any role in this regard). Moreover, in the GET's view, given the significant changes that have been introduced in judicial appointments to enhance their objectivity and transparency, it is unfortunate that doubts are still being raised on political considerations being factored into the appointment of the highest position in the judiciary. The European Court of Human Rights has consistently held that one key factor to establish whether a court can be considered "independent", in the meaning of Article 6(1) of the European Convention on Human Rights is the question whether it presents an appearance of independence. The GET also has misgivings as to the lack of term limits for the President of the Supreme Court and the possibility of unlimited renewals; a balance must be found to both allow for continuity and dynamism in the leadership of the highest court of the system. Consequently, **GRECO recommends that the Croatian authorities review the procedures of selection, appointment and mandate renewal of the President of the Supreme Court in order to increase their transparency and minimise risks of improper political influence.**

76. The Croatian legislative system also recognises the institution of the Constitutional Court, which is separate from the judicial pyramid. The Constitutional Court decides on the conformity of law with the Constitution, on the conformity of other regulations with the Constitution and law, and on constitutional claims against individual rulings of state bodies, bodies of units of local and regional self-government and legal persons vested with public authority. The Constitutional Court monitors constitutionality and legality, resolves jurisdictional disputes between the legislative, executive and judicial branches, decides on the impeachment of the President of the Republic, supervises the constitutionality of the programmes and activities of political parties and supervises the constitutionality and legality of elections, state referenda, etc. The Constitutional Court is a body of 13 judges appointed by Parliament for an eight-year term.

77. The Act on Courts (February 2013) regulates the organisation, competence and jurisdiction of courts, their rights and responsibilities, and sets forth special provisions on the Supreme Court. The Croatian judicial system is institutionally organised by the principles of the rule of law and independence. In particular, the Constitution (Article 118) and the Act on Courts (Articles 2 and 89) provide that judicial power in Croatia is exercised by courts established by law, in an autonomous and independent manner. Article 5 of the Act on Courts provides that courts administer justice only on the basis of the Constitution, international agreements, laws and other valid sources of law (e.g. implementing legislation – regulations, decrees, rules, etc.). Article 6 of the Act on Courts, together with Article 309 of the Criminal Code, forbid any kind of influence on judicial decisions. Independence is further guaranteed through immunity provisions establishing that judges may not be held accountable for the opinions or votes given in the judicial decision-making processes, except if the judge commits a violation of the law which constitutes a crime (see also paragraph 121).

78. The State Judicial Council is an autonomous and independent body that assures the autonomy and independence of the judicial branch in Croatia (Article 124, Constitution). It appoints judges, appoints and dismisses presidents of courts, decides on the immunity of judges, transfers judges, deals with disciplinary proceedings, decides on the dismissal of judges, participates in the education of judges, adopts the methodology of judges' evaluation reports, deals with the admission procedure to the State School for Judicial Officials as well as the procedure to pass the final examination, deals with the personal register of judges and their asset declarations. The Council consists of eleven

members, elected by their own peers, of whom seven are judges (two judges of the Supreme Court, two judges of a county court, two judges of a municipal court, one judge of a specialised court), two university professors of law and two members of parliament, of whom one who comes from the opposition. Presidents of courts may not be elected as members of the State Judicial Council. Members of the State Judicial Council are elected for a four-year term and cannot be re-elected more than twice. The jurisdiction and the proceedings of the State Judicial Council are regulated by law. In order to assure the capacity of the State Judicial Council to respond to its duties, amendments to the State Judicial Council Act were adopted in February 2013, to exempt the President and judge members from their normal duties by 75% and by 50% respectively.

79. The GET welcomes the reforms introduced in recent years in the composition and functioning of the State Judicial Council to dispel concerns on its independence and autonomy, as recommended by the European Union. It notes that the majority of members of the State Judicial Council now come from the ranks of judges who are elected by their peers to reduce risks and former allegations of politicisation. There are two members of parliament in the Council, but most of the interlocutors met agreed that this arrangement rather than creating any risk of political interference in the daily work of the Council provided different points of view and was thereby considered as an asset rather than a weakness of the current system. Several interlocutors conceded that the participation of these two MPs in the Council has indeed been instrumental to make the role of the judiciary better understood in Parliament; to date, these members have never interfered in decision-making processes nor have they filtered particular partisan interests in the work of the Council. While some measures have been taken to ensure that the Council operates with increased resources, the fact remains that even though the Council should have 11 staff, it currently has only four. The GET encourages the authorities to pay continued attention to this state of affairs, all the more since the Council has a particularly important role in maintaining the integrity of the judiciary and understaffing is bound to reduce its effectiveness.

80. The Ministry of Justice is responsible for the preparation of the total court budget, as well as for the management and allocation of the budget among individual courts. The judiciary is involved in the preparation of the budget (the courts propose their own budgets) as well as in its management (the president of each court is responsible for the budget allocated to its court). The budget for the judiciary amounted to around 313,000,000 EUR for 2013.

81. Since September 2005, the judiciary in Croatia has been subject to an intensive reform process, whose implementation was positively assessed by the European Union prior to accession. The Strategy of the Judiciary comprised five main areas as the basis for future strategic plans: (1) independence, impartiality, professionalism and qualification; (2) efficiency; (3) Croatian judiciary as a part of the European judiciary; (4) human resources management; (5) application of modern technology. The issues of integrity and anticorruption within the judiciary were further articulated in the Anticorruption Strategy and its Action Plan. The Government also established a high-level body to oversee the implementation of the Strategy. The Council for Monitoring the Implementation of the Strategy of the Judiciary is composed of the deputy and the assistants of the Minister of Justice, the presidents of the State Judicial Council and the State Prosecutorial Council, and the director of the Judicial Academy. The new Strategy of the Judiciary and its Action Plan for 2013-2018 places key focus on the efficiency of the judiciary, an issue which is considered to be the weakest aspect of the Croatian judicial system (see also paragraph 98).

82. The GET recalls that the Croatian judiciary has a turbulent recent history. That history is described in paragraph 67 of the First Evaluation Round Report on Croatia,

adopted in May 2002¹⁴. There had been political interference with judicial independence; in the mid-1990s. Indeed, almost one third of all Croatian judges had left office or were not re-appointed, and political influence in removal and appointment procedures continued until 2000. As a result, at that time, Croatia was described as having a “relatively high number of very young judges with limited professional experience” in a system hampered by a “constantly rising number of unresolved cases which put high pressure on the courts and delays in the administration of justice and continued to undermine the confidence of citizens in the fairness and efficiency of the judiciary”. The GET heard that delays in cases continue to have that kind of undermining effect. The GET understands that cases may go on for between 10 and 20 years and that this is fertile ground for dissatisfaction. Several interlocutors attributed this to continuous legislative change, with frequent amendments in procedural codes and other key legislation, as a result of which judges may have to apply several distinct legal regimes in a single case.

83. At present, there is a lack of confidence in the judicial branch of Croatia which is evidenced by the low public opinion of that branch. The Transparency International Global Corruption Barometer for 2013 indicates that the judiciary in Croatia is one of the two major institutions in the country which score highest on perceived levels of corruption (the other is political parties). Seventy per cent of respondents deemed the judiciary to be corrupt. Other surveys have reported similar results (see also Context section of this report for details). Against this background, it should be noted that there is little evidence suggesting that corruption could constitute a widespread phenomenon within the judiciary. The Global Corruption Barometer reports that 3% of respondents had paid a bribe for judicial services within the 12 months preceding the survey (though it is not recorded whether these bribes were paid to judges or to other figures in the justice system). While any occurrence of bribery is disturbing, the data does not suggest that bribery is a pervasive problem. In the view of the GET, there appears to be an important contradiction between perception and reality, and it is clear that the reasons for this high perceived level of corruption are not understood.

84. While research has been carried out to sound public perception on corruption in State institutions (the most recent study carried out by the Ministry of Justice on this issue dates from 2012), systematic research on the reasons for public mistrust in the judicial system is lacking. This confidence gap is a problem in itself which needs to be tackled as a matter of priority. The causes of public discontent in the judicial system (comprising both judges and prosecutors) must be identified in order for them to be addressed. It would be advisable to commission an appropriate study to elicit the reason for the negative public perception; its added value could prove to be maximised by garnering contributions from judges, litigants, attorneys and other interest groups, including civil society representatives. Accordingly, **GRECO recommends that a study be carried out with the aim of better identifying and understanding the reasons for the high level of public distrust of the judicial system (judges and prosecutors)**. For additional details on this issue regarding the prosecution service, see paragraph 143.

Recruitment, career and conditions of service

85. Judicial office is permanent until retirement (i.e. upon reaching 70 years of age). Judges are appointed and relieved of duty by the State Judicial Council. The State Judicial Council decisions are subject to control by administrative courts (decisions on transfers) and ultimately the Constitutional Court (decisions on appointment and dismissal). The judicial appointment procedure is based on the principle of merit. Detailed criteria are stipulated in the Rulebook of the Evaluation for Judicial Appointments.

¹⁴ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2002\)4_Croatia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)4_Croatia_EN.pdf)

86. Starting from 1 January 2013, a new system of appointment of judges to first instance courts (municipal civil court, commercial court, administrative court and misdemeanour court) applies and requires all candidates to have completed the State School for Judicial Officials. The selection process follows a public announcement of vacant posts to which candidates can apply; posts are then filled on the basis of a scoring system which takes into account the final evaluation score that candidates have received in the State School for Judicial Officials, as well as the score received in an interview carried out with the State Judicial Council (this interview can amount to no more than 20 points). The requirement that prior to permanent appointment candidates were designated for a five-year period was abolished as a threat to judicial independence.

87. Appointment to county courts, the High Misdemeanour Court, the High Commercial Court and the High Administrative Court, require that the candidate has been working as a judicial official for at least eight years. As to appointment of judges to the Supreme Court (other than that of its President which was already described), candidates should have worked for at least 15 years as judicial officials. The same experience is required for applicants who have previously worked as attorneys, public notaries, university professors of legal studies who have passed the bar exam; a total of 20 years of experience is required for a lawyer who has passed the bar exam, who has proven his/her expertise in a particular legal area, and whose professional and scientific papers have been published. If the candidate is not a judge, s/he must pass a written exam (usually writing a judgment) and attend an interview with the State Judicial Council. If the candidate is already a judge of a lower court, the State Judicial Council obtains the evaluation of his/her work from the judicial council of the court in which s/he served.

88. An appraisal system is in place to assess judges' performance. Appraisals play an essential role – together with the interviews carried out by the State Judicial Council once the vacancy is advertised and candidates' applications are received – in promotion processes. Presidents of courts are appointed for a four-year term, with the possibility of reappointment, and are responsible for carrying out judges' appraisals, for submitting appraisal statistics to the Ministry of Justice and for ultimately confirming the fulfilment of all judicial requirements by a judge.

89. The performance of judicial duties is assessed on the basis of framework criteria and a point system methodology¹⁵, including *inter alia* the number of decisions rendered, performance results by types of cases in absolute number and percentages, adherence to deadlines, type of decisions made on appeal (confirmed, revoked or altered in the first instance; decision in absolute numbers and in relation to the total number of decisions, with particular reference to the number of decisions terminated because of significant violations of the proceedings), and other activities of the judge. More generally, the framework criteria fix the number of cases in each of the court branches which a judge should resolve annually, on average, bearing in mind the complexity of the case and the ways in which particular types of cases can be resolved.

90. Judges cannot be redeployed without their consent. By way of exception, a judge may be transferred to another court of the same instance, without his/her express consent, in case a court is cancelled or restructured in accordance with the law. Transfers can be permanent or for a limited period of time. All judicial appointments are publicised in the Official Gazette; both appointments and transfers are displayed on the State Judicial Council website.

91. The GET acknowledges the steps taken in recent years to introduce clear and objectively verifiable criteria for the quantitative assessment of the work of all judges, which has further infused transparency in the system. Both initial appointments and

¹⁵ Framework Criteria for the Performance of Judges and Methodology for the Assessment of Judges' Performance (2012).

promotions are based on merit, through a grading and scoring system which is complemented by personal interviews. Decisions on appointments, promotions and transfers are publicised, and candidates, if dissatisfied with the outcome, may ask for judicial review.

92. Judges can be seconded to work in the Ministry of Justice. Some interlocutors saw in this possibility risks of conflicts of interest between the judicial and the executive branches. Others expressed their misgivings as to the opacity concerning the selection and decision on this type of secondment. The GET considers that, bearing in mind the objective, transparent and robust system that Croatia has developed in recent years with regard to judicial appointments, the particular situation of judges seconded to the Ministry of Justice deserves further attention in order to guarantee equivalent levels of transparency and objectivity in their nominations. Likewise, the GET deems it important to assure that the appearance of independence of a judge, in relation to other powers of the State, is preserved throughout the entire judicial career.

93. Judges may be dismissed from office prior to retirement, only by a decision of the State Judicial Council, (i) at their own request; (ii) if incapable of performing the judicial function; (iii) if convicted of a criminal offence; (iv) if dismissed on disciplinary grounds. Appeals on dismissal are possible before the Constitutional Court.

94. The gross annual salary of a first instance judge at the beginning of career is 176,436 HRK (23,400 EUR); it amounts to 400,524 HRK (53,100 EUR) for judges of the highest court. The salary of judges is regulated under the Law on the Salaries of Judges and Other Judicial Officials. Judges who do not own or rent an apartment in their place of work are entitled, for official use and for the duration of their office, to an apartment that is managed by the Government Office for State's Assets Management. Control over the legality of the use of this facility is ensured by the State Audit Office and the Independent Department for Internal Audit at the Ministry of Justice.

Case management and procedure

95. The assignment of cases is carried out, on an annual schedule, on the basis of the alphabetical order of the list of judges dealing with a category of cases; attention is paid to the type and complexity of the relevant cases to be distributed. When the alphabetical order cannot be followed for reasons of, for example, workload, cases are re-assigned. All courts connected to the Integrated Case Management System (ICMS) have an automatic case allocation process. ICMS provides an electronic court register, executes random case allocation, and enables cases to be tracked and monitored through the judicial proceedings. Related to ICMS, the Project of Unifying the Statistical System has been launched to establish a single, comprehensive system for statistical monitoring of cases before courts, whose results are gradually being published in the judiciary intranet.

96. Specific judicial departments are established in the county courts of Zagreb, Split, Rijeka and Osijek (and their corresponding municipal courts) to deal with criminal cases under the responsibility of the Office for the Suppression of Corruption and Organised Crime (USKOK). In these departments, case allocation follows an annual schedule and only judges who have passed a security check may be assigned to those cases.

97. As a general rule, a judge cannot be removed from a case assigned to him/her. Exceptions apply in the terms provided by law (Article 43, Judicial Rules of Procedure) when a judge is overburdened, exempt or absent from work and other justifiable reasons as necessary for the efficient functioning of the court and the right to fair trial without unreasonable delay.

98. The main problem encumbering the judiciary in Croatia relates to the efficiency of court proceedings and the need to ensure that these are carried out within reasonable

time. Therefore the judicial reform to date has focused on increasing the efficiency of the judiciary. Numerous attempts have been made to streamline the workings of the judicial system, including by rationalising the courts' network, promoting mediation as an alternative method of dispute resolution, making capital investments and introducing modern information technologies, developing tools for statistical analysis of the performance of the judicial system (*e-statistics*), etc. The backlog has been reduced throughout the accession process from 1,600,000 cases to about 800,000 at present. The resolution of the extensive backlog of cases remains an important challenge, particularly given that the economic crisis has triggered an increase in the number of cases (e.g. bankruptcy proceedings).

99. A system of judicial inspection, under the Ministry of Justice *aegis*, is in place to monitor judicial administration in courts. Judicial inspection is carried out on the basis of an annual plan and a standard evaluation scheme. Disciplinary processes shall be instigated by the court president in the event of undue delay.

100. As regards publicity of judicial work, court hearings are public unless provided by law for justified reasons (Article 119, Constitution; Article 6, Act on Courts; Articles 387 to 390 of the Criminal Procedure Act), e.g. for the sake of private life of parties, in marriage cases and in cases connected with custody and adoption, for the protection of military, professional or business secrets, for the protection of national safety and defence interests, but only in the measure that is according to the opinion of the court, unconditionally indispensable in special circumstances where the presence of the public might damage the interests of justice. Even in those cases, a short statement of the verdict should be pronounced in public.

101. The Strategy of Development of the Judiciary (Guideline 2.23) has set in place specific transparency measures in the work of courts, i.e. by improving the transparency of the work of judicial authorities and the Ministry of Justice through greater publicity of their activity and easier access to information, notably by applying modern information technologies. The Act on Courts established that the President of the Supreme Court is to submit a report on the state of judicial authorities on an annual basis. That said, the GET heard recurrent concerns as to the need to improve transparency in the work of the courts: very few courts had developed websites in which it would be possible to follow their composition and work schedules (the Supreme Court ranking as the most informative one regarding its website), a number of court facilities still operate without access to modern case management facilities (e.g. transcription services), etc. The issue of transparency and better communication of judicial work is specifically addressed in paragraphs 129 to 132 and a recommendation follows thereafter.

Ethical principles, rules of conduct and conflicts of interest

102. Ethical principles for judicial conduct are laid out in the Constitution, the Act on Courts and the Code of Judicial Ethics. A judge's behaviour cannot be detrimental to his/her dignity or the dignity of judicial power and cannot put into question his/her professional impartiality and independence or the independence of the judicial power (Article 89, Act on Courts).

103. In September 1999, a Code of Judicial Ethics was adopted by the Association of Croatian Judges; it was coupled with an Ethical Council which was available for advice of associated judges. Subsequently, in October 2006, a Code of Judicial Ethics was adopted by the entire profession. The drafting and subsequent amending process of the Code is to be carried out with active involvement of judges themselves (as represented in Judicial Councils and the Association of Croatian Judges). Any person is entitled to bring a complaint in the event of a violation of the Code of Judicial Ethics. In the event of violation of the Code there are two possible outcomes, depending on the type of violation. The first process can be initiated by the president of the court where the judge

serves before the responsible judicial council of that court the initiation of proceedings on account of the violation of the Code before the judicial council where the judge concerned serves. After hearing the judge concerned, this council passes a decision on whether there has indeed been an infringement. If that is the case, this is recorded in the personal file of the judge and will have a consequence on the corresponding performance evaluation which is taken into account if the judge is to be promoted. The decision can be appealed before the Council of Judges (consisting of the presidents of all judicial councils in Croatia). The second process relates to the initiation of a disciplinary proceeding before the State Judicial Council. By nature, almost every disciplinary violation in itself represents a violation of a certain provision of the Code. However, not every violation of the Code necessarily constitutes a disciplinary violation (for further details on disciplinary proceedings and sanctions, see paragraphs 122 to 127).

104. As to advice on ethical dilemmas, individual judges are not alone when confronted with these in the workplace: they have the possibility of turning to their superiors for advice. They can also seek institutionalised advice from the Council of Judges, however, the GET gathered virtually no practice in this respect from the interlocutors interviewed. As explained before, one of the reasons for public mistrust in judges was attributed to the inadequate handling of conflicts of interest. The GET notes that concerning integrity issues, there is a strict incompatibility regime and comprehensive rules on recusals as detailed below. However, throughout the interviews carried out on-site, understanding of the concept appeared to be uneven among the professionals concerned. On the other hand, civil society representatives concurred that several undeclared and unmanaged conflicts of interest have led to a lack of public confidence. It was said that judges have been seen having coffee with parties to litigation, that judges are well-known local figures, that people know those with whom judges associate and that the public can perceive when there may be a conflict.

105. A recent case of the European Court of Human Rights dealt with an apparent bias of a medical expert whose report carried crucial weight in a case of medical negligence¹⁶. The medical expert was also a professor in the same faculty as the accused. Although Article 250(2) of the Croatian Code of Criminal Procedure expressly provides that an expert who is employed by the same State authority or by the same employer as the accused or injured person has to be disqualified, this requirement was not followed in the case at stake. None of the adjudicating/appeal domestic courts in Croatia deemed this to constitute a case of, if not real, at least apparent, conflict of interest, as they all dismissed the applicant's motion for disqualification, saying nothing more than that there was nothing to suggest bias in the medical expertise carried out. The ECHR reiterated its jurisprudence on how crucial is the trust of the public in the criminal justice system, where appearances have a high importance. The GET was told of some other conflict of interest cases which were not satisfactorily resolved in citizens' eyes. In this connection, more than one interlocutor spoke about the case of a judge who was alleged to have decided a case which arose out of a transaction to which her husband had been a party.

106. In the GET's view, the existing counselling system on ethics, integrity and the prevention of conflicts of interest can certainly benefit from further development. This matter is far from being as clear as perceived by some of the professionals met on-site. There needs to be a change in mind set and approach to focus also on the preventive angle of the notion of conflict of interest, rather than only looking into this matter from a criminal law perspective. Moreover, the reported system of institutionalised advice on ethical matters for judges, i.e. the Council of Judges, is rarely used in practice. The GET takes the view that the establishment of an institutionalised advisory service could not only assist in better advising judges in case of integrity-related dilemmas, but also in bringing coherence to the court's integrity policy and in developing best practice across the profession. For these key reasons the current advisory system on ethics needs to be

¹⁶ Case of Bajić v. Croatia (Application no. 41108/10). Strasbourg, 13 November 2012.

significantly stepped up to demonstrate its operability in practice. Likewise, the development of further guidance in this area of public concern could further clarify ethical standards and help interpret values in concrete situations as well as in their aspirational dimension. **GRECO recommends significantly strengthening and further developing mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for judges.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

107. Judges are subject to a strict regime of incompatibilities. The Constitution is very clear in this respect (Article 123) and detailed restrictions are listed in the Act on Courts (Articles 89 to 92). The Code of Judicial Ethics also pays particular attention to the issue of ancillary activities and conflicts of interest in relation to the principle of dignity of the judicial profession (Article 8). The Code constitutes a guiding instrument for the State Judicial Council as it takes decisions on conflict of interest and incompatibilities matters.

108. As a general rule, judges cannot perform any other service or job which may impair their autonomy, impartiality, independence, or diminish their social dignity, or which would be otherwise incompatible with a judicial function (Article 93, Act on Courts). In particular, judges are banned from membership of political parties as well as involvement in political activities (Article 90, Act on Courts). A judge cannot use his/her judicial position or dignity to pursue his/her own interest; s/he cannot act as an attorney or notary public or be a member of a board of directors or a supervisory board of a company or some other legal entity (Article 90, Act on Courts). The only professional remunerated activities which a judge is entitled to perform relate to the academic field, i.e. producing expert and scientific papers, publishing the content of legally effective court decisions, serving as a lecturer at the Judicial Academy, as a law teacher or teaching associate at University, participating in the work of expert or scientific meetings or commissions, preparing draft regulations (Article 93, Act on Courts). Judges can be arbitrators but need to declare this activity in the relevant disclosure form. Judges are not banned from engaging in financial activities (they can acquire shares), but they are required to report those in their asset disclosure forms.

109. After termination of judicial office, a judge is not allowed to take any role in a case in which s/he has conducted proceedings while performing his/her judicial duty, or in related cases (Article 8, Code of Judicial Ethics).

110. Individual instances of incompatibility are resolved by the court president. If cases relate to the president of the court, they are resolved by the president of the higher court. In cases related to the President of the Supreme Court, they are resolved by the Supreme Court plenum.

Recusal and routine withdrawal

111. The general rule is that a judge assesses his/her own qualification to hear a case but that a party may also call for his/her disqualification. The party is to file the request for disqualification as soon as s/he learns the reason for disqualification, and at the latest by the conclusion of the trial by the first instance court and if there was no trial, by the time the decision is rendered.

112. The reasons for disqualification are enumerated in procedural law (Articles 71 to 75, Civil Procedure Act; Articles 32 to 35, Criminal Procedure Act; Article 15, Act on Administrative Disputes), including *inter alia* when the judge is a party to the case, has provided legal advice or guidance to a party, has testified or been requested to testify, is or has been a spouse or partner of the party or is related to him/her, is connected to the

party's counsel or attorney, is connected to a witness, and, more generally, if there are other conditions or circumstances which are likely to cast reasonable doubt about the judge's impartiality. Specific disqualification rules apply for members of the State Judicial Council when deciding in the areas under their responsibility (appointment, promotions, transfer, dismissal, discipline, asset disclosure, judicial education and training, and immunity matters), if the candidate or judge subject to the decision is the member's spouse or partner, relative in direct line of descent up to any degree and in collateral line of descent to the fourth degree, or is related to the member as guardian, ward, adoptive parent, adoptive child, provider, dependent, foster child or foster parent.

113. When a judge asks to withdraw from a case due to a potential conflict of interest, it is for the court president to decide on the reassignment of the case to another judge. Before the decision of the court president is rendered, the judge concerned may only undertake procedural actions for which there is a risk of delay. There is no possibility to appeal a ruling granting or dismissing a motion for disqualification.

Gifts

114. Judges are banned from receiving gifts, loans or any other service which may compromise the performance of the judicial function. This prohibition extends to his/her family, court employees or anyone else who is subordinated to his/her authority (Article 8, Code of Judicial Ethics). *There was consensus among the different interviewees on-site on the fact that, in practice, there is no culture of making gifts to judges.*

Misuse of confidential information and third party contacts

115. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in a case. Breach of professional confidentiality is punishable by Article 307 of the Criminal Code; sanctions consist of fines and imprisonment of up to three years. Further professional requirements concerning the disclosure of information acquired in office are included in the Code of Judicial Ethics (Articles 9 and 12) and in the Act on Courts (Article 6). Accordingly, the disclosure of confidential information may also entail disciplinary consequences.

Declaration of assets, income, liabilities and interests

116. Within 30 days of taking up office for the first time, judges are required to submit declarations of their own assets and income (real estate, movable assets, shares, savings, revenues from dividends, net monthly salary, monthly earnings from assets, monthly earnings from steady fees and other steady remunerations, debts and loans), as well as those of their spouses and minor children. They must also declare on an annual basis any substantial change. Detailed rules are contained in the Ordinance on the Declaration of the Assets of Judges. The public has the right to view asset declarations; a petition to this end must be filed and the State Judicial Council is bound to respond within eight days.

117. The State Judicial Council keeps and controls the aforementioned asset declarations. Amendments were introduced in the system, to allow for crosschecks of information with the tax administration. If anomalies are found, the State Judicial Council may require the judge to submit a written explanation; if the latter is not satisfactory, the State Judicial Council refers the matter to the court president in which the judge concerned serves in order to instigate a disciplinary procedure. Failure to submit asset declarations as well as false statements constitute a disciplinary offence. In this connection, a total of 31 motions were filed in 2012 for the instigation of disciplinary procedures, 19 disciplinary penalties were pronounced (mostly consisting of reprimand) and six were discontinued.

118. The GET notes that the establishment of an asset declaration system for judges and prosecutors was a recommendation issued by GRECO in the First Evaluation Round Report on Croatia – and then reiterated by the EU – which was deemed to be necessary to prevent corruption and to increase the credibility of the judicial bodies. As the GET gathered practical experience with this disclosure regime during the on-site visit, it was told that judges' declarations are not publicly released. They do, however, fall under the Freedom of Information Act and were made available upon reasoned request. The State Judicial Council was following a strict "proportionality test" to strike a balance between the interest of public disclosure and privacy rights of the declarant. The GET heard that the Ministry of Justice was opening up a debate among judges and prosecutors, as part of the proposed activities in the Anticorruption Strategy and Action Plan, to discuss how to facilitate public access to financial disclosure forms of these categories of professionals. The GET also heard that there was, in principle, more reluctance from the side of judges to accept open access to their disclosure forms, other than upon individual motivated requests as the former law required (after the on-site visit, in November 2013, the law was amended and no longer calls for requests to be motivated). The State Judicial Council indicated that it was rather cautious in granting access as it needed to balance privacy and security of the individuals concerned over public access to information purposes; however, the press did not express any complaint as to the access they have obtained to date to judges' disclosure forms on the few occasions it has requested such access. By contrast, some concerns were expressed by civil society representatives as to the difficulty to carry out research studies on the integrity of judges in the absence of public information on financial declarations. The GET understands the legitimate concerns of the authorities; it welcomes the reflection that has been initiated to evaluate the existing disclosure regime and to identify ways of improvement.

119. The GET clearly saw room for improvement in the system of control performed to date by the State Judicial Council on the disclosure forms received, which is at present of a merely formal nature. Since, as mentioned above, access to disclosure forms is provided upon individual request, the type of public control that can be established over the judicial corps has its limits, and for that reason, the oversight role of the State Judicial Council in preventing and resolving conflicts of interest in the profession is essential. The GET was told that some action has followed in this area as the State Judicial Council had started to check with tax authorities the coherence of disclosure forms with that of tax records. This is a step forward in enhancing credibility of the disclosure regime. Accordingly, **GRECO recommends that the authorities continue in their endeavours to strengthen the scrutiny of financial declaration forms.** In implementing this recommendation as well as recommendation vi above, it would be important that adequate communication channels to exchange good practice and lessons learned are structured with the Commission for the Prevention of Conflicts of Interest, which is vested with key responsibilities in conflict prevention and asset disclosure for all other categories of public officials.

Supervision and enforcement

120. Judges are subject to both criminal and civil liability. Strictly speaking there is no civil liability for judges' individual decisions, but there is a possibility for the complainant to claim damage in the event of intentional or gross negligence.

121. Judges benefit from immunity under the law (Article 122 of the Constitution and Article 8 of the Act on Courts). In particular, judges cannot be held accountable for the opinions expressed or for voting during decision making, except if the judge commits a violation of the law which constitutes a crime. A judge may not be remanded in custody or investigative detention in connection with any criminal prosecution for a criminal offence perpetrated in the performance of his/her judicial duty without prior consent of the State Judicial Council. Exceptionally, a judge may be taken into custody without

permission of the State Judicial Council if the offence committed carries an imprisonment sentence of five years or more and if apprehended in *flagrante delicto*. The President of the State Judicial Council must be informed thereof. Criminal proceedings against a judge following an individual complaint or proposal, or in the case when criminal prosecution is taken over from an injured person, cannot be initiated without permission of the State Judicial Council. When the State Judicial Council is not in session, such permission can be granted by the President of the State Judicial Council but must be subsequently confirmed, within eight days, by the State Judicial Council. The GET was made aware of statistics gathered between 2008-2013 showing the practice followed for honouring requests to lift immunity and stressing that immunity is lifted when requested by the prosecution service. All requests that were overthrown or rejected had been submitted in the aforementioned period by private persons mostly dissatisfied with verdicts passed. Moreover, the GET was told that, in the last five years, six judges have been prosecuted for corruption. Two judges were convicted; two were acquitted; and two cases are still in progress. Whilst the conviction of two of its members for corruption is something about which any national judiciary is bound to be concerned, some sense of proportion is needed. The conviction, in a five year period, of two members out of a judicial population of about 2,000 does not suggest serious cause for concern about systemic corruption within the profession.

122. Disciplinary liability for violations of ethical (e.g. incompatibilities, obligation to file asset declarations) or professional duties (e.g. careless performance of judicial duties, causing disruption in the work of the court to the detriment of judicial performance) also applies. It is regulated in detail in Articles 62 to 67 of the Act on the State Judicial Council. Sanctions consist of reprimands, fines (which cannot be superior to a third of the judge's last monthly salary for a period not exceeding 12 months) and dismissal (a suspended sentence of dismissal may apply if so decided). When establishing a disciplinary sanction, the following can be taken into account to modulate the punishment imposed: the seriousness of the violation and its consequences, the degree of responsibility, the circumstances under which the misconduct occurred, earlier work and behaviour of the judge, as well as other circumstances having an effect on the sanction to be reached. Depending on the type of sanction imposed, the judge punished is also banned from being promoted (the time span of this ban becomes longer, and can last from one to four years, depending on the seriousness of the misconduct and the severity of the sanction applied).

123. If suspicion of misconduct occurs, the persons authorised to submit a request to carry out a disciplinary procedure are the court president where the judge serves or the person in that court who is authorised to perform court administration related tasks, the president of the directly higher court, the Minister of Justice, the President of the Supreme Court and the court council. Disciplinary proceedings are then conducted by the State Judicial Council. The State Judicial Council may appoint, for certain discipline procedures, a special disciplinary committee (so-called Investigating Committee) to carry out the investigation, establish facts and explained the established facts before the State Judicial Council. Then, the decision attributing disciplinary liability and proposing punishment is taken by a majority of votes of all members of the State Judicial Council, in writing and fully reasoned. The State Judicial Council is not bound by the request put forward by the submitter of the complaint. The procedural guarantees of a criminal process (i.e. the provisions of the Criminal Procedure Act) apply in disciplinary procedures, in particular those related to the right to defence. The incriminated judge has the right to appeal against the decision on disciplinary accountability to the Constitutional Court.

124. The absolute statute of limitations for the initiation of disciplinary proceedings is of three years since the offence was committed. Whenever disciplinary proceedings are initiated within the limitation period, they cannot become barred by the objective

limitation period, meaning that the proceedings must be concluded by a decision on the existence or non-existence of the judge's disciplinary accountability.

125. It is possible for citizens to submit petitions, orally or in writing to the responsible court president, regarding the work of the court or the judges for stalling the proceedings or due to the behaviour of the judge or some other court employee with whom they enter into a professional relationship (Article 4, Act on Courts). The GET was told that the Ministry of Justice receives about 8,000 complaints about judges every year but that most of them are submitted by persons disappointed with the outcome of litigation. The GET is well aware that most judicial complaints authorities receive a high volume of complaints from dissatisfied litigants which do not disclose any objective grounds for concern about the conduct of the judge. The GET does not regard the Croatian experience as being in any way unusual in this respect.

126. The GET was told that important amendments were made in 2011 to ameliorate the efficiency of disciplinary proceedings, including by improving the evidence procedure (by providing the possibility to appoint separate investigation commissions to establish facts), by introducing more flexible sanctions, and by increasing the statute of limitations for the initiation of criminal proceedings. These changes have reportedly resulted in more efficient punishment of professional misconduct. In addition, the GET was made aware of the emphasis placed by the State Judicial Council in judicial accountability as a way to tackle allegations of lack of efficiency of courts, corporatism and social mistrust in the system. As a way to support such statement the GET was provided with statistics on disciplinary action: from 2008 to 2010 (under the old system of appointment of court presidents and members of the State Judicial Council) a total of 19 disciplinary measures, including 10 dismissals, were decided. From 2011, a total of 63 disciplinary measures were taken, out of which 7 consisted of dismissals. The GET was also told that, since 2002, the Constitutional Court has only had to deal with 27 complaints from judges about dismissal on any ground.

127. The disciplinary procedure for judges is currently under review to render it faster and to give greater procedural guarantees to judges, the final aim being to strike a balance between procedural guarantees and efficiency of discipline processes. The GET notes the allegations it heard (by members of disciplining bodies themselves) that judges have not always cooperated in relation to attendance in connection with disciplinary matters. The GET finds it surprising that judges have had any choice as to their participation, and encourages the authorities to look into this matter as they review the current rules for disciplinary proceedings.

Advice, training and awareness

128. An important measure in the judicial reform programme is to provide for formal ongoing education of judges. In 2004, the Ministry of Justice established the Judicial Academy to ensure "the autonomous, responsible, independent and impartial performance of judicial duties". A Development Strategy for the Judicial Academy has been issued for the period 2011-2015. In the field of professional ethics and professional duties and responsibilities of judges, the Judicial Academy has developed several modules and educational activities as part of its induction, as well as ongoing training curricula. The workshops and seminars are held in all regional centres of the Judicial Academy; attendance of some of these is mandatory (i.e. initial training module for trainees and court clerks on the organisation of the judiciary; in-service course on ethics and deontology in the judicial profession and autonomy and independence of the judicial function), while attendance of others is considered to be optional and part of career development (e.g. specialised courses on economic crime and the fight against corruption). The GET notes that since its establishment, the good work of the Judicial Academy has been internationally recognised. This is an important asset since training (induction and ongoing) is an essential element to raise ethics awareness values that not

only provide the basis for the organisation's mission and vision, but also give guidance on daily work and help draw the line where the boundaries of acceptable behaviour lie.

129. The explanation which was given most frequently for the high records of public mistrust in the judiciary was misleading publicity as to the work of judges and prosecutors. There were two elements in this. The first was the press itself, which was said to be unbalanced, sensationalist and inaccurate in its reporting. It was said that the press "looks for scandal", that responses by the Association of Judges to allegations made in the press do not receive the same prominence as the original allegations and that the amount of true investigative journalism has been reduced. The GET was also told that close ties between some media owners and political and financial centres of power can have an unbalancing effect on the information which reaches the media.

130. The second element is more worrying. The GET heard from a wide range of interlocutors (not by any means the judiciary alone) that the executive branch has not always acted with restraint in commenting on the judiciary. The GET was told that there have been "flagrant attacks" by the executive branch, sometimes against individual named judges. Institutional boundaries must be more firmly drawn within the government to allow greater independence for the judiciary to conduct its work. Attacks from official authorities within the executive or legislative branches not only undermine the credibility of the judicial branch, but also erode the vitality of the legal system as a whole. The GET was told that judges come under pressure to decide cases in particular ways, that there are serious attempts to question the independence of judges and that ministers express opinions about the guilt of individuals before trial. As an example, the GET was referred to the decision of the European Court of Human Rights in *Pesa v Croatia* in which a breach of Article 6(2) of the European Convention on Human Rights was found (breach of the applicant's right to be presumed innocent) on the basis that the statements made by four high-ranking State officials amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the competent judicial authority¹⁷.

131. Whilst the GET is not in a position to evaluate the accuracy of all of this, such concerns were a striking feature of much that was said to the GET throughout the country visit. The GET recalls that the pace of change in Croatia has been fast and notes that the events with which *Pesa v Croatia* was concerned, for example, took place some time ago. The GET trusts that those in office have now learned to adopt a more restrained and responsible approach. Nevertheless, the press pointed out that it can only work with the information it receives and that the work of the judiciary (comprising both judges and prosecutors) is not always very transparent. Particular attention needs to be paid to increasing the transparency of judicial work, including by improving the level of information provided by courts/prosecution offices' websites, effectively implementing automatised case management and case tracking systems (i.e. ICMS and CTS ongoing projects) and finding ways to enhance cooperation with civil society (e.g. undertaking joint projects with NGOs). The GET further considers that more could be done to articulate ad hoc mechanisms geared at better preserving the independence of the judiciary, not only in law, but also in practice when confronted with political, non-evidence based defamation instances, notably by making clear statements whenever necessary on the required independence of the judiciary. The GET heard that this could be done, for example, in the annual reports of the Supreme Court (the first one of which will be released in 2014 covering activities carried out in 2013) by resorting to Article 45 which provides for the possibility to warn of the status and operation of the judicial power. The GET thinks that the State Judicial Council and the State Prosecutorial Council could also play a valuable role in this respect.

¹⁷ Case of *Pesa v Croatia* (Application no. 40523/08). Strasbourg, 8 April 2010.

132. The GET heard that each court has a judge who serves as spokesperson and that this has been a helpful development. The GET observes, however, that communication with the media is a complex area. Since the influence which press reporting has on the public perception is enormous, it appears to the GET that improved communication with the press could only be beneficial. Better communication with the public and transparency regarding judicial operations and outcomes would shore up the independence of the judicial branch against the other branches of government and likely improve the overall perception problem. Accordingly, **GRECO recommends that a communication policy, including general standards and rules of conduct as to how to communicate with the press, is developed for the judicial system (judges and prosecutors) with the aim of enhancing transparency and accountability.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

133. The public prosecution service of Croatia (PPS) is a vertically structured organisation headed by the Public Prosecutor General (PPG). In addition to the Public Prosecution Office of the Republic of Croatia and the Office for the Suppression of Corruption and Organised Crime (USKOK), the PPS consists of 15 county public prosecution offices and 33 municipal public prosecution offices (33). At the helm of the Public Prosecution Office of the Republic of Croatia is the PPG. At the helm of county public prosecution offices are county public prosecutors and at the helm of municipal public prosecution offices are municipal public prosecutors. Accordingly, the public prosecutor (head of office) is responsible for performing tasks from the scope of work of a public prosecution office which s/he represents and manages. A deputy prosecutor is authorised to perform actions in proceedings before court or other State bodies vested in the public prosecutor by law¹⁸.

134. There are 619 prosecutors, of whom 252 are men and 367 are women¹⁹. The organisation of the PPS, its competencies and the conditions for appointment and dismissal are regulated by the Act on the State Attorney's Office.

135. The PPS plays a special role in the judicial system of Croatia as an autonomous, independent judicial body authorised and obliged to proceed against perpetrators of criminal offences and other punishable offences, to undertake legal actions to protect the property of the Republic of Croatia and to apply legal remedies to protect the Constitution and the law (Article 124 of the Constitution and Article 2 of the Act on the State Attorney's Office). Any interference with the administration of justice, and particularly, any use of coercion against public prosecutors are specifically forbidden by law (Article 2 of the Act on the State Attorney's Office; Article 312, Criminal Code). No institution or person outside the PPS is authorised to give guidelines or instructions to a prosecutor on the handling of concrete cases.

136. The Public Prosecutor General (PPG) is appointed by Parliament for a period of four years, with the possibility of reappointment, at the proposal of the Government of the Republic of Croatia and with a prior opinion of the Judiciary Committee of the Croatian Parliament. Only a person who has at least 15 years of working experience as a judge, public prosecutor, lawyer, public notary, law professor or a reputable jurist who has passed the bar examination, has at least 20 years of working experience and who has proved himself/herself with his/her professional work in a specific legal field as well as with his/her scientific and expert publishing, can be appointed as Public Prosecutor General.

137. The State Prosecutorial Council is entrusted with key responsibilities regarding the career of the prosecutorial corps (e.g. appointments, transfers, appraisal complaints, suspension and dismissal, training, asset declarations). It consists of eleven members, elected by their own peers, of whom seven are deputy prosecutors from different ranks (two deputies of the PPG, two deputies of the county prosecutors and three deputies of the municipal prosecutors), two university law professors and two members of parliament, of whom one comes from the opposition. Head officials of the PPS cannot be members of the State Prosecutorial Council, nor can any deputy prosecutors against whom a disciplinary action was imposed in the past four years. Members of the State Prosecutorial Council are elected for a four-year term and no person may be a member of the Council more than twice.

¹⁸ When this report refers to the term "prosecutor" without any reference to him/her being either a head of office or a deputy, it is meant to encompass all members of the prosecution service no matter of their rank.

¹⁹ Fourth Evaluation Report on European Judicial Systems, European Commission for the Efficiency of Justice (CEPEJ), 20 September 2012.

138. During the on-site visit, discussions were held with regard to the political bodies' involvement in the appointment of the Prosecutor General and in the composition of the State Prosecutorial Council. According to the Constitution of Croatia, the PPS is an autonomous and independent judicial body. Prosecutors cannot receive instructions from anyone outside the prosecutorial system. The role of the Ministry of Justice in relation to the prosecution service has been significantly reduced, at present, to only judicial and financial administration matters.

139. Nevertheless, as was the case with the appointment process of the President of the Supreme Court, the roles of the Parliament and the Government are relevant in the procedure of appointing the PPG of Croatia. In particular, the Prime Minister (executive branch) proposes the PPG who is then appointed by Parliament (legislative branch) for a period of four years, which can be renewed. There is no limit to the number of mandates the PPG may hold. The criteria on which the Government bases its proposal for the PPG's appointment are not transparent enough. The State Prosecutorial Council does not have any role in the appointment process of the PPG, but the authorities consider that the current system balances well the interests of all branches of government (in their highest ranks) for the appointment of the heads of the justice system (i.e. President of the Supreme Court and the PPG).

140. Although the involvement of the executive and/or the legislative body in the appointment of a Prosecutor General is common in many European countries, and according to the Recommendation Rec(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system, a plurality of models is accepted – from systems in which the public prosecution is independent of the Government to others where it is subordinated to the executive branch; it would clearly be preferable if the procedure for the appointment of the prosecutors, and especially of the Prosecutor General, could prevent any risk of improper political influence or pressure in connection with the functioning of the prosecution service. It is important that the method of selection and appointment of the Prosecutor General is such as to gain the confidence of the public and the respect of the judiciary and the legal profession. To achieve this, professional, non-political expertise should be involved in the selection process; in the GET's view, the current system could certainly benefit if subjecting the selection and appointment of the Prosecutor General to decisive involvement of the State Prosecutorial Council. Moreover, the unlimited number of mandate renewals of the PPG is also a reason of concern for the GET since it could potentially increase the vulnerability of this key position to political pressure (i.e. individual expectations of renewal). The GET recalls that the Venice Commission stated in its report on European Standards as regards the Independence of the Judicial System²⁰ that a Prosecutor General should not be eligible for re-appointment, at least not by either the legislature or the executive, since there is a potential risk that a prosecutor who is seeking re-appointment by a political body will behave in such a manner to obtain the favour of that body or at least to be perceived as doing so. Therefore, **GRECO recommends that the Croatian authorities consider reviewing the procedures of selection, appointment and mandate renewal of the Public Prosecutor General in order to increase their transparency and minimise risks of improper political influence.**

141. As far as the composition of the State Prosecutorial Council is concerned, the fact that two of the 11 members of the Council are elected among members of parliament was also analysed during the on-site visit. As it was the case with judges, the inclusion of two members of parliament in the composition of the State Prosecutorial Council is reputed to bring a valuable contribution to the work of the Council, providing a view from the outside into the world of the prosecution system.

²⁰ Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)040.

142. The Ministry of Justice conducts the tasks of judicial administration for the PPS. When preparing the budget of the prosecution service, the PPS proposes an amount to the Ministry of Justice, but the latter is not bound by the proposition. Once the financial resources are approved, the PPS uses it according to its needs. The Ministry of Justice contracts and procures equipment, including IT means for the PPS. As mentioned before, the GET was told that the role of the Ministry of Justice with respect to prosecutors has been significantly limited in the last few years (for example, it currently plays no role at all in the appointment of prosecutors; it is for prosecutors themselves to elect their peers). The Ministry of Justice confines itself to budgetary matters, namely, to ensuring some preconditions for adequate means and resources for the daily work of prosecutors.

143. In Croatia, public prosecutors (along with judges) are considered members of the judiciary, having many similar or very close features as regards their status and career. Judicial reforms carried out as a consequence to the preparation to EU accession brought significant progress for both categories of members of the judiciary. However, the prosecutors are also affected by a significantly negative perception within society. Thus, the high level of mistrust and perception of corruption covers the entire justice system. As explained before, according to the interlocutors met on-site, the problem of corruption as concerns the Croatian judiciary, including prosecutors, is not as much related to bribery, but rather to other facets of the corruption phenomenon, dealing more, for example, with the lack of transparency and a low level of understanding of the concept of conflict of interest. Nevertheless, a thorough analysis of the causes of the mistrust and corruption perception that covers the prosecutors along with the judges has never been carried out. The GET refers back to recommendation v in this respect.

Recruitment, career and conditions of service

144. Deputy prosecutors are appointed for life by the State Prosecutorial Council. The requirement that deputy prosecutors were designated for a five-year period prior to their permanent appointment was abolished as a threat to their autonomy and independence. Different requirements apply depending on the level to which applications are made, i.e. municipal prosecution offices, county prosecution offices or the Public Prosecution Office of the Republic of Croatia. The requisites (years of work experience) and procedures (advertisement of posts, selection process, scoring systems and priority lists of candidates) are similar to that described for judges under paragraph 86. In appointing candidates, chief importance is placed on performance appraisals and the opinions of the respective management and collegial bodies under which the prosecutor concerned has served. Public prosecutors (heads of office) are appointed by the State Prosecutorial Council for a fixed time period of four years with the possibility of reappointment. In particular, the appointment process of County Public Prosecutors by the State Prosecutorial Council necessitates the prior opinion from the Collegiate Body of the Public Prosecution Office of the Republic of Croatia and at the proposal of the PPG; Municipal Public Prosecutors are appointed by the State Prosecutorial Council with the prior opinion from the Collegiate Body of the County Public Prosecutor's Office.

145. As highlighted above, the State Prosecutorial Council goes ahead with an appointment procedure only after collecting all required information on the candidates' previous work that can provide a sound basis for making the appointment decision. Appointment procedures, regardless of whether public prosecutors/deputy prosecutors are appointed at the beginning of their careers or as part of their professional advancement, are largely based on merit. Security checks are also required. The PPG/Head of Office in question is invited to appointment sessions to provide the State Prosecutorial Council with additional explanations, as necessary. Vacancies, appointment and dismissal decisions are publicised in the Official Gazette.

146. An appraisal procedure is in place to evaluate, on a regular basis, the work of individual public prosecutors/deputy prosecutors. Public prosecutors (heads of office) are

appraised every two years; deputy prosecutors are appraised every three years, with the exception of those appointed to office for the first time, who are evaluated every year for the first three years in service. Performance evaluation is the backbone of the promotion system in the PPS. Detailed instructions and procedures have been developed to assess the merits of prosecutors and the extent of the success or failure of their work (e.g. diligence in carrying out duties, quality of work in terms of rhetorical and writing skills, compliance with procedural deadlines, cooperation with fellow workers, professional competence and work results, implementation of legal remedies, etc.). There is also a prescribed time of working experience which is of use for career advancement purposes in the different levels of territorial jurisdiction, i.e. two years for the municipal level, eight years for the county level and 15 years for the State level. Unsatisfactory performance can lead to suspension. A suspension decision can only be taken, following a reasoned motion of the PPS, by the State Prosecutorial Council and only after having heard the prosecutors concerned. Administrative dispute mechanisms are in place to contest suspension decisions.

147. Transfers generally take place at the request of the prosecutor concerned. Reassignments may take place for organisational purposes; they need to be reasoned in writing and limited in time (six months if the prosecutor is reassigned to the same level or a lower level position, and four years if assigned to a higher-rank office). Prosecutors who are transferred against their consent may file a complaint before the State Prosecutorial Council.

148. As explained before, prosecutors are appointed for a lifetime and may only lose their position in the cases provided by law (i) at their own request; (ii) if incapable of performing their official duties; (iii) if convicted of a criminal offence; (iv) if dismissed on disciplinary grounds; (v) upon reaching the age of retirement at 70 years. Any decision on termination of office must be reached by a majority vote of the State Prosecutorial Council after the prosecutor concerned has been given the opportunity to present his/her defence in person or through an attorney; the dismissed prosecutor can challenge the decision in administrative dispute.

149. The gross annual salary of a prosecutor at the beginning of career equals that of a judge and therefore amounts to 176,436 HRK (23,400 EUR); it amounts to 490,728 HRK (64,500 EUR) for the PPG. Prosecutors who do not own or rent an apartment in their place of work are entitled, for official use and for the duration of their office, to an apartment that is managed by the Government Office for State's Assets Management. Control over the legality of the use of this facility is ensured by the State Audit Office and the Independent Department for Internal Audit at the Ministry of Justice.

150. Within the context of judicial reform, several measures have been taken in order to increase the independence and transparency of the prosecution system. Thus, uniform, transparent and objective selection criteria, as well as a competitive procedure, have been introduced in the appointment system to prosecutorial posts; the composition of the State Prosecutorial Council has become more balanced and the procedure for electing its members more transparent; periodical evaluation and promotion rules have been improved, etc. The GET positively values all these developments.

Case management and procedure

151. Case files are sorted in chronological order of receipt and then distributed in alphabetical order by the surnames of prosecutors in the respective prosecution offices, but also paying attention to special competence or specialisation as well as the workload of each prosecutor. If departing from the aforementioned random system for case allocation and assigning a specific case to a specific prosecutor, such a decision must be sufficiently grounded and reasoned in written form. An automatised Case Tracking System (CTS), with similar functions to the ICMS for judges (see paragraph 95), is being

introduced in the prosecution service. Likewise, in the framework of the reform of the judiciary, there has also been a restructuration and functional rationalisation of public prosecution offices.

152. The PPG, and essentially every public prosecutor (head of office), can give general or specific instructions to subordinate prosecutors who are, in principle, obliged to follow them. Mandatory instructions must always be made in writing and contain a statement of reasons (they can exceptionally be oral, but for them to be valid, they need to be confirmed in writing). However, if the subordinated prosecutor receiving the instruction deems it to be illegal or unfounded, s/he has to notify the public prosecutor (head of office) in a reasoned report, in which case the latter must reassign the case. The prosecutor opposing the instruction of his/her superior cannot be called to account for the opinion given or for the request made to withdraw from the case.

153. The representatives of the prosecution service interviewed on-site confirmed that the reassignment of cases is extremely rare and when it occurs, it is generally related to conflicts of interest of the prosecutor assigned to the case, as explained above (subjective reasons), or whenever the work load of the prosecution office is extremely heavy and thus the case is moved from that office to another – rather than from one prosecutor to another in the same office (objective reasons). When a case is transferred, this only occurs pursuant to a reasoned or written decision. The responsible court remains, in any case, the same.

154. There are safeguards in place to ensure that prosecutors deal with cases without undue delay, including statutory deadlines. Failure to act within the prescribed deadlines or to intentionally delay a process could trigger disciplinary or criminal proceedings and will, in any event, be taken into consideration in the framework of the appraisal system. The GET was pleased to hear that there has been no single case which has not been resolved due to delays of the prosecution service.

155. Within the PPS, there is an inspection system which is carried out by the Internal Control Department every two years, according to an annual work plan (and which is different from the evaluation process of individual prosecutors).

156. The PPG must submit to the Parliament an annual report concerning the status and trends of crime in the preceding year, cases related to the protection of property interests of Croatia, legal matters in specific areas and a review on staff organisational matters and work conditions. In addition, s/he must give notice to the Ministry of Justice regarding any criminal proceeding instituted against judges and public prosecutors. The PPG must, upon request of the Minister of Justice, submit general reports relating to certain types of criminal proceedings. However, as already mentioned, 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 media representatives met on-site gave credit to the efforts made in recent years by the prosecution service to facilitate information on its operation (e.g. indictments issued; information on cases opened, dismissed and concluded; statistics on disciplinary action).

Ethical principles, rules of conduct and conflicts of interest

157. Standards of conduct of the prosecutors are provided by the Act on the State Attorney's Office, as well as by the Code of Ethics adopted in 2008 by the Extended Collegiate Body of the Public Prosecution Office. The Code is available at the PPS website (www.dorh.hr). It contains provisions on legality, impartiality, diligence and expertise, integrity and incorruptibility, loyalty, dignity, etc. Breaches of the Code of Ethics can trigger disciplinary action. A certain level of emphasis on the ethics rules is placed in the training and regular evaluation of the prosecutors. Every prosecutor receives a copy of the Code of Ethics when s/he enters the profession. Each year, each prosecutor has to

undertake a course on judicial ethics at the Judicial Academy. The trainers are selected among the judges, prosecutors and the members of the State Judicial/Prosecutorial Councils. The GET was informed that the methodology of the relevant training courses encompasses both a theoretical and practical approach (based on case studies).

158. Prosecutors have a body – the Ethical Committee – established with the purpose of supervising the adherence to and the interpretation of their Code of Ethics. The GET considers this a step forward in fostering a climate of integrity among prosecutors, and they are to be commended for that. The Ethical Committee consists of the president and two members, appointed by the Extended Collegiate Body of the Public Prosecution Office. Its role is, on the one hand, to respond to prosecutors' requests to interpret the ethical principles applicable to them, and, on the other hand, to issue opinions/recommendations regarding complaints against the behaviour considered by the submitter as contrary to the Code. In practice, the Committee receives a broad range of questions from the prosecutors e.g. on how to act outside court or prosecution office in relation to a party in a case, on potential restrictions they should place on their social contacts, on possible membership of clubs and associations etc., which proves their need for guidance in this field, especially in relation with potential incompatibilities and situations of conflict of interest. The approach of the Ethical Committee is an informal one, their opinions are not binding, and breaches of ethical rules are not addressed by this Committee. If the breach of the Code of Ethics is serious enough, it will be considered as a disciplinary offence and it will be up to the State Prosecutorial Council to sanction it. The Ethical Committee maintains an advisory role. However, the discussions held on-site revealed that at present the Ethical Committee is rather cautious in issuing opinions on very concrete ethical dilemmas, preferring to stick to the description of principles; it does not record the requests received, nor the answers given and does not give general guidance to the prosecutors on the practical interpretation of the principles enshrined in the Code. The GET heard that the Ethical Committee was looking into making its decisions and general guidance for the prosecution profession more easily accessible on-line, as well as to increasing its interaction with the Judicial Academy. In the GET's view, counselling services currently available to prosecutors could be strengthened, general guidance with regard to concrete typical situations of potential incompatibilities and situations of conflict of interest could be offered not only to the requesting prosecutor, but to all of them. Therefore, **GRECO recommends that further measures be taken to develop guidance and counselling for prosecutors on observing ethical principles in concrete situations.**

159. As was repeatedly indicated to the GET during the on-site visit, the notion of conflict of interest, the distinction between the potential and the actual conflict of interest, is not always well understood by any of the categories of public officials, including prosecutors. Concrete instances in which prosecutors may find themselves in a situation that is not necessarily described expressis verbis in the list of reasons for incompatibility or for prohibition or restriction of certain ancillary activities that are provided for in law or in the Code of Ethics (i.e. "grey areas") is not always considered as a conflict of interest nor addressed as such. In the Strategy of the Judiciary, prevention of conflicts of interest is not among the objectives to pursue. No clear rules for the situations where (judges and) prosecutors move to the private sector are adopted. Although the Law on Preventing Conflicts of Interests does not apply to judges and prosecutors and the Commission for the Prevention of Conflicts of Interest has no competence in relation to members of the judiciary, a common understanding of the notion of conflict of interest as encompassing all situations in which the private interests of the public official might collide with his/her public duty, as well as a common emphasis on preventing them would be useful. This must be kept in mind when implementing recommendation x above.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

160. As a general rule, prosecutors cannot perform any other service or job which may impair the reputation, integrity, objectivity and autonomy of the PPS (Articles 117 and 120, Act on the State Attorney's Office). In particular, prosecutors are banned from membership of political parties as well as involvement in political activities (Article 119, Act on the State Attorney's Office). A prosecutor cannot use his/her official position or dignity to pursue his/her own interest; s/he cannot act as a judge, lawyer or notary public or be a member of a board of directors or a supervisory board of a company or some other legal entity (Article 120, Act on the State Attorney's Office). The only professional remunerated activities which a prosecutor is entitled to perform relate to the academic field, i.e. producing expert and scientific papers, participating at professional or scientific conferences, drafting legislation (Article 120, Act on the State Attorney's Office). Prosecutors are not banned from engaging in financial activities (they can acquire shares), but they are required to report those in their asset disclosure forms. Prosecutors must inform their superior in line of any additional activity they may engage in.

161. The GET was told that there used to be post-employment limitations for prosecutors, but that these were declared unconstitutional and that, in the event that a conflict of interest may emerge when a prosecutor leaves office to go to the private sector, the recusal rules would apply. The GET was also informed that situations where prosecutors turned to private sector activity were rare in practice, although the growing demands imposed on the profession are resulting *de facto* in higher pressure in service and this could well entail a shift in the current situation and practice with more prosecutors moving to the private sector.

Recusal and routine withdrawal

162. Prosecutors must recuse themselves for the same reasons as judges, e.g. when the prosecutor is a party to the case, has provided legal advice or guidance to a party, is connected to a party, etc. (for details, see paragraph 112). It is possible for an individual (an interested party in the case at stake) to call for a prosecutor's disqualification. It is the responsibility of the superior prosecutor to reassign the case to another prosecutor.

163. Additionally, specific disqualification rules apply for members of the State Prosecutorial Council when deciding in the areas under their responsibility (appointment, appraisal complaints, discipline, etc.), if the candidate or prosecutor subject to the decision is the member's spouse or partner, relative in direct line of descent up to any degree and in collateral line of descent to the fourth degree, or is related to the member as guardian, ward, adoptive parent, adoptive child, provider, dependent, foster child or foster parent.

Gifts

164. Prosecutors are banned from receiving gifts and free services which may compromise or raise doubts about their impartiality and objectivity (Article 4, Code of Ethics of Prosecutors). There was consensus among the different interviewees on-site that, in practice, there was no culture of making gifts to prosecutors.

Misuse of confidential information and third party contacts

165. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in the case, as well as that of classified data (Articles 36 and 37, Act on the State Attorney's Office). Breach of professional

confidentiality is punishable (Article 300 of the Criminal Code); sanctions consist of fines and imprisonment of up to three years. Further professional requirements concerning the disclosure of information acquired in office are contained in the Code of Ethics for Prosecutors. The disclosure of confidential information may also entail disciplinary consequences.

Declaration of assets, income, liabilities and interests

166. Within 30 days of taking up office for the first time, prosecutors are required to submit declarations of their own assets and income (including cash savings when these exceed the annual income of the relevant prosecutor), as well as the assets of their spouses and minor children. They must also declare on an annual basis any substantial change. An asset declaration is also to be filed at the end of the prosecutor's mandate. The public has the right to view public declarations.

167. The State Prosecutorial Council keeps and controls the aforementioned asset declarations. It can cross check information with the tax authorities, as necessary. If anomalies are found, the State Prosecutorial Council may require the prosecutor to submit a written explanation. If the latter is not satisfactory, the State Prosecutorial Council notifies the matter to the head of the prosecution office in which the prosecutor concerned serves in order to instigate a disciplinary procedure. Failure to submit asset declarations as well as false statements constitutes a disciplinary offence. So far, the State Prosecutorial Council has not received any report on violations regarding conflict of interest or asset declaration provisions.

168. The GET was told that, in the experience of the State Prosecutorial Council, prosecutors are very diligent when filing and updating their forms. One of the reasons behind this is public exposure if doing otherwise. As was the case with judges, the relevant disclosure forms are made available upon request, but the GET found it to be a much more open policy for granting access to forms than that applied by the State Judicial Council (which had opted for a restrictive proportionality test in this respect). The GET was advised that no objection has ever been made to grant access to a prosecutor's financial declaration. As to the checks performed in practice by the State Prosecutorial Council, since it was esteemed that this was a low risk area, and given the limited resources this Council has (with a permanent staff that consists of a secretary, an administrator and an accountant), the control carried out is mainly pro-forma. The State Prosecutorial Council said it relied on tax inspection services for cross-checks. As was the case with judges, the GET acknowledges the reservations of the authorities to broaden public access to declaration forms (e.g. by publishing them online or in the Official Gazette) due to privacy and security concerns of prosecutors. That said, this in turn limits somehow the type of control that can be exercised by the public as they lose a holistic view of conflicts of interest risks and challenges in the profession, and, for that reason, the oversight performed over the forms by the State Prosecutorial Council cannot be merely formalistic; for credibility purposes, it does need to be intensified. The GET welcomes the discussion initiated by the Ministry of Justice to further advance in this domain. Consequently, **GRECO recommends that the authorities continue in their endeavours to strengthen the scrutiny of prosecutors' financial declarations.** In implementing this recommendation as well as recommendation x above, it would be important that adequate communication channels to exchange good practice and lessons learned are structured with the Commission for the Prevention of Conflicts of Interest, which is vested with key responsibilities in conflict prevention and asset disclosure for all other categories of public officials.

Supervision and enforcement

169. Prosecutors are subject to both criminal and civil liability. A prosecutor cannot be held accountable, arrested or detained, or punished for a legal opinion voiced in a case

delegated to him/her, unless s/he violates the law (Article 6, Act on the State Attorney's Office). The GET was told that, in the last five years, criminal proceedings for corruption offences had been started against two prosecutors.

170. In addition, disciplinary liability of prosecutors is regulated in detail in Articles 137 to 139 of the Act on the State Attorney's Office. Violations of ethical duties (e.g. incompatibilities, obligation to file asset declarations) or professional duties (e.g. unjustified lack of performance or irregular performance of duties, undue delay, abuse of power, breach of confidentiality) trigger disciplinary action. Sanctions consist of reprimands, fines (which cannot be superior to a third of the prosecutor's monthly salary for a period not exceeding six months), temporary suspension from office and dismissal. Sanctions are modulated on the basis of the seriousness of the offence, the damage caused, the degree of responsibility and the circumstances under which the misconduct occurred, recidivism instances, etc.). Depending on the type of sanction imposed, the prosecutor punished may also be suspended from promotion for a maximum period of three years or banned from appointment to a head of office position for a period of one year. The absolute statute of limitations for the initiation of disciplinary proceedings is for three years after the offence was committed.

171. Discipline proceedings vary depending on whether the prosecutor concerned is a head of office or a deputy prosecutor. For the former, the PPG is responsible for bringing forward a proposal to the State Prosecutorial Council on discipline measures. The PPG can submit such a proposal as a result of an inspection of the service, or at his/her own motion if s/he becomes aware of an irregularity. The State Prosecutorial Council is responsible for conducting disciplinary proceedings and deciding on the disciplinary liability of deputy prosecutors. Disciplinary decisions of the State Prosecutorial Council are taken by a majority of votes of its members, in writing and fully reasoned. The procedural guarantees of a criminal process (i.e. the provisions of the Criminal Procedure Act) apply, in particular those related to the right to defence and the right to be heard of the prosecutor in question. The prosecutor concerned has the right to initiate an administrative dispute against the decision on disciplinary accountability. Details on disciplinary measures taken are available on-site.

Statistics on disciplinary proceedings against prosecutors (2010-2013)

Year	Requests made	Proceedings instigated	Requests withdrawn	Proceedings dismissed	Acquittals	Sanctions			
						Dismissal	Fine	Reprimand	Suspended from promotion for 3 years
2010	3	2	0	0	0	0	0	1	1
2011	1	1	1	1	0	0	0	0	0
2012	4	4	0	1	0	2	1	0	0
2013*	2	2	0	0	0	0	0	1	0
TOTAL	10	9	1	2	0	2	1	2	1

*Note: One procedure still pending.

Advice, training and awareness

172. In parallel with the formal ceremony of swearing in newly appointed prosecutors, they are handed the Code of Ethics for Prosecutors and the PPS Handbook which further elaborates on ethical rules and available advisory mechanisms on integrity matters. In

this connection, as explained before, prosecutors can obtain guidance on ethics and related matters from the Ethics Committee.

173. As part of the initial training of prosecutors, the curriculum of the Judicial Academy includes sessions dedicated to the rights and duties of prosecutors, liability of prosecutors and disciplinary proceedings alongside provisions related to professional ethics. The initial training on ethics is obligatory for all future prosecutors. As regards in-service training, numerous seminars are organised to study and discuss matters related to ethics, conflicts of interest, the fight against corruption and related topics.

174. As was the case with judges, the GET noted difficulties in communication with the media and civil society that was feeding the perception of corruption and political influence with regard to the activity of the prosecutors. This perception gap can be quite detrimental to the system and is in stark contrast with the performance records of the prosecution service, as well as the valuable reforms introduced in recent years to assure its neutrality, transparency and efficiency. As already mentioned, the interlocutors met recognised that there was a rather good degree of openness regarding appointment and disciplinary outcomes; in this sense, they were appreciative of the improvements made by the prosecution service in recent years to improve the transparency of its work. Furthermore, prosecutors' offices entrust the communication with the media to dedicated spokespersons²¹; prosecution offices publicise on their websites information on relevant cases that they investigate and indict. However, the GET felt a certain sense of mistrust flowing between the prosecutors and the media. Prosecutors express their dissatisfaction about the pressure they have to endure from the press and the, sometimes, inaccurate coverage the press offers in relation to some "hot" cases, speculating about the timing and reasons for opening a certain investigation, the press adopting a sensation-seeking attitude rather than reflecting on the facts of the case in question. In their turn, media representatives claimed that they felt that some elements of relentless opacity of the prosecution service remained. The GET understood from the interviews held that challenges remain in terms of properly conveying and explaining prosecutors' decisions. For this reason, the GET refers back to recommendation viii reflecting on the need to develop an effective communication policy in the judicial system.

²¹ For example, USKOK has had since 2008 a dedicated spokesperson who is a journalist. The same applies to the Public Prosecution General Office since 2005.

VI. RECOMMENDATIONS AND FOLLOW-UP

175. In view of the findings of the present report, GRECO addresses the following recommendations to Croatia:

Regarding members of parliament

- i. (i) that a code of conduct for members of Parliament be developed and adopted with the participation of MPs themselves and be made easily accessible to the public (comprising detailed guidance on e.g. prevention of conflicts of interest when developing the parliamentary function, ad-hoc disclosure and self-recusal possibilities with respect to specific conflict of interest situations, gifts and other advantages, third party contacts, deontology of dual mandate, etc.); (ii) that it be coupled with a credible supervision and enforcement mechanism (paragraph 36);**
- ii. (i) that the technical and personnel resources of the Commission for the Prevention of Conflicts of Interest be reassessed, and that measures be taken as necessary thereafter, with a view to ensuring their adequacy and effectiveness; (ii) that the Commission displays a more proactive approach in its preventive role with members of Parliament, notably by further developing communication and advisory channels with Parliament and, in close coordination with the latter, preparing tailored guidance on conflicts of interest that may emerge in carrying out parliamentary functions (paragraph 67);**
- iii. that efficient internal mechanisms be developed to promote, raise awareness and thereby safeguard integrity in Parliament, including on an individual basis (confidential counselling) and on an institutional level (training, institutional discussions on ethical issues related to parliamentary conduct, etc.) (paragraph 73);**

Regarding judges

- iv. that the Croatian authorities review the procedures of selection, appointment and mandate renewal of the President of the Supreme Court in order to increase their transparency and minimise risks of improper political influence (paragraph 75);**
- v. that a study be carried out with the aim of better identifying and understanding the reasons for the high level of public distrust of the judicial system (judges and prosecutors) (paragraph 84);**
- vi. significantly strengthening and further developing mechanisms to provide guidance and counselling on ethics and the prevention of conflicts of interest for judges (paragraph 106);**
- vii. that the authorities continue in their endeavours to strengthen the scrutiny of financial declaration forms (paragraph 119);**
- viii. that a communication policy, including general standards and rules of conduct as to how to communicate with the press, is developed for the judicial system (judges and prosecutors) with the aim of enhancing transparency and accountability (paragraph 132);**

*Regarding prosecutors (**see also recommendations v and viii above)*

- ix. that the Croatian authorities consider reviewing the procedures of selection, appointment and mandate renewal of the Public Prosecutor General in order to increase their transparency and minimise risks of improper political influence** (paragraph 140);
- x. that further measures be taken to develop guidance and counselling for prosecutors on observing ethical principles in concrete situations** (paragraph 158);
- xi. that the authorities continue in their endeavours to strengthen the scrutiny of prosecutors' financial declarations** (paragraph 168).

176. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Croatia to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2015. These measures will be assessed by GRECO through its specific compliance procedure.

177. GRECO invites the authorities of Croatia to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.
