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## **Second Evaluation Round**

### **Evaluation Report on Croatia**

Adopted by GRECO  
at its 26<sup>th</sup> Plenary Meeting  
(Strasbourg, 5-9 December 2005)

## **I. INTRODUCTION**

1. Croatia was the 26<sup>th</sup> GRECO member to be examined in the second Evaluation round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Heikki KOPPERONEN, Detective Chief Superintendent, National Bureau of Investigation, Finland; Ms Jane LEY, Deputy Director, U.S. Office of Government Ethics, United States; Mrs Antonija SETNIČAR MUBI, Senior Adviser, Ministry of Finance, Slovenia. This GET, accompanied by one member of the Council of Europe Secretariat, visited Croatia from 5 to 8 April 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2004) 17E) as well as copies of relevant legislation.
2. The GET met with officials from the following governmental organisations: the Public Prosecutor's Office, the County Court, the Supreme Court, the High Commercial Court, the Ministry of Finance (Tax Administration, Customs Department, Money Laundering Prevention Department, Financial Police), the Ministry of Justice, the Ministry of Interior, the Central State Administrative Office for Public Administration, the Ombudsman's Office, the Commission for the Resolution of Conflicts of Interests, the State Audit Office. Moreover, the GET met with members of the following non-governmental institutions: the Croatian Bar Association, the Association for Democratic Society, unions and media representatives.
3. It is recalled that GRECO at its 10<sup>th</sup> Plenary meeting (July 2002), in accordance with Article 10.3 of its Statute, agreed that the 2<sup>nd</sup> Evaluation Round would deal with the following themes:
  - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173<sup>1</sup>), by Articles 19 paragraph 3, 13 and 23 of the Convention;
  - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.
4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Croatian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Croatia in order to improve its level of compliance with the provisions under consideration.

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<sup>1</sup> Croatia ratified the Criminal Law Convention on Corruption on 8 November 2000. The Convention entered into force in respect of Croatia on 1 July 2002.

## II. THEME I – PROCEEDS OF CORRUPTION

### a. Description of the situation

#### Confiscation and other deprivation of instrumentalities and proceeds of crime

5. The general confiscation regime is established in Article 82 of the Criminal Code and Articles 463 to 471 of the Criminal Procedure Code. Confiscation is considered as a sui generis criminal measure. It has a mandatory character and, in principle, can be decided by a court upon conviction of the perpetrator (physical or legal person). The Croatian authorities have indicated that attachment in rem is possible according to Article 463(1) of the Criminal Procedure Code even when criminal proceedings do not lead to a judgement of conviction; the bases stated in the above-mentioned Article are (1) considerations of public safety or (2) protection of the honour and dignity of citizens. Moreover, pursuant to Article 468 of the Criminal Procedure Code, the court may order the confiscation of the pecuniary gain even in those cases where conviction of the perpetrator is not possible (e.g., cases where the offender cannot be identified, cases where criminal proceedings must be discontinued, etc.).
6. Confiscation is applicable to proceeds (“pecuniary gain”) and instrumentalities of a criminal offence. Confiscation of proceeds of crime covers everything that the offender has gained from the offence. In principle, the expenditure incurred in gaining the proceeds of crime cannot be deducted. Value confiscation is possible pursuant to Article 82(2) of the Criminal Code. Although there are no legal criteria for assessing the exact economic advantage, in practice, it is fixed by the court on the basis of the value of the assets at the time of the commission of the offence. If a precise estimation entails undue difficulties or significant delays, the court may fix the amount of the economic advantage at its own discretion (Article 466, Criminal Procedure Code).
7. The pecuniary gain subject to confiscation may be exacted from a third party if property was not acquired *bona fide*.
8. The burden of proof for the purpose of confiscation cannot be reversed. According to Article 50(1) of the Law on the Office for the Suppression of Corruption and Organised Crime (USKOK), “the court shall, at the proposal of the USKOK, order the security measure of seizure of the means, proceeds or assets resulting from the criminal offence”. For seizure to be ordered, the prosecutor must prove that there are grounds to suspect that the instrumentalities or/and proceeds concerned resulted directly or indirectly from the commission of the criminal offence. The suspect is then to assert their legitimate origin (Article 52(3), Law on USKOK).
9. Confiscated property accrues to the State as a main rule. Pursuant to Article 82(4), (5) and (6) of the Criminal Code, it is possible to satisfy the claims corresponding to the damage caused to an individual who has exerted his/her civil rights in due time.

#### Interim measures: seizure and attachment

10. Seizure as an interim security measure is provided for in the Code of Criminal Procedure (Articles 218 to 221). The competent court can order seizure of those objects reasonably presumed important to a criminal investigation, or taken from a person through a criminal act, or subject to subsequent confiscation at an early stage of the criminal proceedings. In addition, the USKOK is entitled to file a seizure request *ex officio* for those corruption offences under its

competence<sup>2</sup>; the seizure order is to be delivered within 12 hours (Article 51(2), Law on USKOK). Moreover, pursuant to Article 218(8) of the Code of Criminal Procedure, the police are also entitled to seize assets inquires of criminal offences or urgent investigatory actions. Refusal to surrender the assets required by a seizure order is punished with sanctions consisting of fines up to a maximum of 20,000 Kn (2,750 EUR) and, in the event of further refusal, imprisonment until the assets are surrendered to the competent court and no longer than one month (Article 218(2)).

11. There are detailed rules on the management of seized assets (Articles 219(6) and 220, Criminal Procedure Code). Financial means and cash are deposited on a special interest-bearing account, while seized movable assets are kept by the court which holds a registry thereof.
12. The use of seizure is considered within the framework of the criminal investigation of the particular crime. The USKOK is empowered to initiate specific investigations aimed at identifying, tracing and freezing the proceeds of crime when potential corruption offences and indications of organised crime are detected (Articles 21c and 21d, Law on USKOK). Special investigative techniques are detailed in Article 180 of the Criminal Procedure Code. They can only be ordered by the investigating judge. Further techniques are provided for under Article 41 of the Law on USKOK (e.g., concluding simulated legal transactions).
13. The investigating judge is empowered to require a bank to deliver information on financial records of the perpetrator or the person subject to the proceedings for confiscation of pecuniary benefits. Such a request may be made even before criminal proceedings have commenced if it is suspected that the money was obtained through illegal trafficking of drugs or via an organised crime group (Article 219(3), Criminal Procedure Code). The court may also order the temporary suspension of a financial transaction (Article 219(5), Criminal Procedure Code).

#### Statistics

14. According to the data gathered by the Public Prosecutor's Office, confiscation for criminal offences against property (Articles 216-236, Criminal Code), unlawful business transactions (Articles 292-293 Criminal Code) and abuse of official duty (Article 317, Criminal Code) have been ordered as follows:

<b>2001</b>	281
<b>2002</b>	564
<b>2003</b>	537
<b>Total</b>	1382

During the visit, the USKOK provided statistics covering the last three years: seizure was ordered in 22 cases involving passive and active bribery (Articles 347 and 348 of the Criminal Code, respectively); confiscation was ordered in two cases of passive bribery.

#### Money laundering

15. Money laundering has been criminalised as a separate offence in Article 279 of the Criminal Code. It follows an "all crime" approach; therefore, any corruption offence can be a predicate

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<sup>2</sup> According to Article 21 of the Law on the Office for the Suppression of Corruption and Organised Crime USKOK has competence over the following corruption-related offences: active and passive bribery (Articles 347, 348, 294a and 294b, Criminal Code), trading in influence (Article 343, Criminal Code), misuse in performing government duties (Article 338, Criminal Code), money laundering with respect to the predicate offence of corruption and money laundering committed by a perpetrator who is part of a criminal organisation (Article 279(3), Criminal Code).

offence to money laundering, even if committed abroad. Pursuant to Article 279(5) and Article 16(2) and (3) of the Criminal Code, predicate offences that are intentionally or negligently committed abroad, but do not constitute an offence in the third country concerned, are still punishable in Croatia following approval of the Public Prosecutor's Office and according to general international legal principles.

16. The Law on the Prevention of Money Laundering lists the "reporting institutions" responsible for detecting and subsequently notifying any transaction that may reasonably be assumed to constitute money laundering, e.g., banks, investment funds and custody companies, pension funds and companies for the management of pension funds, the Financial Agency, the Croatian Post Office, the Croatian Privatisation Fund, insurance companies, stock markets, authorised exchange offices, pawnshops, gambling companies, as well as other legal persons licensed to perform financial transactions, etc. (Article 2). Lawyers, legal advisers, notaries, auditors, certified accountants and tax consultants are also obliged to report suspicious transactions (STR), except lawyers representing their clients in administrative or judicial proceedings (Article 9a).
17. The Anti Money Laundering Department (AML) within the Ministry of Finance is the FIU, which gathers and analyses STRs and subsequently informs the Public Prosecutor's Office, the USKOK (in the case of predicate offences relating to corruption), and/or the Ministry of Interior on grounded suspicions. Although the AML is not vested with investigative powers, it can suspend the execution of the STR for a maximum of 72 hours. Finally, the public prosecutor may request the investigating judge to order the seizure of accounts if solid grounds for suspicion of money laundering exist.
18. The AML has so far reported to the USKOK five cases in relation to the predicate offence of corruption. According to the data gathered by the USKOK, no convictions have been secured to date in relation to the predicate offence of corruption; two cases were under investigation at the time of the evaluation visit.

#### Mutual legal assistance: interim measures and confiscation

19. Judicial cooperation on interim measures and confiscation is subject to the same rules and machinery as mutual assistance in criminal matters in general; thus, it is based on international<sup>3</sup> and bilateral agreements and the Act on Mutual Legal Assistance (MLA), which entered into force on 1 July 2005. According to the MLA, the Ministry of Justice is, in principle, the central authority for co-ordinating mutual legal assistance requests; a specific department has been established to this effect. In urgent cases and under the condition of reciprocity, the Ministry of Justice may transmit/receive requests through Interpol, whereas the use of diplomatic channels may take place in the absence of international treaties. No requests have been made/received concerning confiscation/seizure in respect of corruption offences.

#### **b. Analysis**

20. Croatia has in place a comprehensive legal framework concerning both confiscation and seizure of proceeds and instrumentalities of crime which is fully applicable to cases of corruption. Confiscation of proceeds of crime is compulsory, *in rem* confiscation and value confiscation are possible and property may be confiscated from a third party (including from a legal entity) if it was

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<sup>3</sup> Croatia has ratified into domestic law the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS 30) and its Additional Protocol (ETS 99), the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141), and finally, the United Nations Convention against Transnational Organised Crime and its Protocols.

not acquired in good faith. According to the law enforcement authorities with whom the GET met, the notion of *bona fides* is interpreted in a restrictive manner.

21. Despite the comprehensive legal framework on confiscation, the analysis of the available statistics suggests that while practitioners are making use of the set of legal tools provided by Croatian law to facilitate seizure of the proceeds of corruption, motion for confiscation seldom occurs in practice (i.e., two cases in the last three years). The GET discussed these problems with representatives from the prosecution service, who highlighted the difficulty of proving the unlawfulness of indirect proceeds from crime. In addition, the lack of any provision according to which the burden of proof could be reversed or lowered with regard to confiscation could constitute an important obstacle for the application of confiscation measures in practice. Finally, and in relation with some of the challenges experienced concerning effective enforcement of the confiscation-related provisions, the GET was also informed that there were ongoing discussions to provide for extended confiscation allowing confiscating property – entirely or partly - held by a perpetrator. In view of the above, while it is mandatory under Croatian law to deprive the beneficiaries of the proceeds of crime, even without obtaining the conviction of the perpetrator (*in rem* confiscation), the GET found that confiscation of proceeds and instrumentalities of corruption crimes was not used to a significant extent in practice. Consequently, in order to enhance the use of confiscation, **the GET recommends to review the application of the existing provisions on confiscation of corruption proceeds and, where appropriate, to continue providing training to the law enforcement authorities on the application of the relevant legal provisions.**
22. As regards the seizure of the proceeds of crime, the GET has the impression, that Croatia has appropriate legal means in place as from the initiation of criminal proceedings. The GET did not come across inappropriate constraints in respect of the wide range of investigative techniques provided for by the Law on the Office for the Suppression of Corruption and Organised Crime (USKOK).
23. Cases concerning corruption are mostly dealt with by the USKOK. In particular, the USKOK has been empowered since 2001 with intelligence, investigative, prosecutorial and preventive functions concerning active and passive bribery in the public sector, trading in influence, misuse in performing government duties, money laundering with respect to the predicate offence of corruption and money laundering committed by a perpetrator who is a member of a criminal organisation. Moreover, the USKOK's scope of work was enlarged in March 2005 to also cover cases of active and passive bribery in the private sector (Articles 294a and 294b of the Criminal Code). The GET noted, however, that certain offences which although listed as corruption offences according to the internal police classification and the National Programme Against Corruption, do not come under the USKOK's competence (e.g., abuse of office and official duties, conclusion of a prejudicial contract, disclosure of an official secret, disclosure and unauthorised procurement of a business secret, etc.). At present, this type of corruption-related offences could not benefit from certain privileged measures provided by the Law on USKOK (e.g., special regime of seizure of proceeds from crime for future confiscation, requests of provisional measures before the criminal procedure formally starts, use of special investigative techniques, etc.). *The GET observes that the provisions of the Law on the Office for the Suppression of Corruption and Organised Crime (USKOK) concerning confiscation and seizure of the criminal proceeds should be extended to all corruption-related offences covered under the National Programme Against Corruption. In addition, steps should be taken to ensure a regular exchange of information and expertise among public prosecutors investigating those corruption offences which are not covered by USKOK, and specialised USKOK prosecutors.*

24. With regard to the human and technical resources assigned to the USKOK, they consisted in April 2005 of 22 permanent staff, including 13 prosecutors. At the time of the visit, an EC CARDS project had been launched to improve the human and technical capacity of the USKOK by (1) providing IT equipment and software to establish a national centralised database for sharing information on organised crime at national and international levels and (2) strengthening professional skills via systematic training. As per the statistical data provided, the USKOK receives around 120 reports of suspicions of corruption per year; approximately half of those suspicions are deemed sufficiently grounded to warrant subsequent investigations.
25. Financial investigation is highly important in corruption cases, both with regard to detection and confiscation. The GET is of the opinion that a key element of a successful financial investigation is the systematic and professional cooperation of law enforcement authorities with financial institutions, tax and auditing authorities as well as register offices in order to effectively identify important data regarding income, asset and, tax declarations, etc. Although Croatian legislation generally provides a good basis for inter-institutional cooperation, the GET noted that not all the government bodies that are under a legal obligation to report corruption suspicions to the USKOK and to provide a swift response to its requests are actually doing so. In this context, the GET welcomes the steps undertaken by the Anti Money Laundering Department (AML) and the USKOK to structure their cooperation via a Memorandum of Understanding which was being drafted at the time of the visit. This example could be replicated with other authorities to enhance their mutual cooperation. Moreover, guidelines and training for tracking down offenders' assets could be of particular relevance for investigative authorities (police officers, prosecutors and investigating judges). Therefore, **the GET recommends that cooperation on a regular basis and at appropriate levels be established between the Office for the Suppression of Corruption and Organised Crime (USKOK) and bodies specifically involved in the detection of corruption offences; and that guidelines and adequate training be developed for police, prosecutors and investigating judges concerning the tracking down of offenders' assets.**
26. The GET commends the recent amendment to the Law on the Prevention of Money Laundering, which extends the categories of entities with an obligation to report any unusual or suspicious transaction<sup>4</sup>. The GET was informed that in 2004 the AMLD analysed 1,227 of the 14,000 STRs received, reported 247 of these to the relevant investigative bodies and ordered temporary suspension of STRs in 15 cases for a total value of 5,630,000 EUR. The GET recognises the valuable work developed to date by the AMLD and the efforts made by its staff to co-ordinate its action with the relevant investigative bodies at national and international levels; it notes, however, that there is no mechanism in place to provide subsequent feedback on the outcome of the reports filed.
27. Concerning requests for mutual legal assistance, the GET was pleased to note that Croatia is a contracting party to all relevant international conventions in the field of criminal law. Croatia has signed bilateral agreements with Albania, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Romania and Serbia and Montenegro to speed up efficiency of data and best practice exchange at early stages of joint investigations. In addition, the recently adopted Act on Mutual Legal Assistance, which had not yet entered into force at the time of the visit,

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<sup>4</sup> The Law on the Prevention of Money Laundering was amended on 1 January 2004. The amendment extended the reporting obligation to several institutions and professions:

- Reporting entities with subsidiaries or majority ownership or control of financial institutions in countries abroad that do not apply the standards for the prevention of money laundering;
- Attorneys-at-law, law firms and notaries, audit firms, licensed auditors and legal and natural persons providing accounting or tax advisory services.

regulates the system applicable to requests for international legal assistance concerning confiscation and provisional measures in respect of benefits obtained from crime (including corruption). Finally, direct contacts between law enforcement authorities are being promoted (in particular via the newly created Department for International Cooperation and Joint Investigations of USKOK, AMLD, police). Therefore, Croatia is, in principle, in a position to benefit from, and effectively contribute to, international co-operation in criminal matters. However, during the evaluation visit, the GET noted that the Croatian authorities had not been making use of confiscation/provisional measures in the field of mutual legal assistance. The Ministry of Justice proved to be fully aware of the situation and had developed a series of measures, with corresponding targets and deadlines, to enhance implementation of the legal framework of mutual legal assistance. The GET was hopeful that the envisaged implementation measures, in combination with the comprehensive legal framework already in place, would establish effective international co-operation concerning confiscation and provisional measures in relation to corruption offences.

### **III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION**

#### **a. Description of the situation**

##### Definitions and legal framework

28. Article 116 of the Constitution of Croatia refers to the term “State administration” and subjects its structure and functioning to the rule of law. It also provides for the possibility of entrusting certain responsibilities of the State administration to local, regional, self-government and other legal bodies vested with public authority. The scope and principles of the functioning of public administration are contained in the Constitution, the Law on Civil Servants and Employees, the Law on Employees in Local Self-Government and the General Administration Procedure Act. There are a total of 65,000 civil servants and public employees in Croatia.<sup>5</sup>

##### Anti-Corruption Policy

29. In April 2002, a National Programme for the Fight against Corruption with an Action Plan covering the period 2003-2007 was adopted; its effectiveness has not been assessed as yet. A new Strategy for the Fight against Corruption is to be adopted in 2005. The Government of Croatia also plans to establish a new anti-corruption body which will be responsible for the implementation of the national strategy as well as other preventive measures.

##### Transparency

30. Since the 1980's Croatia has enacted laws requiring to keep and archive public records so that government information is not lost or destroyed. It has also recently enacted the Law on the Right of Access to Information and the Regulations on the Structure, Content and Manner of Keeping the Official Register on Information Requests which address the rights of natural and legal persons to request access to information. The aforementioned law provides that public authorities actively disclose certain types of information without waiting for a request (Article 21),

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<sup>5</sup> In Croatia there are three types of public officials: civil servants and employees, and “officials” (generally those elected or appointed to the highest level positions and who are covered by the Law on Preventing Conflicts of Interest in Public Office). Article 2 of the Law on Preventing Conflicts of Interest in Public Office lists the categories of officials bound by its provisions, e.g., President and Vice-President of Croatian Parliament, President and the members of the Government of Croatia, General State Auditor and his Deputies, etc.



and that they inform the public about agendas, time and venue of certain meetings, indicating whether those meetings are open to the public and the procedures to be followed in case of attendance (Article 22, Law on the Right of Access to Information). There are rights of appeal for denials of access to information.

31. According to the Rules of Procedure of the Government of Croatia, the State administration prepares legal and policy proposals and opinions for further development by the Government on the basis of targeted consultation with professional organisations (Article 27(5) of the Government Rules of Procedure).

#### Control of Public Administration

32. If the general public or individuals wish to appeal an administrative decision, they may start an administrative procedure before the so-called “second instance” administrative body, and, if still not satisfied with the decisions taken by the administrative body concerned, they can bring the case before the courts according to the rules established by the General Administration Procedure Act. Furthermore, it is possible to challenge the judicial decision before the Supreme Court (if leave to appeal is granted).
33. The Ombudsman has no direct competence in relation to the prevention and detection of corruption, but is entrusted with the protection of citizens’ rights in cases of maladministration of acts taken by the State administration or any other body vested with public authority. In this context, the Ombudsman issues recommendations to the public authorities concerned; the failure to comply is immediately reported by the Ombudsman to the Parliament and the public in general.
34. The State Audit Office is an independent body accountable only to the Parliament. It is responsible for auditing the use of State finances and those of local self-government. It assesses whether public resources have been used efficiently: it carries out both financial audits (assessing the soundness of expenditure and public accounts) and performance audits (examining whether public activity is carried out in an effective and economic manner). Finally, it submits an annual report to Parliament, which is published and can also be accessed on the Internet.

#### Recruitment, career and preventive measures

35. The general conditions for the selection and recruitment of public officials comprise a minimum age of 18, Croatian nationality and suitable professional experience for the post to be filled. Screening of personal criminal records does not take place during the recruitment process, but public officials are required to certify that they are not the subject of an ongoing criminal procedure prior to taking up their duties. Recruitment is generally organised via an open competition; however, the Law on Civil Servants and Employees provides for certain exceptions to this general rule which apply to temporary contracts, as well as to employment in local/regional self-government and other legal bodies vested with public authority such as the Public Health Institute, the Croatian Employment Service, the Croatian Bureau of Statistics, etc.
36. There is no general provision about systematic rotation of staff in public administration.
37. There are neither specific statutes that prevent public officials from moving to the private sector nor statutes that prohibit them from misusing government information gained while a public official or misusing their former positions.

## Training

38. There is no legal obligation to develop regular training for public officials about fundamental principles, ethics and anti-corruption, etc. However, the Croatian authorities stated that general training and information seminars on public service ethics are organised in practice. A Strategy on Education and Training of Civil Servants was prepared in October 2004; systematic training, including specific chapters on corruption, was said to start shortly.<sup>6</sup>

## Codes of conduct/ethics

39. There is no general code of conduct for public officials, although certain categories of public officials (e.g., State Audit Office and Public Prosecutor's Office officials) have adopted their own ethical codes. The Law on Civil Servants and Employees and the Law on Preventing Conflicts of Interest in Public Office contain certain provisions relating to conduct.

## Conflicts of interest

40. The Law on Preventing Conflicts of Interest in Public Office aims at ensuring that financial or other interests or undertakings of officials do not compromise the performance of their duties. In particular, they are required to report to the Commission for the Resolution of Conflicts of Interest their assets as well as those of their closest relatives (spouse and children) as early as 30 days upon taking of duties and when leaving public office. Moreover, they are prohibited from receiving gifts or promises of gifts of a certain value and any additional remuneration other than their regular salary. Additional measures to prevent conflicts of interest consist of limitations to engage in activities involving advisory or supervisory tasks for the private sector as well as the mandatory reporting of any situation that may give rise to a potential conflict of interest. The Commission for the Resolution of Conflicts of Interest has both preventive and repressive responsibilities, provides advice concerning potential conflicts of interests, supervises the implementation of the obligations included in the Law on Preventing Conflicts of Interest in Public Office, investigates cases related to conflicts of interest, and imposes sanctions. The Commission has a duty to report to the Parliament on its activity on an annual basis and to provide certain pieces of information to the general public upon individual requests (e.g., information on asset declarations, reports on gifts or company membership).
41. Failure to comply with the obligations included in the Law on Preventing Conflicts of Interest in Public Office may entail sanctions consisting of salary retentions, warnings or publication of disciplinary decisions at the official's expense.

## Gifts

42. In principle, public officials are prohibited from accepting gifts or promises of gifts in connection with their duties. Acceptance of money, any other security (e.g., shares, bonds, etc.) or precious metal is specifically banned. In addition, the Law on Preventing Conflicts of Interest in Public Office provides that officials are allowed to keep gifts not exceeding the amount of one third of the average monthly salary paid in Croatia (approximately 600 EUR) in the preceding year; any gift that exceeds the afore-mentioned threshold has to be reported to the Commission for the Resolution of Conflicts of Interest and subsequently becomes national property. Unlawful

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<sup>6</sup> The GET was informed after the visit that the Training Centre had started to operate in June 2005.

acceptance of gifts may lead to sanctions consisting of salary retentions, warnings or publication of disciplinary decisions at the official's expense.

#### Reporting corruption

43. Public officials are not subject to a specific obligation to report on corruption. However, there are some general provisions in the Criminal Code (Article 300) and in the Criminal Procedure Code (Articles 171-173) which require citizens as well as public officials to report suspicions of criminal behaviour; failure to do so can be punished by a fine or imprisonment not exceeding three years. According to Article 300(3) of the Criminal Code, exceptions to the above-mentioned reporting obligation may apply to certain close relatives of the offender and professions (e.g., lawyers and notaries). Public officials are subject to the general principles of loyalty and obedience vis-à-vis their hierarchical superiors; however, pursuant to Article 26 of the Law on Civil Servants and Employees, a civil servant or employee is "authorised" to file a written complaint to his/her superior if s/he considers the order to be illegal, or if s/he considers that the execution of the order may cause serious damage. Moreover, a civil servant or employee "must" and "is authorised" to hold back execution of a superior's order if it would entail the commission of a criminal offence.
44. There are no legal measures in place to ensure confidentiality and protection of public officials reporting corruption.

#### Disciplinary proceedings

45. The Law on Civil Servants and Employees regulates disciplinary proceedings. With regard to serious infringements of official duties, an Officials Court carries out the procedure; appeals to its final decision are possible before a High Officials Court.<sup>7</sup> With regard to less serious violations, investigation is assigned to a hierarchical superior. In addition, the Commission for the Resolution of Conflicts of Interest is entitled to carry out disciplinary enquiries, whether following an official's request, an anonymous report or on its own initiative. The Commission establishes relevant facts (including in cases of suspicions of corruption) through its own investigation and in close cooperation with other public bodies. Public officials may appeal against decisions concerning the imposition of official penalties to the Administrative Court. Disciplinary and criminal proceedings may run in parallel.

#### **b. Analysis**

46. As part of the review of the organisation, functioning and decision-making process of public administration, the GET noted that the Government has stated in its Programme of the Government for the 2003-2007 Mandate, that it will consider and propose a new organisation of public administration. The GET also understood that Croatia was intending to develop a new Anti-Corruption Strategy to replace the 2002 National Programme for the Fight Against Corruption and its Action Plan. Discussions with officials indicated that the latter had not been fully implemented and Croatia now recognises that repressive measures are not sufficient for a fully developed anti-corruption programme. The new Strategy would include preventive measures in line with the provisions of the new UN Convention Against Corruption. During the evaluation visit, the GET found that a number of programmes that were the subject of its review had already been targeted by the Government as being in need of change. In general, however, the GET

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<sup>7</sup> Article 40, Law on Civil Servants and Employees: (1) The Officials Court consists of a president and six members, the president and at least one member shall be appointed among judges; (2) The High Officials Court consists of a president and ten members, the president and at least two members shall be appointed among judges.

found that assessment mechanisms for the effectiveness of the current systems reviewed were not as well developed as might have been expected and that it was hopeful that such assessments would occur before a new organisation of public administration and a new anti-corruption strategy and their resulting programmes were established.

47. With the exception of one Mayor, the GET met only public officials representing the central State administration during its visit. The process of decentralisation has not been completed in Croatia and systems of transparency, oversight and accountability which are not as fully developed at the local level will, as that process occurs, have to be more fully implemented and monitored. *The GET observes that any improvements in public administration programmes designed to meet the goals of transparency, oversight and accountability at the central level should also be provided for as a part of the requirements at the local levels of government.*
48. As far as transparency of government is concerned, the GET found that no one office in the Government was responsible for assessing the effectiveness of the Law on the Right of Access to Information and its implementation, although the Central State Office for Administration was responsible for providing guidance to public authorities on how to implement the Act and is required to make an annual report on the authorities' selection of information officers. The Central State Office for Administration did not feel, however, that it had the legal authority to seek the type of information necessary from public authorities in order to assess the effectiveness of the law, nor were they aware of any studies being conducted by academia or NGOs. In addition, the GET learned that the Administrative Court did not keep data in categories that could specifically identify appeals from denials of requests for information, so this basic indicator of implementation was not available to the GET or to the Government. The GET did, however, understand from some of the interviews held during the evaluation visit that the denials of requests for information were more common than may have been proper under the law. Finally, the GET was not aware of any focused training provided to the information officers, or public officials in general, about the application of the new law. While the law contains the basic provisions that are important to providing access to government information and thus transparency of government, the law's actual implementation and application is critical in an effective fight against corruption and to general good governance. **The GET recommends that the effectiveness of the provisions of the Law on the Right of Access to Information and its implementation be assessed and that training on the provisions of the law be provided to all information officers and to public officials who manage programmes that are subject to significant requests for information.**
49. In addition to the Law on the Right of Access to Information, the 2003-2007 Mandate of the Government indicates that an e-Croatia project will set up a system to enable every citizen to make use of services in public administration, communicate with public administrative offices, and request and receive a wide variety of government documents and information, all by means of the internet. A Central State Administrative Office for e-Croatia has been established to implement that programme. At the time of the GET's visit, the programme was not well established; furthermore, the GET was informed by certain of the administrative offices interviewed that they had not yet been contacted by the e-Croatia office to cooperate on interconnectivity. However, the GET has no reason to believe that this programme will not be fully realised within a reasonable time. Moreover, the GET encourages the Government to use this system as one way of providing the public with an understanding on how to use the Law on the Right of Access to Information and compliments the efforts of the Government in supporting this additional tool for transparency.

50. With regard to decision-making processes, as noted in the descriptive part of the present report, Croatia has a General Administration Procedure Act that provides for internal and then judicial review of administrative decisions. At the time of its visit, the GET was informed that the Government had decided to modernise the said Act in order to speed up some of the procedures and to allow for the use of electronic documents. In addition, the GET was informed by a number of sources that, while judicial review is available, the backlog in the Administrative Court made an appeal to the court a lengthy process. The GET understands that the judiciary and the judicial system are in the process of reform and that in particular the Administrative Court has recently resolved some issues with regard to staffing and workplace; nevertheless a reformed process dealing with a backlog will still take time. **The GET recommends, that as it develops its new Administrative Procedure Act, Croatia considers specifically including alternatives to an appeal to the Administrative Court, such as alternative dispute resolution procedures.**
51. As regards the recruitment, selection, rights and the duties of public officials of central and local governments, Croatia currently has a general Law on Civil Servants and Employees. In general, the Law sets out the manner in which civil servants and employees are to be selected, their educational requirements, their competencies, their job classifications, their pay, their rights and their obligations. During the visit, the GET understood from Croatian officials that a new law on civil service was being considered by the Government. The GET noted that civil servants selected to serve in positions before the enactment of the current law still have rights to positions or rights to other compensatory benefits and that previous and current reorganisation efforts had to take the current makeup of the workforce into consideration. When visiting with one authority, the GET was told that the surplus of workers in Croatia was a social as well as a political problem and that particularly within that authority there was a lack of individuals with advanced degrees and a surplus of those without. This authority indicated that it was still feeling the consequences of non-selective recruitment. The GET recognises that the transition from one public employment selection system to a full merit system will take some time and some care with those who are adversely affected through no fault of their own. However, the Government will have to continue to move forward with civil service reform efforts that have as their goal a merit selected civil service who understand their public service duties and obligations as well as their rights.
52. The GET noted that in the current Law on Civil Servants and Employees there was no requirement for competition for positions in administration departments and services of local/regional self-government or legal entities with public authority. The GET was also told that the salaries at the local level were generally higher than that at the central level. *With decentralisation, the GET observes that in developing a new civil service law, the government should strongly consider including requiring the use of merit principles for those who will be hired at the local level to carry out these decentralised functions.*
53. In addition, the current law has limited general authority for the rotation of civil servants and employees, if necessary, for the purposes of fighting corruption. And, while one of the obstacles to being employed as a civil servant was having been convicted of a certain crime or sentenced with a penalty of imprisonment of more than three years for any crime, the response to the GRECO's evaluation questionnaire seemed to indicate that there was no routine check conducted prior to appointment. Further, the current law prohibits civil servants and employees from being fired for reporting misconduct, but did not prevent other types of retributive action. And finally, according to the response to the questionnaire, authorities did not read the current law on civil service to require civil servants and employees to report corruption and other crimes. Consequently, **the GET recommends the consideration of including in any new civil service law the following tools that will help to combat corruption: the general legal authority to develop a rotational system if necessary; a requirement to screen potential civil servants**

**and employees for previous convictions; a requirement to report suspected corruption or other crimes; and protection from reprisal for reporting and, thereafter for those tools included, establishing a process by which the fairness, efficiency and effectiveness of their implementation can be evaluated.<sup>8</sup>**

54. Croatia has no general code of conduct for public officials although certain of the authorities have begun to develop their own. A code of conduct was recommended as a part of GRECO's First Round of Evaluation and is still an open recommendation. The GET believes that the development of a common enforceable general code of conduct is also important in meeting Guiding Principle 10 and in particular, when made public, to help establish shared expectations for those in public service as well as the public they serve. The GET understood that a code of conduct was intended to be a part of the new civil service law, but the officials interviewed did not believe that information on disciplinary actions had been gathered from the individual employing entities to learn if there were trends in the types of misconduct under the current prohibitions. If that information was not a part of the analytical process leading to a draft code, the GET is hopeful that such an assessment is conducted before the code is finalised.
55. The duty to avoid conflicts of interest and other inappropriate official conduct is addressed administratively for civil servants and employees through the Law on Civil Servants and Employees and for officials by the Law on Preventing Conflicts of Interest in Public Office. The restrictions in both of these laws focus primarily on potential conflicts such as outside compensated activities, management rights, memberships, non-official income and gifts, and the restrictions primarily prohibit the interests, management duties, compensation, activities or gifts. Each restriction has some limited exceptions. In particular, according to the Law on Preventing Conflicts of Interest in Public Office, officials are allowed to keep gifts not exceeding the amount of one third of the average monthly salary paid in Croatia. Neither law contains clear guidance with regard to the obligation to recuse from matters where the interests, income or activities are not prohibited, but where there still remains an actual or apparent conflict with the private interests or activities of the individual (or spouse) and the individual's public duties. The GET was aware that the criminal corruption provisions could potentially be used to reach conduct where the conflicts raise a question of abuse of office or a bribe, but was concerned that those to whom those provisions applied may not be aware that is the case. This is particularly true where the exception to the gifts restriction seems significantly high. **The GET recommends that Croatia reconsider the gift exception (gifts valued less than one third of the average monthly salary) to lower the value and frequency of any gifts that may be accepted by civil servants, employees or officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage.**
56. The GET was unaware of any Government training or education programmes designed to help civil servants, employees and officials understand the restrictions placed upon them by these current laws or of any compilation of such restrictions that was publicly available. Training for civil servants and employees has been left to each employing agency although it was anticipated that shortly after the GET's visit a new central training centre for civil servants would become operative (cf. footnote 6). When that occurred, general government-wide courses could be developed so that all civil servants might have a better chance of understanding their obligations under various laws. The Commission for the Resolution of Conflicts of Interest stated to the GET

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<sup>8</sup> The GET was informed after the visit that the new Law on Civil Servants had been adopted and published in "Narodne Novine" (Official Gazette) 92/05. It will enter into force on 1 January 2006. The implementation of this recommendation and the extent to which the tools to combat corruption listed are covered by the new Law on Civil Servants, will be examined in the context of GRECO's compliance procedure.

that it might develop some pamphlets for officials, but that it had no plans for holding any training programmes or seminars.

57. Additionally, there also did not appear to be any coordination between the authorities responsible for administering the non-criminal conduct prohibitions applicable to civil servants, employees and officials and the Office for the Suppression of Corruption and Organised Crime (USKOK) which has jurisdiction over corruption offences that could involve the same conduct. For example, accepting a gift or accepting an offer of employment after public service in exchange for an official act could implicate the criminal restrictions on abuse in performing governmental duties or bribes, as well as the prohibitions in the Law on Civil Servants and Employees and the Law on Preventing Conflicts of Interest in Public Office. Such coordination could include developing some joint guidance and/or making sure that referrals to the USKOK of potential conduct covered by the corruption offences under its jurisdiction were made in a timely manner. Finally, the administratively imposed penalties available for violations by civil servants, employees and officials under their respective law's restrictions did not appear to be significant if the individual left public service before the imposition of the penalty (no salary to withhold). The GET believes that a lack of appropriate sanctions for inappropriate but non-criminal conduct can increase public cynicism and undermine their confidence in the Government. **The GET recommends that the appropriate authorities develop public, written interpretative guidance of the current prohibitions for public officials and the relationship of those prohibitions to the relevant corruption-related provisions under criminal law, and that the Commission for the Resolution of Conflicts of Interest include a similar discussion in its informational materials.**
58. Under the Law on Preventing Conflicts of Interest in Public Office, officials are required to report for themselves and for some family members certain financial interests, sources of income, and management positions held outside of public service. These reports are collected by the Commission for the Resolution of Conflicts of Interest and are available to the public. The reports are to be filed by an individual upon becoming an official and upon leaving the position. During service as an official, information on additional income is required to be reported within a specified period of time. The Commission stated to the GET that the purpose of these forms is to help determine if assets have been questionably acquired. The GET believes that such a determination may require information from other government authorities such as the tax authorities and suggests that while the system is still relatively new, the Commission work with those authorities to determine what procedures must be followed to obtain that information. *The GET observes that the information provided by the official should also be used by the Commission for the Resolution of Conflicts of Interest in a preventive manner by helping to identify potential conflicts of interest and then counsel the official on the steps that must be taken to avoid the conflicts. Such steps could include recusal or resignation from a conflicting but not prohibited outside position.*

#### **IV. THEME III – LEGAL PERSONS AND CORRUPTION**

##### **a. Description of the situation**

###### Definition of legal persons

59. Legal persons are defined in Article 89(6) of the Criminal Code as any “public or private company, fund, institution, political or social organisation, association of citizens, units of local self-government, as well as any other type of legal entity, which regularly or occasionally

generates resources and disposes of them". In addition, the 1993 Company Act distinguishes between five types of economic organisations:

a) Limited liability companies (d.o.o.) are formed by one or more individuals or legal persons who invest their property and thereby participate in the previously agreed share capital. The minimum starting capital may not be below 20,000 Kn (2,730 EUR). The shareholders are not personally liable for obligations of limited companies. Limited liability companies are obliged to keep a register of shares and to establish a management board and to convene a general meeting of the shareholders. A supervisory board is obligatory only if this is prescribed by law for a particular business activity, if the initial starting company exceeds 600,000 Kn (82,000 EUR) and the company has more than 50 owners, if the company has a single management that runs public and private limited companies that have a mandatory supervisory board, or if the company has more than 300 employees. The limited liability company is the most widely used type of company in Croatia.

b) Joint stock companies (d.d.) may be founded by one or more shareholders. The minimum starting capital is 200,000 Kn (27,322 EUR); at least one-third of the cash contributions and all of the contributions in kind have to be paid in at registration. Shareholders are not personally liable for the obligations of the company. A joint stock company must have a management and a supervisory board, and must convene a general shareholder's meeting.

c) Limited partnerships (k.d.) are established for the purpose of carrying out business on a permanent basis by the association of two or more natural or legal persons, whereby at least one shall be liable for the obligations of the company with his/her own assets. There are no minimum requirements to start business. The management of the company is entrusted to the partners.

d) Unlimited partnerships (j.t.d) are defined and regulated as limited partnerships; however, there are no limits placed on the liability of the partners with respect to the paid-in capital.

e) Economic interest groups (GIU) are non-profitable legal entities. They may be formed without any capital and the rights of members cannot be represented in securities. All members are liable for obligations and have unlimited liability with their respective assets. An economic interest group is represented by a management board that is appointed by the members of the grouping.

In cases provided for by law, companies may be engaged in a certain type of commercial activity (e.g., banking, insurance, energy activities, etc.) only after having been granted a special licence by a State body.

#### Registration and transparency measures

60. The conditions governing the establishment and registration of legal persons differ depending on their profitable character and are specifically laid out in the legislation on each category. There are no nationality requirements for founders in any form of legal entity. Legal persons acquire personality following registration. Registration of profitable legal entities takes place before the competent commercial court according to the rules established in the Court Register Act; entry in a commercial register is the responsibility of the register court with jurisdiction over the area in which the entity to be registered is based. Time limits for company registration are not specifically defined by law, but according to Article 13(1) of the Court Register Act, registration of companies is dealt with under an "urgent procedure". In this context, the GET was officially informed that an application would normally be processed within 15 to 20 days following the submission of all relevant documents (completed and notarised memorandum of association of founders'



statement, detailed lists on founders', representatives and members of management/supervisory bodies, as well as receipts of all cash payments). Registration in the commercial register is to be followed by its further publication in the Official Gazette (Narodne Novine) and in at least one more newspaper at the expense of the applicant (Article 64, Company Act). Information contained in the commercial register is public (Article 65, Company Act).

61. In addition to the above-mentioned court registration, companies must also register with the State Statistical Office, the Agency for Payments, the tax authorities, the custom authorities (if the company intends to participate in foreign trade), the Croatian Pension Insurance Administration, and the Croatian Institute for Health Insurance in order to start their business activity.
62. Non-profitable entities are registered with their respective administrative registers (e.g., register of associations, register of foundations, register of religious communities, register of the Council for National Minorities, etc.). The Central State Administrative Office for Public Administration keeps registers of non-profitable entities.

#### Limitations on exercising functions in legal persons

63. There are no restrictions on legal persons to hold interests in another legal person, nor restrictions on the number of accounts a company can hold. According to Article 51 of the Labour Law and the Law on Civil Servants and Employees, the mere initiation of criminal proceedings against a person acting in a leading position in a legal person leads to disqualification of the physical person concerned.

#### Liability of legal persons

64. The Law on Responsibility of Legal Entities for Criminal Offences establishes criminal liability of legal persons, which also applies to corruption-related offences. In particular, *“a legal entity is to be punished for a criminal offence committed by a responsible person if such an offence violates any of the duties of the legal entity or if the legal entity has obtained or should have obtained illegal gain for itself or for any other third person/s”* (Article 3). The term *“responsible person”* refers to *“a natural person in charge of the operations of the legal entity or entrusted with the tasks falling under the scope of the legal entity”*. (Article 4). Corporate criminal liability primarily derives from the liability of the legal person's leader and is based on his/her guilt (Article 5(1)); however, it is exceptionally possible to assign liability to a legal person when the responsible person cannot be charged due to legal or factual obstacles (Article 5(2)).
65. According to the Croatian authorities, in those cases where the absence of supervision or control by a person exercising a leading position within the legal person would make possible the commission of corruption offences, the responsibility of a legal person may be established under the general provisions included in Article 25 of the Criminal Code concerning cases of “omission” of duty.<sup>9</sup> In addition, for responsible persons, Article 337 of the Criminal Code penalises an intentional failure to perform duties which results in non-pecuniary and pecuniary gain and Article 339 of the Criminal Code penalises negligent failure to perform supervisory duties resulting in a violation of the rights of third parties or considerable property damage. Invoking a legal person's

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<sup>9</sup> Article 25, Criminal Code: (1) A criminal offence can be committed by an act or an omission to act; (2) A criminal offence is committed by omission when the perpetrator, who is legally obliged to avert the consequence of a criminal offence defined by law, fails to do so, and such a failure to act equals by its effect and significance to the perpetration of such an offence by action; (3) The punishment of a perpetrator who commits a criminal offence by omission can be mitigated, except in the case of a criminal offence which can be committed only by failure to act.

liability does not exclude individual perpetrators, instigators or accessories from being held liable as well.

66. In principle, the liability of a legal person is determined within the framework of the same proceedings as those against the physical perpetrator and a single decision is taken (Article 23(1), Law on Responsibility of Legal Entities for Criminal Offences). Nevertheless, when obstacles exist with regard to the natural person (e.g., death of the person concerned), proceedings against legal persons may be initiated anyway (Article 23(2), Law on Responsibility of Legal Entities for Criminal Offences).

### Sanctions

67. The Law on Responsibility of Legal Entities for Criminal Offences (Articles 8 to 21) foresees two types of sanctions where a legal person is found criminally liable: (i) penalties consisting of fines of 5,000 Kn (682 EUR) up to 5,000,000 Kn (682,513 EUR), fines that could be suspended and dissolution of the legal entity; (ii) security measures, including professional bans, bans on transactions with beneficiaries of the national or local budgets, ban on obtaining licences, authorisations or concessions, confiscation and publication of the verdict. Units of local and regional self-government, political parties and trade unions may not be subject to sanctions involving the dissolution of the legal entity or professional bans according to Articles 13(2) and 16(3) of the aforementioned law.
68. Pursuant to Article 38 of the Law on Responsibility of Legal Entities for Criminal Offences, certain security measures (professional bans, bans on transactions with beneficiaries of the national or local budgets, ban on obtaining licences, authorisations or concessions) decided by the court are to be recorded in public registers, including the register of companies. Finally, safeguards are provided to prevent companies and their officers from avoiding penalties through bankruptcy, restructuring and re-establishment (Article 7, Law on Responsibility of Legal Entities for Criminal Offences).
69. The State Attorney's Office informed the GET during the on-site visit that, since the entry into force of the Law on Responsibility of Legal Entities for Criminal Offences on 24 March 2004, 85 criminal reports were filed against legal entities. Out of that number, 10 criminal charges were brought against legal entities, and conviction was secured in one case relating to economic fraud.

### Tax deductibility and fiscal authorities

70. Deductibility of any illegal payment within the meaning of the Criminal Code (including bribes and other expenses linked to corruption offences) is not allowed under the current tax legislation. However, no provision in national legislation contains an explicit prohibition of deducting bribes or facilitation payments. Tax authorities are subject to the general obligation to detect and subsequently report corruption-related offences according to Articles 171, 172, 173 of the Criminal Procedure Code. Failures to report result in fines or imprisonment not exceeding 3 years according to Article 300 of the Criminal Code. Tax records are only disclosed to tax officials and to other State bodies following a written request.

### Accounting Rules

71. All legal persons are obliged to keep accounting records or books according to the legal provisions laid out in the Value Added Tax Act (Article 24), the Law on Accounting (Article 6) and the General Tax Act (Article 55). Different book-keeping timeframes are established in the afore-

mentioned acts depending on the type of accounting document involved, which may vary from a minimum period of two years to an indefinite period and until termination of the legal entity (e.g., payroll lists). There are no exceptions to the requirement to keep and preserve proper accounting records for legal entities.

72. The use of accounting documents or records containing false or incomplete information or double invoices is punishable pursuant to Article 28 of the Value Added Tax Act and Articles 223, 292, 311, 312 and 344 of the Criminal Code. In addition, the destruction or hiding of accounting records or books can be punished under Articles 287 and 312 of the Criminal Code. Breaches of the aforementioned obligations are liable to severe criminal sanctions involving imprisonment from three months up to ten years if the perpetrator is a public official and substantial pecuniary gain is obtained through the commission of the accounting offence. Additional penalties, including fines and professional bans, are also specified in the Law on Accounting (Articles 32 to 36), the General Tax Act (Article 171), and the Value Added Tax (Article 29).

#### Role of accountants, auditors, and legal professionals

73. Large and medium-sized joint stock companies are subject to a full annual audit of their financial statements while small joint stock companies are obliged to undergo an abbreviated audit every third year; other types of legal persons are obliged to have their financial reports audited according to their respective internal regulations/statutes (Article 28, Law on Accounting). Audits must be conducted by duly certified public auditors. According to the Croatian authorities, accountants, auditors and legal professionals are subject to the general obligation provided in Articles 171 and 172 of the Criminal Procedure Code to report suspicions of criminal offences. Failure to report may result in fines or imprisonment not exceeding 3 years, according to Article 300 of the Criminal Code. In addition, under Article 9a of the Law on Prevention of Money Laundering, accountants, auditors and legal professionals are under the obligation to inform the Anti Money Laundering Department about suspicions of money laundering. Pursuant to Article 18 of the Law on Prevention of Money Laundering and Articles 26 and 28 of the Enforcement Regulation on the Law on Prevention of Money Laundering, failure to report is punishable by fines of 10,000 up to 100,000 Kn (1,360 to 13,600 EUR), and even 300,000 Kn (41,000 EUR) if the failure to report occurs in relation to a transaction amounting to 1,000,000 Kn (136,101 EUR) or more.

#### **b. Analysis**

74. Croatian legislation provides for a wide range of legal persons. Requirements for establishing legal persons depend on the type of legal entity concerned; however, all legal persons are subject to registration. To register a company, firstly, a notary has to certify the correctness of the data required for the registration of a specific legal person; then, the competent commercial court undertakes a further formal and material control of the data, including of the identity of the founder(s) and the payment of the required starting capital. However, the verification process established under the Company Act does not require the competent commercial court to undertake an *ex-ante* control of the criminal records, including the security measures imposed on the persons involved in the establishment of the company.<sup>10</sup> Furthermore, the GET was informed during the on-site visit that, pursuant to Article 38 of the Law on Responsibility of Legal Entities for Criminal Offences, bans from business activity ordered by a criminal court must be entered into the commercial register. However, no mechanism has been established to inform the

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<sup>10</sup> Article 73 of the Criminal Code lists six types of security measures: compulsory psychiatric treatment; compulsory treatment of addiction; prohibition to engage in a profession, activity or specific duty; prohibition to drive a motor vehicle; expulsion of aliens; and forfeiture. Records on security measures are kept by the Ministry of Justice.

commercial courts of such orders. Therefore, **the GET recommends to ensure that persons establishing companies are screened in respect of security measures involving limitations of rights to which they might be subjected (e.g., prohibition to engage in a profession, activity or specific duty); and to establish a system to timely notify the commercial courts whenever a leading person in a corporation has been banned from business activity by a criminal court.**

75. The information contained in the commercial registers is public; any individual is entitled to request a certified copy of registration data, of the documents on which registration has been based, as well as of the certificates concerning the status of registration of a particular company. Moreover, the GET was informed that data on the name, address and activity of a registered company could, in principle, be consulted via the Internet; however, the registers kept by the competent commercial courts remain mostly paper-based, and thus, a centralised and computerised commercial register is not yet fully operative in practice. The various business establishment procedures (e.g., by the judiciary or tax and pension fund registration) and the co-existence of different registers for profitable and non-profitable entities add complexity to public access to registration records. Recognising that the existence of a transparent and accessible register of legal persons is an essential preventive measure against the use of legal persons to shield corruption offences, **the GET recommends to take appropriate measures to ensure that the public's right of access to information on legal persons contained in commercial registers can be exercised in an effective manner.**
76. The principle of corporate criminal liability was introduced by the Law on Liability of Legal Entities for Criminal Offences. It covers, among others, active and passive bribery, trading in influence and money laundering. In the absence of practical experience with the application of the aforementioned law, it is difficult to assess at this stage its compliance with Article 18 of the Criminal Law Convention on Corruption. Although the Law on Liability of Legal Entities for Criminal Offences does not expressly refer to situations where the lack of supervision or control by a natural person in a leading position makes the corruption offence possible, it would appear that such situations are indeed covered – by the general provisions of Articles 25(2), 337 and 339 of the Criminal Code, as well as Article 4 of the Law on Liability of Legal Entities for Criminal Offences (cf. § 74 and 75). The GET trusts that the aforementioned provisions will prove to be suitable legal tools giving full effect in practice to Article 18(2) of the Criminal Law Convention on Corruption.
77. The sanctions (including security measures) available under Croatian legislation appear to conform to the requirements established by Article 19(2) of the Criminal Law Convention on Corruption. That said, the GET could not form an opinion on the effectiveness in practice of the sanctions concerning legal persons in corruption cases, as no established practice nor statistics are available.
78. During the visit, the GET gained the clear impression that Croatian practitioners involved in combating corruption were not sufficiently familiar with operations involving legal entities and that little attention was paid to the problems of corruption offences committed for the benefit of legal entities. The GET identified a clear need to improve the level of awareness of corporate liability among crime preventing/investigating/prosecuting authorities. This calls for extensive information and training to the aforementioned authorities. Consequently, **the GET recommends to develop training to raise the awareness among police officers, prosecutors, judges, tax inspectors and State auditors of the possibilities for applying the Law on Liability of Legal Entities for Criminal Offences, and of problems of corruption linked with legal persons.**

79. All legal persons must comply with the accounting obligations in place. As regards the taxation regime applicable to possible corruption-related expenses, there is no explicit prohibition of deducting bribes or facilitation payments provided in domestic law; however, the discussions held by the GET with the Croatian authorities indicated that it was generally understood that an attempt to claim bribes or facilitation payments as deductible would lead to administrative or criminal responsibility. Moreover, the General Tax Act establishes that any expenses that are subject to tax deduction procedures have to be duly explained and justified. The latter obligation would require appropriate supporting documents that would render it difficult to hide any expenses related to unlawful transactions.
80. Accountants and auditors have the duty, under the general provisions of the Criminal Code, to report suspicions of corruption to the law enforcement authorities. This obligation is expressly stated in the anti-money laundering legislation with respect to STRs (Article 9a). The level of sanction for a failure to report (i.e., fines varying from 1,360 EUR to 41,000 EUR to imprisonment) could be considered as adequate. The GET welcomed the regulatory framework that requires private auditors and accountants to prevent and report instances of money laundering they come across; however, it took the view that this requirement needs to be backed up by the provision of adequate training in order to become effective in practice. In this connection, the GET was informed that, in 2005, the Anti Money Laundering Department received eight STRs from private auditors and accountants; none of the STRs concerned corruption-related offences. Therefore, **the GET recommends that the Croatian authorities encourage the private accountants' and auditors' representative bodies to issue guidelines and organise training on the detection and reporting of corruption.**

## **V. CONCLUSIONS**

81. In Croatia, detailed legal provisions dealing with confiscation, seizure and management of seized and confiscated assets are in place. That said, the provision of specific guidance to, and enhanced cooperation between, the implementing bodies concerned could contribute to improving the effectiveness of the existing legal framework with respect to seizure and confiscation of proceeds of corruption. Relevant efforts have been made in the public administration to build up policies aimed at preventing and combating corruption: the Office for the Prevention of Corruption and Organised Crime was established in 2001, a National Programme for Combating Corruption has been drawn up, activities of State institutions in the sphere of public access to information have been regulated and a new law on prevention of conflict of interest has been adopted. However, the effectiveness of corruption prevention policies in public administration could be increased, notably by assessing the functioning of the policy/legislative anti-corruption framework, by tackling the backlog in the administrative courts and by defining clearly the legal framework within which civil servants must exercise their functions. With regard to legal persons, there remains a pressing need to simplify and modernise the system of their registration. The introduction of corporate criminal liability in Croatia is commendable. However, further implementation of this legislation requires an adequate level of awareness and the provision of appropriate information to the relevant authorities.
82. In view of the above, the GET addresses the following recommendations to Croatia:
- i. **to review the application of the existing provisions on confiscation of corruption proceeds and, where appropriate, to continue providing training to the law enforcement authorities on the application of the relevant legal provisions (paragraph 21);**

- ii. that cooperation on a regular basis and at appropriate levels be established between the Office for the Suppression of Corruption and Organised Crime (USKOK) and bodies specifically involved in the detection of corruption offences; and that guidelines and adequate training be developed for police, prosecutors and investigating judges concerning the tracking down of offenders' assets (paragraph 25);
- iii. that the effectiveness of the provisions of the Law on the Right of Access to Information and its implementation be assessed and that training on the provisions of the law be provided to all information officers and to public officials who manage programmes that are subject to significant requests for information (paragraph 48);
- iv. that as it develops its new Administrative Procedure Act, Croatia considers specifically including alternatives to an appeal to the Administrative Court, such as alternative dispute resolution procedures (paragraph 50);
- v. the consideration of including in any new civil service law the following tools that will help to combat corruption: the general legal authority to develop a rotational system if necessary; a requirement to screen potential civil servants and employees for previous convictions; a requirement to report suspected corruption or other crimes; and protection from reprisal for reporting and, thereafter for those tools included, establishing a process by which the fairness, efficiency and effectiveness of their implementation can be evaluated (paragraph 53);
- vi. that Croatia reconsiders the gift exception (gifts valued less than one third of the average monthly salary) to lower the value and frequency of any gifts that may be accepted by civil servants, employees or officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage (paragraph 55);
- vii. that the appropriate authorities develop public, written interpretative guidance of the current prohibitions for public officials and the relationship of those prohibitions to the relevant corruption-related provisions under criminal law, and that the Commission for the Resolution of Conflicts of Interest include a similar discussion in its informational materials (paragraph 57);
- viii. to ensure that persons establishing companies are screened in respect of security measures involving limitations of rights to which they might be subjected (e.g., prohibition to engage in a profession, activity or specific duty); and to establish a system to timely notify the commercial courts whenever a leading person in a corporation has been banned from business activity by a criminal court (paragraph 74);
- ix. to take appropriate measures to ensure that the public's right of access to information on legal persons contained in commercial registers can be exercised in an effective manner (paragraph 75);
- x. to develop training to raise the awareness among police officers, prosecutors, judges, tax inspectors and State auditors of the possibilities for applying the Law on Liability of Legal Entities for Criminal Offences, and of problems of corruption linked with legal persons (paragraph 78);

**xi. that the Croatian authorities encourage the private accountants' and auditors' representative bodies to issue guidelines and organise training on the detection and reporting of corruption (paragraph 80).**

83. Moreover, GRECO invites the Croatian authorities to take account of the observations (paragraphs 23, 47, 52 and 58) made in the analytical part of this report.

84. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Croatian authorities to present a report on the implementation of the above-mentioned recommendations by 31 July 2007.