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**Greco Eval III Rep (2009) 1E**  
**Theme I**

## **Third Evaluation Round**

### **Evaluation Report on Croatia Incriminations (ETS 173 and 191, GPC 2)**

(Theme I)

Adopted by GRECO  
at its 45<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November – 4 December 2009)

## **I. INTRODUCTION**

1. Croatia joined GRECO in 2000. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 4E) in respect of Croatia at its 9<sup>th</sup> Plenary Meeting (13-17 May 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2005) 4E) at its 26<sup>th</sup> Plenary Meeting (Strasbourg, 5-9 December 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Croatia on 30 and 31 March 2009, was composed of Mr Flemming DENKER, Deputy Director, Public Prosecutor for Serious Economic Crime (Denmark) and Mr Georg Florian GRABENWEGER, Head of Unit 4, Prevention and External Relations, Federal Bureau for Internal Affairs (BIA), Federal Ministry of the Interior (Austria). The GET was supported by Mr Michael JANSSEN from GRECO's Secretariat. Prior to the visit the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 1E, Theme I) as well as copies of relevant legislation.
4. The GET met with officials from the following governmental organisations: the Ministry of Justice, the Ministry of Finance, the Supreme Court, the County Court of Zagreb, the Office for the Suppression of Corruption and Organised Crime (USKOK) and the Police. The GET also met with representatives of the University of Zagreb (Law Faculty), of non-governmental organisations (Transparency International and the "Partnership for social development") and of the media.
5. The present report on Theme I of GRECO's Third Evaluation Round on Incriminations 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 measures adopted by the Croatian authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. 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.
6. The report on Theme II – Transparency of Party Funding is set out in Greco Eval III Rep (2009) 1E-Theme II.

## II. INCRIMINATIONS

### Description of the situation

7. Croatia ratified the Criminal Law Convention on Corruption (ETS 173) on 8 November 2000 and the Convention entered into force in respect of Croatia on 1 July 2002 without any reservations. The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) was ratified by Croatia on 10 May 2005 and entered into force in respect of Croatia on 1 September 2005 without any reservations.
8. The Criminal Code of Croatia (hereafter: CC) entered into force on 1 January 1998. Several corruption-related provisions were subject to the legal amendments of 2000, 2004 and 2006 which aimed at adjusting national legislation to the requirements of the Criminal Law Convention on Corruption and its Additional Protocol, in particular with regard to the definition of an “official person” and its international dimension,<sup>1</sup> to the criminalisation of active and passive bribery in the private sector<sup>2</sup> and of passive trading in influence.<sup>3</sup>

### Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

9. Section 347 CC establishes the offence of *passive bribery* and section 348 CC that of *active bribery*. Both sections differentiate as to whether the – intended or real – act or omission by the public official is illegal (paragraph 1) or legal (paragraph 2), providing for different degrees of sanctions. In addition, section 348 CC contains a specific provision on bribe-taking *after* the performance of an act or omission by a public official (paragraph 3), providing for a lower degree of sanction.

#### **Section 347 CC: Accepting a bribe**

(1) An official or a responsible person who solicits or accepts a gift or some other gain, or who accepts a promise to be given a gift or some other gain in order to perform within the scope of his/her authority an official or other act which s/he should not perform, or to omit an official or other act which s/he should perform, shall be punished for 1 to 8 years.

(2) An official or a responsible person who solicits or accepts a gift or some other gain or who accepts a promise to be given a gift or some other gain in order to perform within the scope of his/her authority an official or other act which s/he should perform, or to omit an official or other act which s/he should not perform, shall be punished by imprisonment for 6 months to 5 years.

(3) An official or a responsible person who after the performance or omission of an official or other act referred to in paragraphs 1 and 2 of this section solicits or accepts a gift or some other gain as a result of such performance or omission, shall be punished by a fine or imprisonment not exceeding 1 year.

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

#### **Section 348 CC: Offering a Bribe**

(1) Whoever gives or promises to give a gift or some other gain to an official or a responsible person in order to perform, within the scope of his/her official authority, an official or other act which s/he should not perform,

<sup>1</sup> Section 89, paragraph 3 CC.

<sup>2</sup> Sections 294a and 294b CC.

<sup>3</sup> Section 334 CC.

or to omit an official or other act which s/he should otherwise perform, or whoever mediates in bribing an official or responsible person in such a way, shall be punished by imprisonment for 6 months to 3 years.

(2) Whoever gives or promises to give a gift or some other gain to an official or a responsible person in order to perform, within the scope of his/her official authority, an official or other act which s/he should perform, or to omit an official or other act which s/he should not perform, or whoever mediates in bribing an official or responsible person in such a way, shall be punished by a fine or imprisonment not exceeding 1 year.

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

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

### Elements of the offence

#### *“Domestic public official”*

10. The Croatian bribery provisions employ the terms “official person” and “responsible person” which are defined in section 89, paragraphs 3 and 7 CC.<sup>4</sup>

#### **Section 89 CC**

(...) (3) An official person, when referred to as the perpetrator of a criminal offence, is an official elected or nominated to a representative body, a public official or a servant performing official duties in bodies of the State administration, local self-government and administration, a unit of regional self-government, the judiciary, the Constitutional Court of Croatia, the Public Prosecutor's Office, the Ombudsman's Office, the Ombudsman's Office for Children, the Ombudsman's Office for Gender Equality, the Office of the President of the Republic, or a body, an office or a specific agency of the Government of Croatia and the Croatian Parliament, a person vested with judicial authorities, a judge of the Constitutional Court of Croatia, the Chief Public Prosecutor of Croatia and his/her deputies, the Ombudsman of Croatia and his/her deputies and the Ombudsman for Children and his/her deputies, the Ombudsman for Gender Equality and his/her deputies, a domestic arbitrator or a notary public.

In the case of criminal offences that Croatia is obliged to penalise according to international law, an official person is a foreign servant, a representative or a servant of a foreign representative body, a servant of an international organisation of which Croatia is a member, a representative or a servant of an international assembly of which Croatia is a member, and a judge or a servant of an international court whose jurisdiction Croatia has recognised, a foreign lay judge or a foreign arbitrator.

(7) A responsible person, as referred to in this Code, is a person who is entrusted with particular tasks from the field of activities of a legal entity, a government body, a body of local self-government and administration or a local self-government body.

(...)

The authorities indicated that this concept also covers, *inter alia*, ministers and mayors.

<sup>4</sup> In this report the term *public official* is used and is to be understood in the sense of *official or responsible person*, unless otherwise specified.

*“Promising, offering or giving” (active bribery)*

11. The provisions of 348 CC use the words “gives” and “promises to give”. The authorities indicated to the GET that according to several decisions of the Supreme Court, the “offer” is also covered by this provision, as there is no legal difference between offering and promising.<sup>5</sup>

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

12. The provisions of section 347 CC use the words “solicits”, “accepts and “accepts a promise”. The authorities indicated to the GET that the simple “receipt” is also covered by this provision, as in the Croatian language the words “accept” and “receive” are synonymous.

*“Any undue advantage”*

13. The concept of “any undue advantage” is transposed by reference to “a gift or some other gain” in the penal provisions concerning active and passive bribery. The authorities indicated to the GET that the term “gain” is interpreted extensively by the courts and covers both material and immaterial benefits. As regards the element “undue”, they referred to regulations contained in section 16 of the Civil Servants Act and in section 8 of the Act on the Prevention of Conflicts of Interest in the Exercise of Public Office, the latter provision permitting high-ranking officials to keep gifts of symbolic value not exceeding 500 Croatian Kuna/HRK (67 EUR)<sup>6</sup> from the same donor (except for money, other security or precious metal whose receipt is generally prohibited). The manner of how to proceed with gifts which are not of symbolic value is defined by the Regulation on Gifts.

*“Directly or indirectly”*

14. The relevant provisions on active and passive bribery do not specify whether the offence could be committed directly or indirectly. According to the authorities, bribery may also be committed indirectly by the bribe-giver or the bribe-taker, and in such cases the mediators themselves are also criminally responsible (on the basis of section 348 CC – which expressly mentions mediators – or section 347 CC in conjunction with the general provisions on aiding and abetting<sup>7</sup>).

*“For himself or herself or for anyone else”*

15. The provisions on active and passive bribery do not specify whether the advantage must be for the official him/herself. The authorities indicated to the GET that according to several court decisions, passive bribery also occurs in cases where the advantage is intended or given to a third party.<sup>8</sup>

*“To act or refrain from acting in the exercise of his or her functions”*

16. Croatian legislation expressly covers both positive – legal and illegal – acts and omissions, on condition that they are in the scope of his/her authority. According to the authorities, acts which

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<sup>5</sup> The authorities referred to the Supreme Court decisions Nos. I Kž 1011/07, I Kž 747/07, I Kž 483/07, I Kž 650/06, I Kž 415/06, I Kž 778/05, I Kž 102/05, I Kž 30/05, I Kž 883/04 and I Kž 742/03.

<sup>6</sup> Exchange rate from HRK to EUR on 10 February 2009.

<sup>7</sup> See sections 36/38 CC.

<sup>8</sup> The authorities referred to the Supreme Court decision No. I Kž-3378/1955 and to decisions of the County Court in Zagreb (K-us-16/02, K-us-21/04).

fall out of the scope of the official's competences are covered by other provisions – in particular, the provisions on fraud (section 224 CC), abuse of office and official authority (section 337 CC), abuse in performing governmental duties (section 338 CC), negligent performance of duty (section 339 CC), trading in influence (section 343) or fraud in the performance of a duty (section 344 CC) –, depending on the circumstances.

*“Committed intentionally”*

17. The authorities indicated to the GET that both active and passive bribery can only be committed with intention.

Sanctions

18. Active bribery is punishable by 6 months to 3 years of imprisonment if it involves an illegal act or omission by the public official and by a fine or imprisonment of up to 1 year if it involves a legal act or omission. Passive bribery offences carry prison sentences of 1 to 8 years in the case of illegal acts or omissions and 6 months to 5 years in the case of legal acts or omissions; a fine or imprisonment of up to 1 year are available for officials who request or accept a gain after the performance or omission of a (legal or illegal) act.
19. According to section 56 CC, the court determines the punishment in consideration of all mitigating or aggravating circumstances, in particular the degree of culpability, motives and social/personal grounds for committing the offence, the circumstances under which it was committed, the degree of peril or injury to the protected good, the conditions in which the perpetrator lived before and after committing the offence, his/her abidance by the law and his/her conduct, particularly his/her relation towards the injured person and his/her efforts to compensate the damage caused. Under section 54 CC, the court may decide that the punishment of imprisonment for the duration of up to 6 months be replaced, with the consent of the convict, by community service. Moreover, pursuant to section 57 the court may mitigate the punishment prescribed by law when it holds that, in view of the existence of particularly obvious mitigating circumstances, the purpose of punishment may also be attained by a more lenient punishment.
20. Similar sanctions are available for other comparable criminal offences such as fraud (section 224 CC), abuse of office and official authority (section 337 CC), abuse in performing governmental duties (section 338 CC), negligent performance of duty (section 339 CC), fraud in the performance of a duty (section 344 CC) or embezzlement (section 345 CC).
21. In addition to the above-mentioned sanctions, the security measure “prohibition to engage in a profession, activity or duty” for a period which may not be shorter than one or longer than five years may be imposed on public officials having committed bribery. In the terms of section 77, paragraph 1 CC such a measure “may be ordered against a perpetrator who commits a criminal offence in carrying out his/her profession, activity or duty if there is a danger that such a role could induce the perpetration of another criminal offence through the abuse of the profession, activity or duty.”

**Bribery of members of domestic public assemblies (Article 4 of ETS 173)**

22. The authorities indicated that members of domestic public assemblies are covered by sections 347 and 348 CC which criminalise active and passive corruption involving “official persons” as defined by section 89, paragraph 3 CC which explicitly includes officials elected or appointed to a representative body, public officials and persons performing official duties in a body of the

State administration or of local self-government and administration. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of domestic public assemblies. There is no case law/court decision concerning bribery of members of domestic public assemblies.

### **Bribery of foreign public officials (Article 5 of ETS 173)**

23. According to the authorities, bribery of foreign public officials is covered by sections 347 and 348 CC, as the definition of an “official person” expressly includes “foreign servants”, with respect to criminal offences that Croatia is obliged to sanction under international law, see the second sentence of section 89, paragraph 3 CC which was introduced in 2000 in order to adjust national legislation to the requirements of the Criminal Law Convention on Corruption. The authorities indicated that the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. There is no case law/court decision concerning bribery of foreign public officials.

### **Bribery of members of foreign public assemblies (Article 6 of ETS 173)**

24. Bribery of members of foreign public assemblies is covered by the Croatian bribery provisions, as the definition of an “official person” includes representatives and servants of foreign representative bodies, with respect to criminal offences that Croatia is obliged to sanction under international law, see the second sentence of section 89, paragraph 3 CC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of members of foreign public assemblies. There is no case law/court decision concerning bribery of members of foreign public assemblies.

### **Bribery in the private sector (Articles 7 and 8 of ETS 173)**

25. Active and passive bribery in the private sector are criminalised under the new provisions of sections 294a and 294b CC which were introduced in 2004 in order to align national legislation with the requirements of the Criminal Law Convention on Corruption.

#### ***Section 294a CC: Receiving a Bribe in Economic or Other Transactions***

*(1) A responsible person in a legal entity dealing with economic transactions who demands or receives a gift or any other gain or who accepts the promise of a gift or any other gain and who in return makes a deal or renders services that are advantageous for another but detrimental for the party he or she represents, shall be punished by imprisonment for 1 to 8 years.*

*(2) A responsible person in a legal entity dealing with economic transactions who demands or receives a gift or any other gain or who accepts the promise of a gift or any other gain as a counter favour for making a deal or rendering services, shall be punished by imprisonment for 6 months to 5 years.*

*(3) The gift or other material gain that has been received shall be forfeited.*

#### ***Section 294b: Offering a Bribe in Economic or Other Transactions***

*(1) Whoever gives or promises a gift or any other gain to a responsible person in a legal entity dealing with economic transactions so that this person makes a deal or renders services to the advantage of another but causes damage to the party he or she represents, or whoever mediates in the bribery of a responsible person, shall be punished by imprisonment for 6 months to 3 years.*

(2) Whoever gives a gift or promises a gift or any other gain to a responsible person in a legal entity dealing with economic transactions as a counter favour for making a deal or rendering services, or who mediates in the bribery of a responsible person, shall be punished by a fine or imprisonment not exceeding 1 year.

(3) The perpetrator of a criminal offence referred to in paragraphs 1 and 2 of this section who has given a bribe at the request of a responsible person and reports this act prior to its discovery or prior to his knowledge that it has been discovered shall have the punishment remitted.

(4) The gift or material gain referred to in paragraph 3 of this section shall be returned to the donor.

### Elements of the offence

26. The elements described under bribery of domestic public officials also apply to bribery in the private sector in accordance with the following particular elements:

*“Persons who direct or work for, in any capacity, private sector entities”*

27. Sections 294a and 294b CC use the words “a responsible person in a legal entity dealing with economic transactions”. According to the definition provided by section 89, paragraph 6 CC, a legal entity in this meaning is “a company, a fund, an institution, a political or social organisation and an association of citizens, a unit of local and regional self-government, as well as some other legal entity which, within the framework of its regular business, regularly or occasionally generates or provides resources and disposes of them.” Paragraph 7 of the same section provides that “a responsible person” is to be understood as “a person who is entrusted with particular tasks from the field of activities of a legal entity.”

*“In the course of business activity”; “...in breach of duties”*

28. Sections 294a and 294b CC use the words “who in return makes a deal or renders services that are advantageous for another but detrimental for the party he or she represents” (paragraph 1) and, alternatively, “as a counter favour for making a deal or rendering services” (paragraph 2). The authorities indicated that these terms imply an act committed in the course of business activity and a breach of duties. Furthermore, they explained that the term “to make a deal” is to be understood as to conclude a business agreement or contract, not necessarily in a written form.

### Sanctions

29. Active bribery in the private sector is punishable by 6 months to 3 years of imprisonment in cases of acts detrimental to the private entity, otherwise by a fine (calculated on the basis of the perpetrator’s or the average daily income) or imprisonment of up to 1 year. Passive bribery offences committed in the private sector carry prison sentences of 1 to 8 years in cases of acts detrimental to the private entity, otherwise 6 months to 5 years.

### **Bribery of officials of international organisations (Article 9 of ETS 173)**

30. Bribery of officials of international organisations is covered by sections 347 and 348 CC, as the definition of an “official person” explicitly includes servants of international organisations of which Croatia is a member, with respect to criminal offences that Croatia is obliged to sanction under international law, see the second sentence of section 89, paragraph 3 CC. The authorities indicated to the GET that this definition is broad enough to also cover contracted employees,

seconded personnel and persons carrying out functions corresponding to those performed by public officials. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international organisations. There is no case law/court decision concerning bribery of officials of international organisations.

### **Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)**

31. Bribery of members of international parliamentary assemblies is covered by the Croatian bribery provisions, as the definition of an “official person” expressly includes representatives and servants of international assemblies of which Croatia is a member, with respect to criminal offences that Croatia is obliged to sanction under international law, see the second sentence of section 89, paragraph 3 CC. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of officials of international parliamentary assemblies. There is no case law/court decision concerning bribery of members of international parliamentary assemblies.

### **Bribery of judges and officials of international courts (Article 11 of ETS 173)**

32. Active and passive bribery of judges and officials of international courts are criminal offences under sections 347 and 348 CC; the persons concerned are covered by the notion of “official person” in the above provisions. According to the second sentence of section 89, paragraph 3 CC, this notion includes judges and servants of international courts whose jurisdiction Croatia has recognised, with respect to criminal offences that Croatia is obliged to sanction under international law. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of judges and officials of international courts. There is no case law/court decision concerning bribery of judges and officials of international courts.

### **Trading in influence (Article 12 of ETS 173)**

33. Trading in influence is criminalised in section 343 CC both in its active (paragraph 4 and 5) and passive form (paragraphs 1 to 3, introduced in 2004).

#### ***Section 343 CC: Illegal Intercession***

*(1) Whoever demands or receives a gift or any other gain, or receives an offer or promise of a gift or any other gain for him/herself or for another natural or legal person so as to intercede by taking advantage of his/her official or social position or influence, whereby an official or other act be performed which should be performed, or that an official or other act not be performed which should not to be performed, shall be punished by imprisonment for 6 months to 3 years.*

*(2) The punishment referred to in paragraph 1 of this section shall be inflicted on whoever, by abusing his official or social position or influence, intercedes so that an official or other act be performed which should not be performed or so that an official or other act not be performed which should be performed.*

*(3) If, for the intercession referred to in paragraph 2 of this section, the perpetrator has received a gift or some other gain, or if s/he has received an offer or accepted the promise of a gift or some other gain for him/herself or for another natural or legal person, while some other criminal offence is not committed for which a more severe punishment is prescribed, the perpetrator shall be punished by imprisonment for 1 to 5 years.*

*(4) Whoever offers, promises or gives a gift or some other gain to another, meant for that person or for another natural or legal person so that by abusing his/her official or social position or influence s/he intercedes so that an official or other act be performed that should be performed, or so that an official or*

*other act not be performed that should not be performed,  
shall be punished by imprisonment for 6 months to 3 years.*

*(5) Whoever offers, promises or gives a gift or some other gain to another, meant for that person or for another natural or legal person, so that by abusing his/her official or social position or influence s/he intercedes so that an official or other act be performed that otherwise should not be performed, or so that an official or other act not be performed which should be performed, shall be punished by imprisonment for 1 to 5 years.*

### Elements of the offence

*“Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]”*

34. This concept is implemented in section 343 CC by use of the words “so as to intercede by taking advantage of his/her official or social position or influence, whereby an official or other act be performed (...), or that an official or other act not be performed (...)”. The authorities indicated that it is not relevant whether the influence was actually exerted or if it led to the intended result. The term “improper” is not explicitly transposed and the provisions of section 343 CC cover both situations implying (intended or real) legal and illegal acts or omissions.

### *Other constitutive elements*

35. The constitutive elements of bribery offences largely apply with regard to active and passive trading in influence, however, the “offer” of an advantage and the “receipt of an offer”, as well as third party beneficiaries are explicitly mentioned, in contrast to sections 347/348 and 294a/294b CC.

### Sanctions

36. Active trading in influence is punishable by between 1 and 5 years of imprisonment in cases implying an – intended or real – illegal (official or other) act or omission and by between 6 months and 3 years of imprisonment in cases implying a legal act or omission. The sanctions applicable to passive trading in influence are imprisonment for 1 month to 5 years in cases where another criminal offence is not committed for which a more severe punishment is prescribed, otherwise 6 months to 3 years.

### **Bribery of domestic arbitrators (Article 1, paragraphs 1 and 2 and Articles 2 and 3 of ETS 191) and bribery of foreign arbitrators (Article 4 of ETS 191)**

37. Domestic and foreign arbitrators are covered by the bribery provisions of sections 347 and 348 CC, see the definition of an “official person” in section 89, paragraph 3 CC, sentence 1 (including domestic arbitrators) and 2 (including foreign arbitrators). The authorities indicated to the GET that arbitration is regulated in the Arbitration Act, according to which an arbitration agreement is a written agreement of the parties to submit to arbitration all or certain disputes that have arisen or that may arise in the future between them in respect of a defined legal relationship of a contractual or non-contractual nature, see section 6, paragraph 1. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of domestic and foreign arbitrators. There is no case law/court decision concerning bribery of domestic or foreign arbitrators.

## **Bribery of domestic jurors (Article 1, paragraph 3 and Article 5 of ETS 191) and bribery of foreign jurors (Article 6 of ETS 191)**

38. The authorities indicated that domestic and foreign jurors are captured by the notion of “official person” in the meaning of the Croatian bribery provisions and referred to the definition in section 89, paragraph 3 CC, sentence 1 (including persons performing official duties in the judiciary) and 2 (including foreign lay judges). They added that the Croatian legal system considers the concept of lay judges as members of a judicial panel trying criminal cases at first instance and that any Croatian citizen of full age worthy of performing the duty of a lay judge may be appointed as a lay judge.<sup>9</sup> According to the authorities, the elements of the offence and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of domestic and foreign jurors. There is no case law/court decision concerning bribery of domestic or foreign jurors.

### **Other questions**

#### **Participatory acts**

39. Aiding and abetting the commission of all of the abovementioned criminal offences is criminalised under Croatian legislation. The same sanctions can be imposed on aiders and abettors (“accomplices”) as on the principal offender but the court may remit the punishment of an accomplice who voluntarily prevents the perpetration of a criminal offence.

#### ***Section 35 CC: The Principal and Accomplices***

(...) (4) The instigator and aider or abettor are accomplices who, without control over the perpetration of a criminal offence, contribute to its perpetration by instigation or by aiding and abetting.

#### ***Section 36 CC: Punishment of Accomplices***

(1) Each co-principal shall be liable in accordance with his intent or negligence, while the instigator and the aider and abettor shall be liable in accordance with their intent.

(2) The material or personal characteristics of the principal, which represent the material elements of a criminal offence or influence the severity of the prescribed punishment, shall also apply to accomplices.

(3) Strictly personal circumstances for which the law excludes culpability and allows for the remission, mitigation or aggravation of punishment may apply only to the principal or accomplice to whom they pertain.

(4) The punishment of an accomplice who voluntarily prevents the perpetration of a criminal offence may be remitted.

#### **Jurisdiction**

40. Under the relevant provisions of the general part of the Criminal Code, which apply to all criminal offences,<sup>10</sup> jurisdiction is, firstly, established over acts committed within the territory of Croatia, by Croatian or foreign citizens (principle of territoriality), see section 13 CC which also includes offences committed aboard a domestic vessel, military aircraft or civil aircraft while in flight, regardless of the location of such a vessel or aircraft at the time the criminal offence is committed.
41. As regards offences committed abroad, the provisions of section 14 CC establish jurisdiction over, *inter alia*,

<sup>9</sup> See section 131 of the Act on Courts.

<sup>10</sup> See section 12 CC.

- criminal offences committed by persons which Croatia is obliged to penalise according to the provisions of international law and international treaties or inter-state agreements (paragraph 1, item 3);
- criminal offences committed against Croatian State officials or civil servants relating to their office (paragraph 1, item 4);
- criminal offences committed by Croatian citizens (paragraph 2, principle of nationality);
- criminal offences committed by foreign citizens against Croatia or its citizens (paragraph 3);
- criminal offences committed by foreign citizens against a foreign State or another foreign citizen for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied (paragraph 4).

If in the cases specified in section 14, paragraphs 2, 3 and 4 CC such an act does not constitute a criminal offence under the law in force in the country of perpetration, criminal proceedings may be instituted only upon the approval of the Chief Public Prosecutor of Croatia. In the case referred to in section 14, paragraph 4 CC, the Chief Public Prosecutor of Croatia may authorise the institution of criminal proceedings in Croatia and the application of the criminal legislation of Croatia when the committed act is not punishable under the law in force in the country in which it was committed but is deemed to be a criminal offence according to the general principles of law of the international community.<sup>11</sup>

42. The GET was informed that there was no case law/court decision in connection with jurisdiction over bribery offences.

#### Statute of limitations

43. The period of limitation is determined by the severity of sanctions which can be imposed for the offence in question.<sup>12</sup> Accordingly, the basic limitation period – during which criminal prosecution can be initiated – provided for active bribery offences both in the public and private sectors is 3 years. Passive bribery offences in the public sector are subject to a limitation period of 10 years in cases implying an illegal act or omission, 5 years in cases implying a legal act or omission and 3 years in cases of bribe-taking *after* the performance of an act or omission by the official. The limitation period provided for offences of passive bribery in the private sector is 10 years in cases of acts detrimental to the private entity, otherwise 5 years. Trading in influence is subject to a limitation period of 3 years or, in the specific cases of passive trading in influence specified in section 343, paragraph 3 CC, 5 years. The calculation of the statute of limitation is interrupted, *inter alia*, by procedural actions undertaken in order to institute criminal prosecution against the perpetrator, but ultimately, the absolute time limit for prosecution cannot exceed twice the basic statutes.<sup>13</sup>

#### Defences

44. A special defence is provided for active bribery offences committed in the public or in the private sector on condition that the briber acted at the request of the bribee. Section 348, paragraph 3 CC stipulates that “the court shall remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1 and 2 of this section, provided that s/he gives the bribe at the request of an official person and reports the offence before it is discovered or before s/he learns that the offence has been discovered.” Section 294b CC contains an analogous provision in paragraph 3. The authorities explained to the GET that under these provisions, exemption from punishment is

<sup>11</sup> See section 16, paragraphs 2 and 3 CC.

<sup>12</sup> See section 19 CC.

<sup>13</sup> Section 20, paragraph 6 CC.

granted only if the perpetrator reports the crime to the police or to the public prosecutor, before they have been otherwise informed of the criminal offence. They indicated that during the years 2002 to 2007, section 348, paragraph 3 CC has been applied twice.

### Statistics

45. According to the statistics submitted by the authorities, in 2007, 1,326 cases of corruption-related offences in a wider sense (including offences such as money laundering, abuse of power, abuse of public authority etc.) were reported to the law enforcement agencies, leading to 429 indictments and 170 convictions. As regards the sanctions imposed on perpetrators of corruption-related offences, statistics show that during the period 2002-2007, 181 persons were sentenced to imprisonment (in 147 cases the sentence was suspended) and 23 to a fine (in 2 cases the sentence was suspended) for active bribery in the public sector; 2 more persons were found guilty but their punishments were remitted and an educational measure was imposed on 1 person. During the same period, 82 persons were sentenced to imprisonment (in 50 cases the sentence was suspended) for passive bribery in the public sector. During the same period, no persons were convicted for bribery in the private sector and 2 persons for trading in influence.

### **IV. ANALYSIS**

46. In Croatia, bribery in the public and private sectors, as well as trading in influence, are criminalised both in their active and passive form. The Criminal Code (hereafter: CC), in force since January 1998, has been amended on several occasions with the aim of adopting the standards of the Criminal Law Convention on Corruption (ETS 173) (hereafter: the Convention) and its Additional Protocol (ETS 191), in particular with regard to bribery of foreign/international officials, private sector bribery and trading in influence. The GET notes, however, that these amendments have at the same time led to some inconsistencies in the corruption-related provisions which need to be addressed, as detailed below. In this context, it should be noted that a working group has recently been set up in the Ministry of Justice in order to prepare a revised Criminal Code, and it was indicated to the GET that suggestions on how to further improve the corruption legislation would be welcome.
47. Bribery in the public sector is criminalised by virtue of sections 347 CC (passive bribery) and 348 CC (active bribery). Concerning the categories of persons covered by these provisions, it was indicated to the GET by numerous interlocutors that the concept of “an official or a responsible person” as defined in section 89, paragraphs 3 and 7 CC is extremely wide and encompasses all categories of persons referred to in Article 1.a of the Convention, as well as jurors (the Croatian law only recognises the concept of “lay judges” as members of a judicial panel trying criminal cases at first instance) and arbitrators who are addressed by the Additional Protocol to the Convention. Although the GET finds the definition of “an official person” unnecessarily complicated and notes that several interlocutors had some difficulties in explaining its precise content, it has no reason to doubt these indications, particularly in consideration of the broad definition of a “responsible person” as “a person who is entrusted with particular tasks from the field of activities of a legal entity, a government body, a body of local self-government and administration or a regional self-government body”. As regards the international dimension of the bribery offences, the second sentence of section 89, paragraph 3 CC – introduced in 2000 – expressly includes “a foreign servant, a representative or a servant of a foreign representative body, a servant of an international organisation of which Croatia is a member, a representative or a servant of an international assembly of which Croatia is a member, and a judge or a servant of an international court whose jurisdiction Croatia has recognised, a foreign lay judge or a foreign arbitrator”. The authorities explained to the GET that the term “servant” (“službenik”) employed in

this provision was to be understood as “civil servant” which, following recent reforms of the administrative law, also included public employees. The GET therefore concludes that this term is broad enough to cover the foreign and international public officials addressed by the Convention.

48. Pursuant to section 348 CC, active bribery in the public sector may be committed by “giving” and “promising to give”. One of the three elements contained in Article 2 of the Convention, namely the “offering”, is therefore not explicitly mentioned. The authorities stated that there is no legal difference between offering and promising and that legal practitioners do not meet with problems when prosecuting and adjudicating corruption cases where the bribes are simply offered but not given immediately or form part of a firm proposition or self-commitment by the briber. As for passive bribery, the provisions of 347 CC use the words “soliciting” and “accepting”; the latter applies distinctively to the acceptance of the advantage itself (the gift or gain) as well as to the acceptance of a proposition (the promise). The authorities stated that the simple “receipt” of the advantage (in the absence of a formal preliminary promise) is thus also covered by this provision, as in the Croatian language the words “accepting” and “receiving” are synonymous. This explanation was commonly shared by the practitioners met during the visit. Concerning the “acceptance of an offer” – a further element contained in Article 3 of the Convention – the authorities emphasised that an explicit reference to this concept was not necessary and reiterated their statement that there is no legal difference between offering and promising in Croatian criminal law. In this context, the GET notes that the provisions on trading in influence contain the elements “offer” and “acceptance of an offer” and finds it advisable, for the sake of legal clarity and consistency, to adjust the bribery provisions accordingly. However, as the authorities referred to a number of Supreme Court decisions stressing that the offer and its acceptance are covered by the bribery provisions as well,<sup>14</sup> no formal recommendation is made in this respect.
49. The concept of “any undue advantage” is transposed by reference to “a gift or some other gain” in the penal provisions concerning active and passive bribery and trading in influence. The authorities indicated to the GET that the term “gain” is interpreted extensively by the courts and covers both material and immaterial benefits. As regards the element “undue”, they referred to regulations contained in section 16 of the Civil Servants Act and in section 8 of the Act on the Prevention of Conflicts of Interest in the Exercise of Public Office, the latter provision permitting high-ranking officials to keep gifts of symbolic value not exceeding 500 Croatian Kuna (67 EUR) from the same donor in a given year. During the visit, it was explained however that under the bribery provisions of the Criminal Code even the acceptance of such gifts was prohibited when they were aimed at the performance or omission of an – official or other – act by the public official. The GET considers that these rules are in line with the concept of “undue advantage” as employed in the Convention and notes that the practitioners interviewed on-site reported having met no problems in their application.
50. The relevant provisions contained in the Criminal Code do not expressly provide for indirect commission of bribery offences, i.e. bribery committed through intermediaries – only the acts of intermediaries themselves are explicitly criminalised in the active bribery provisions. Instead, the interlocutors interviewed referred – convincingly – to the general rules of the Criminal Code on the “principal” and “accomplices” in section 35 CC, according to which “the principal is a person who commits a criminal offence by his own act or omission or through another agent.” In the absence of any indications to the contrary, the GET accepts that the general rules referred to would cover situations of indirect bribery. As regards beneficiaries of the bribe, neither section 347 CC nor section 348 CC specify whether the advantage must be for the official him/herself or

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<sup>14</sup> The authorities referred to the Supreme Court decisions Nos. I Kž 1011/07, I Kž 747/07, I Kž 483/07, I Kž 650/06, I Kž 415/06, I Kž 778/05, I Kž 102/05, I Kž 30/05, I Kž 883/04 and I Kž 742/03.

may be intended for a third party as well. The wording of the aforementioned provisions raises serious doubts as to whether bribery offences are criminalised where the beneficiary of the bribe is a third person, e.g. where the official or employee would solicit an advantage for one of his/her relatives, a political party or a company. After the visit, the authorities referred to court decisions according to which passive bribery also occurs in cases where the advantage is intended or given to a third party.<sup>15</sup> The GET notes, however, that section 343 CC explicitly includes the concept of a third party beneficiary in the offence of trading in influence. The GET wishes to stress, once again, how important it is for the sake of consistency, clarity and legal security that all corruption offences contain the same basic elements. Consequently, in order to establish a fully coherent legal framework, in conformity with Articles 2 and 3 of the Convention, the GET recommends **to ensure that the offences of active and passive bribery in the public sector are construed in such a way as to cover instances unambiguously where the advantage is not intended for the official him/herself but for a third party.**

51. Sections 347 and 348 CC criminalise active and passive bribery for the legal or illegal performance or omission of “an official or other act” by the public official, the available sanctions being more severe in the case of illegal acts or omissions. However, these provisions entail a specific restriction in so far as they only apply to – intended or real – acts or omissions by the public official “within the scope of his/her authority”. During the interviews, it was explained to the GET that this concept would also cover cases where a public official in the field of his/her competences transgresses his/her rights, whereas acts and omissions which fall completely outside the official’s competences are not directly covered by the bribery provisions. The GET takes the view that this concept narrows down the requirements of Articles 2 and 3 of the Convention which refer to acts and omissions by public officials “in the exercise of his or her functions”, thus covering acts and omissions which are made possible in relation to the public official’s function, even if the act or omission is a misuse of the official position. Although the authorities indicated that acts and omissions falling outside the scope of the official’s competences could be prosecuted under other criminal offences such as fraud (section 224 CC), abuse of office and official authority (section 337 CC) or fraud in the performance of a duty (section 344 CC), or by reference to the general rules on instigation (section 37 CC), the GET has serious doubts that all cases of bribery in the meaning of Articles 2 and 3 of the Convention would indeed be covered by the aforementioned offences (e.g. cases where a person unsuccessfully asks a public official to act outside his/her competences). Therefore, the GET is of the opinion that the narrow notion of “within the scope of his/her authority” adds an – excessively restrictive – extra element to the criminalisation of bribery, which may make prosecution of the offence more difficult, i.e. by requiring proof that the official was expected to act within his/her competences. Consequently, the GET can only conclude that Croatian legislation is not fully in line with the Convention, and therefore recommends **to take the legislative measures necessary to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s competences.**
52. Bribery in the private sector is criminalised both in its active (section 294b CC) and passive form (section 294a CC). The GET acknowledges that under these provisions, the criminalisation is not limited to the involvement of business entities stricto sensu but applies also to funds, institutions, political, social, non-profit making and other organisations, as well as units of local and regional self-government, the activity of which, within the framework of their regular business, “regularly or occasionally generates or provides resources and dispose[s] of them” (section 89, paragraph 6

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<sup>15</sup> The authorities referred to the Supreme Court decision No. I Kž-3378/1955 and to decisions of the County Court in Zagreb (K-us-16/02, K-us-21/04).

CC). That said, the GET noticed several shortcomings which need to be remedied. Firstly, as regards the range of possible perpetrators, sections 294a and 294b CC make reference to “a responsible person in a legal entity dealing with economic transactions”. During the interviews held on site, the GET was informed that the concept of a legal entity (as defined by section 89, paragraph 6 CC, see above) implied legal personality, whereas the Explanatory Report to the Criminal Law Convention<sup>16</sup> makes it clear that Articles 7 and 8 of the Convention also cover entities without legal personality, as well as individuals. In addition, the concept of “a responsible person *in a legal entity*” seems to exclude entity representatives if they are neither employed nor managers of the entity, whereas the Explanatory Report to the Criminal Law Convention<sup>17</sup> specifies that Articles 7 and 8 of the Convention also cover “other types of relationships such as partners, lawyer and client and others in which there is no contract of employment”. Against this background, the GET is not convinced that the scope of sections 294a and 294b CC fully meets the requirements of Articles 7 and 8 of the Convention which refer to “any persons who direct or work for, in any capacity, private sector entities”.

53. A second area of concern in the private sector bribery provisions is related to the – intended or real – behaviour of the bribe-taker. Whereas Articles 7 and 8 of the Convention cover all cases where bribe-takers “act or refrain from acting in *breach of their duties*”, sections 294a, paragraph 1, and 294b, paragraph 1 CC require an act of the bribe-taker (“makes a deal or renders services”) which is *detrimental* to the entity s/he represents. In the GET’s view this formulation unnecessarily narrows down the requirement of the Convention and adds an extra element to the criminalisation of private sector bribery. In this connection, practitioners interviewed on site clearly stated that this very element – difficult to prove in practice – to a large extent explained the fact that the private sector bribery provisions were hardly ever applied (according to the statistics delivered by the authorities, no persons were convicted for bribery in the private sector since the introduction of sections 294a and 294b CC in 2004). They furthermore explained that paragraph 2 of both sections 294a and 294b CC, which does not contain a detrimental act but instead refers to an advantage “*as a counter favour for making a deal or rendering services*”, was also narrow and difficult to apply in practice. This concept seems to require that the bribee has acted as expected by the briber, which is clearly not required under Articles 7 and 8 of the Convention.
54. Thirdly, the GET noticed that the provisions on bribery in the private sector contain the same lacuna as the provisions on bribery in the public sector as regards the beneficiaries of the bribe: Neither section 294a CC nor section 294b CC explicitly include third party beneficiaries, in contrast to Articles 7 and 8 of the Convention. In this connection, the GET refers to its comments on the corresponding provisions on bribery in the public sector (sections 347 and 348 CC) which are identical in this respect (see paragraph 50 above). Furthermore, sections 294a and 294b CC do not explicitly criminalise the “offer” of an advantage nor the “acceptance of an offer”, in contrast to Articles 7 and 8 of the Convention. However, having regard to the comments on the corresponding provisions on bribery in the public sector and the numerous Supreme Court decisions (see paragraph 48 above), no formal recommendation is made in this respect. In light of the preceding paragraphs, the GET recommends **(i) to ensure that current legislation in respect of bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for – in any capacity – private sector entities; and (ii) to amend this legislation in such a way as to cover unambiguously all instances implying a breach of duty by the bribed person as well as instances where the advantage is not intended for the bribee him/herself but for a third party.**

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<sup>16</sup> Explanatory report to the Criminal Law Convention, paragraph 54.

<sup>17</sup> Explanatory report to the Criminal Law Convention, paragraph 54.

55. Active and passive trading in influence are criminalised pursuant to section 343 CC (“illegal intercession”) which was amended in 2004 in order to adjust national legislation to the requirements of the Convention. The constitutive elements of the offence are largely in line with Article 12 of the Convention, in particular with respect to the corrupt acts covered – also including the “offer” and the “receipt of an offer” – and third party beneficiaries, which are not explicitly addressed by the bribery provisions. Instances of trading in influence committed indirectly appear to be covered by the general provisions of the Criminal Code on aiding and abetting, sections 35 and 36 CC. The provisions of section 343 CC are particularly broad in scope in so far as they do not refer to the concept of “improper” influence, but to the concept of “abusing/taking advantage of his/her official or social position or influence”.
56. The sanctions available for passive bribery offences committed in the public or in the private sector – up to eight years of imprisonment – under Croatian law appear to conform to the requirements relating to effectiveness, proportionality and dissuasiveness established under Article 19, paragraph 1 of the Convention. By contrast, the GET is concerned about the low level of the available maximum penalties in respect of active bribery committed in the public or in the private sector, i.e. three years of imprisonment – all the more so as they only apply to certain cases of active bribery, i.e. cases involving an illegal act or omission by the public official and cases involving an act which is detrimental to a private sector entity (in other cases, the maximum sanctions are even lower, i.e. one year of imprisonment). In this context, the GET wishes to recall the intentions underlying the Criminal Law Convention according to which corruption does not only represent a mere economic offence, but may, in some of its serious forms, threaten the rule of law, the stability of democratic institutions and the moral foundations of society, undermine good governance, security, health, fairness and justice. Against this background, the sanctions for active bribery appear weak, in comparison with some other offences contained in the Croatian Criminal Code, such as embezzlement (section 220 CC) or fraud (section 224 CC) which in their aggravated forms may lead to imprisonment of up to eight and ten years respectively. Consequently, the GET takes the view that the maximum penalties available for active bribery do not appear to be proportionate and sufficiently dissuasive. The GET recommends **to consider increasing the penalties for active bribery offences in the public and private sectors**. This would also lead to an extension of the limitation period which is essential for an effective fight against corruption in this area (currently, the basic limitation period for offences of active bribery in the public and private sectors is three years and the absolute limitation period, six years).
57. The special defence of effective regret exempts the bribe-giver from punishment in cases of active bribery in the public as well as the private sector, provided that s/he gives the bribe at the request of an official person and reports the offence before it is discovered or before s/he learns that the offence has been discovered, see sections 348, paragraph 3 CC and 294b, paragraph 3 CC. Despite the strict requirements of these provisions – which have been of little relevance until now, with only two cases of application during the years 2002 to 2007 – the GET is concerned about the automatic nature of this defence. There is no possibility for review of the situation and motives of the bribe-giver: if s/he reports the offence before the investigative body learns of the offence, the competent court must remit his/her punishment. In principle, very serious cases of active corruption could go totally unpunished by reference to this defence, and it could be misused by the bribe-giver as a means of exerting pressure on the bribe-taker to get even more advantages from him/her. During the on-site visit, the automatic – and mandatorily total – exemption from punishment was thus openly criticised by some of the practitioners who are to apply the law, and it was not made unambiguously clear to the GET what would be the added value in the fight against corruption of sections 348, paragraph 3 CC and 294b, paragraph 3 CC in their present form. Moreover, the GET is of the opinion that the provisions in sections 348,

paragraph 4 CC and 294b, paragraph 4 CC, according to which the gift or material gain referred to in paragraph 3 of these sections is to be restored to the bribe-giver, are questionable. The GET therefore recommends **to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and in the private sector who report to law enforcement authorities, and to abolish the restitution of the bribe to the bribe-giver in such cases.**

58. The jurisdictional principles of territoriality and nationality apply to all bribery and trading in influence offences. As regards offences committed abroad, the provisions of section 14 CC establish jurisdiction over, *inter alia*, criminal offences committed against Croatian State officials or civil servants relating to their office (paragraph 1, item 4); criminal offences committed by Croatian citizens (paragraph 2, principle of nationality); criminal offences committed by foreign citizens against Croatia or its citizens (paragraph 3); criminal offences committed by foreign citizens against a foreign State or another foreign citizen for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied (paragraph 4). If in the cases specified in section 14, paragraphs 2, 3 and 4 CC such an act does not constitute a criminal offence under the law in force in the country of perpetration, criminal proceedings may be instituted only upon the approval of the Chief Public Prosecutor of Croatia, see section 16, paragraph 2 CC. During the interviews held on site, it was explained to the GET that this approval of the Chief Public Prosecutor is a formal act which does not hamper the prosecution of such cases. The GET considers that the above-mentioned jurisdictional rules are rather broad, covering offences committed abroad by nationals (as required by Article 17, paragraph 1.b of the Convention) or involving nationals (beyond the requirements of Article 17, paragraph 1.c of the Convention), without establishing a dual criminality requirement. Finally, as regards (active) nationality jurisdiction over corruption offences committed abroad by domestic public officials and members of domestic public assemblies, who are not at the same time nationals, as required by Article 17 paragraph 1.b of the Convention, the authorities referred – after the visit – to section 14, paragraph 1, item 3 CC. According to this provision, jurisdiction is established over criminal offences committed abroad “which Croatia is obliged to penalise according to the provisions of international law and international treaties or inter-state agreements“. The authorities explained that these terms would apply to Croatia’s obligation under Article 17, paragraph 1.b of the Convention, ratified by Croatia without reservation.
59. Turning to the practical application of the Croatian bribery and trading in influence provisions, the incriminations contained in the Criminal Code – as amended in 2000, 2004 and 2006 – appear to provide a quite solid basis for the prosecution and adjudication of corruption offences, with the exception of the lacunae mentioned in the paragraphs above. Moreover, the GET was interested to hear that following the establishment of the “Office for the Prevention of Corruption and Organised Crime” (USKOK) in 2001, specialised chambers for cases of corruption and organised crime (so-called “USKOK-courts”) had recently been set up at the County Courts of Zagreb, Rijeka, Osijek and Split; also, that the new Criminal Procedure Code – in force since July 2009 – introduced measures to accelerate proceedings of corruption cases and that specific training in the area of corruption and organised crime would be provided to judges and prosecutors. The GET noted that these measures were considered by the majority of interlocutors as promising efforts to fight corruption efficiently – efforts which need to be continued and further developed.

## **V. CONCLUSIONS**

60. Following recent legislative reforms aimed at transposing the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191) into Croatian law – in particular with regard to bribery of foreign/international officials, private sector bribery and trading

in influence – , the existing legal framework provides a fairly sound basis for the criminalisation of the various corruption offences. Nevertheless, the amendments introduced have led to some inconsistencies in the relevant provisions, *inter alia*, as regards advantages intended for a third person, which are explicitly included in the provisions on trading in influence but not in those on bribery in the public and private sectors. Furthermore, the range of possible perpetrators of private sector bribery is narrower than foreseen by the Convention. Another area of concern are the low sanctions prescribed for active bribery offences both in the public and private sectors. Finally, the possibility provided by the special defence of effective regret to exempt the bribe-giver, who, if solicited by the public official, declares the offence before it is uncovered, should be reviewed in order to limit the risks of abuse. Given that a revision of the Criminal Code is currently under way, the present report and its recommendations should be seen as a timely contribution to the ongoing reform process. To conclude, Croatia is to be commended for recent measures aimed at the implementation of the existing legislative framework – including the establishment of specialised court chambers for cases of corruption and organised crime as well as the planned provision of specific training to judges and prosecutors – and the authorities are encouraged to further develop and pursue their efforts in order to fight corruption efficiently.

61. In view of the above, GRECO addresses the following recommendations to Croatia:
- i. **to ensure that the offences of active and passive bribery in the public sector are construed in such a way as to cover instances unambiguously where the advantage is not intended for the official him/herself but for a third party** (paragraph 50);
  - ii. **to take the legislative measures necessary to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competences** (paragraph 51);
  - iii. (i) **to ensure that current legislation in respect of bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for – in any capacity – private sector entities; and (ii) to amend this legislation in such a way as to cover unambiguously all instances implying a breach of duty by the bribed person as well as instances where the advantage is not intended for the bribee him/herself but for a third party** (paragraph 54);
  - iv. **to consider increasing the penalties for active bribery offences in the public and private sectors** (paragraph 56);
  - v. **to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and in the private sector who report to law enforcement authorities, and to abolish the restitution of the bribe to the bribe-giver in such cases** (paragraph 57).
62. 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 30 June 2011.
63. Finally, GRECO invites the authorities of Croatia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.