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# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## EVALUATION REPORT

# CROATIA



Adopted by GRECO  
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Group of States against Corruption  
Groupe d'États contre la corruption

COUNCIL OF EUROPE



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## **I. EXECUTIVE SUMMARY**

1. This report evaluates the effectiveness of the framework in place in Croatia to prevent corruption amongst persons entrusted with top executive functions, including members of the government, state secretaries and assistant ministers, and the Croatian police. It aims to support domestic endeavours to strengthen transparency, integrity and accountability in public life.

2. Overall, Croatia has a well-developed legal and policy arsenal to promote integrity and prevent corruption in the public sector. In 2015, it adopted an Anti-Corruption Strategy 2015-2020, which has the “integrity of the political system and administration” as one of its strategic themes, accompanied by more detailed two-yearly Action Plans. Furthermore, the Law on the Prevention of Conflicts of Interest contains detailed rules on conflicts of interest, incompatibilities, gifts and financial declarations. Other important legislation includes the Law on the Right of Access to Information and the recently-adopted law on whistleblowers. There are however a number of areas where the prevention of corruption needs to be enhanced, in legislation (including the Law on the Prevention of Conflicts of Interest) and practice.

3. To start with, developments in last few years have shown that there is a need to ensure that certain integrity standards (including on conflicts of interest and the use of confidential information) apply to people working in an advisory capacity for the government. The current legislative framework needs to be complemented by a code of conduct for persons with top executive functions (supplemented with practical guidance). Moreover, a requirement for persons entrusted with top executive functions to disclose (in an ad-hoc manner) situations of conflicts of interest, as well as rules on how to engage with lobbyists and other third parties seeking to influence the government’s decision-making are to be adopted. In addition, the immunity provided to members of the government is too far-reaching and needs to be limited and persons with top executive functions should submit their financial declarations more regularly than once every four years.

4. The Law on the Prevention of Conflicts of Interest confers a central role to the Commission for the Prevention of Conflicts, an independent body, supervising the implementation of the law. The report finds it necessary to improve possibilities for the Commission to obtain the information it needs to verify financial declarations.

5. When it comes to the police, an integrity and anti-corruption strategy would need be adopted for the entire police force (and not just in respect of the border police), on the basis of a comprehensive risk assessment of corruption prone activities of the police. Whilst it is positive that a code of ethics for police officers already exists, it would need to cover more in detail all relevant integrity matters and be supplemented with an explanatory manual to become a truly practical tool and a reference point for the to-be-revised police trainings.

6. Moreover, the current appointment and promotion processes of police officers and their employment after they leave the service requires further attention. Finally, it is recommended that a requirement be established for police staff to report integrity-related misconduct they come across in the service.

## II. INTRODUCTION AND METHODOLOGY

7. Croatia joined GRECO in 2000 and has been evaluated in the framework of GRECO's First (in May 2002), Second (in December 2005), Third (in December 2009) and Fourth (in October 2013) Evaluation Rounds. The resulting Evaluation Reports, as well as the subsequent Compliance Reports, are available on [GRECO's website](#). This Fifth Evaluation Round was launched on 1 January 2017.<sup>1</sup>

8. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Croatia to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Croatia, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Croatia shall report back on the action taken in response to GRECO's recommendations.

9. To prepare this report, a GRECO Evaluation Team (hereafter referred to as the "GET"), carried out an on-site visit to Croatia from 8 to 12 April 2019, and reference was made to the responses by Croatia to the Evaluation Questionnaire, as well as other information received, including from civil society. The GET was composed of Mr Flemming DENKER, Former Deputy State Prosecutor at the State Prosecutor for Serious Economic and International Crime (Denmark), Ms Marina MICUNOVIC, Head of Section, Department of International Relations and Standards, Agency for Prevention of Corruption (Montenegro), Ms Panagiota VATIKALOU, Presiding Judge, First Instance Court of Athens (Greece) and Mr Alvis VILKS, Head of Quality Assurance Department of State Joint Stock Company "Latvijas gaisa satiksme", Former Deputy Director of the Corruption Prevention and Combating Bureau (KNAB) (Latvia). The GET was supported by Ms Tania VAN DIJK of the GRECO Secretariat.

10. The GET interviewed the State Secretary of the Ministry of Justice (also as a representative of the Committee for the Prevention of Corruption), parliamentarians and representatives of the Office of the President, Office of the Prime Minister, Ministry of Public Administration, Ministry of Finance, Ministry of the Interior, State Audit Office, State Commission for the Control of Public Procurement Procedures, the Information Commissioner and USKOK<sup>2</sup>. The GET also interviewed the Ombudswoman and the President and members of the Commission for the Prevention of Conflicts of Interest. In addition, the GET met with representatives of non-governmental organisations, academia, police unions and the media.

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](#).

<sup>2</sup> USKOK, the Office for the Suppression of Organised Crime and Corruption, is Croatia's specialised prosecution body.

### III. CONTEXT

11. Croatia has been a member of GRECO since 2000. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention of and the fight against corruption<sup>3</sup>. Overall, Croatia has had a good track record in implementing GRECO recommendations, with 75% of the First Evaluation Round recommendations implemented and 100% of the recommendations of the Second and Third Evaluation Rounds fully implemented. That said, the record has been lower in the Fourth Evaluation Round, dealing with corruption prevention in respect of parliamentarians, judges and prosecutors, with only 45% of the recommendations fully implemented, with 27% partly implemented and 27% not implemented so far. The compliance procedure under that round is, however, still on-going.

12. Corruption is widely perceived as a major issue affecting Croatia. In Transparency International's 2018 Corruption Perceptions Index, Croatia scores 48 (out of a total score of 100, with 0 equating highly corrupt and 100 meaning very clean), placing it at 60 out of the 180 countries included in the survey.<sup>4</sup> According to the 2017 Eurobarometer, 94% of respondents thought that corruption was widespread in Croatia (EU average: 68%) with 18% more respondents saying that corruption has increased in recent years (58%, with the EU average at 43%). Croatia has one of the highest scores (81%) of all EU countries (52%) of respondents agreeing that political connections are necessary to ensure success in business. Politicians are among the least trusted groups, with 61% of respondents believing that corruption is widespread among them (EU average: 56%).<sup>5</sup>

13. Over the years, the specialised prosecution service, the Office for the Suppression of Corruption and Organised Crime (USKOK), and its more recently established counterpart in the police (PN-USKOK), have built up a solid track record in investigating and prosecuting high-level corruption-related offences, with several indictments filed against persons who formerly held top executive functions (including in long-running cases against a former prime minister). Similarly, on the preventive side, the Commission on the Prevention of Conflicts of Interest has played a pro-active role in upholding the Law on the Prevention of Conflicts of Interest, in particular when it comes to persons who hold or have held top executive functions. One of these cases, related to the near collapse of the biggest food company in the region, has been the focus of intense media scrutiny and continues to cast its shadow to this day.<sup>6</sup> In this

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<sup>3</sup> Eval I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption. Extent and scope of immunities; Eval II: Identification, seizure and confiscation of corruption proceeds. Public administration and corruption. Prevention of legal persons being used as shields for corruption. Tax and financial legislation to counter corruption. Links between corruption, organised crime and money laundering; Eval III: Criminalisation of corruption. Transparency of party funding; Eval IV: Prevention of corruption in respect of members of parliament, judges and prosecutors.

<sup>4</sup> Transparency International, [Corruption Perceptions Index \(2018\)](#).

<sup>5</sup> European Commission, [Special Eurobarometer 470 - Corruption \(2017\)](#).

<sup>6</sup> In March 2017, when the financial difficulties of Agrokor (one of the biggest companies in the region) became untenable, the government of Croatia passed the *Law on Extraordinary Administration Procedure in Enterprises of Systemic Importance for the Republic of Croatia*. With the activation of the law by Agrokor's management, the collapse of Agrokor (which could have destabilised Croatia's economy) was prevented. In a decision of May 2018, the Constitutional Court of Croatia assessed the aforementioned law to be in compliance with Croatia's constitution. While not questioning this law as such, the process of adopting this law raised some questions: news reports *inter alia* unveiled that an unofficial group of consultants participated in the drafting of this law and that some members of this group were subsequently appointed as in the emergency administration of the company or as consultants thereof. One member of the government resigned over these reports and various proceedings took place before the Commission related to this case (which were subsequently also dealt with in administrative court proceedings).

connection, the GET stresses the importance of officials (irrespective of their position) showing full cooperation with, independent institutions, such as the Commission for the Prevention of Conflicts of Interest, so that they can properly and effectively fulfil their mandate, as provided for by law.

14. The police in Croatia enjoys a slightly higher level of trust than politicians, but still 55% of respondents to recent surveys think that corruption is widespread in the police, which is significantly higher than the EU average of 31%.<sup>7</sup> In addition to rather developed and specialised law enforcement to investigate corruption, it would appear that more needs to be done to prevent risks of corruption within the police itself, in terms of strategic measures to minimise conflicts of interest and to manage such situations in practice, as shown in this report.

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<sup>7</sup> See footnote 5.

#### **IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)**

##### **System of government and top executive functions**

###### *The President*

15. Croatia is a parliamentary republic, with a multi-party political system. The Head of State is the President, who is directly elected for a five-year term (renewable once) by a simple majority of votes.<sup>8</sup> The President's duties are incompatible with any other public or professional function and s/he is to resign from membership of a political party once elected (Article 96, Constitution).

16. According to the Constitution (Article 94), the President represents Croatia at home and abroad, ensures the regular and balanced functioning and stability of government and is responsible for defence of the independence and territorial integrity of Croatia. S/he has the procedural duty of entrusting the mandate to form a government to a person (Prime Minister-designate), who – as evident from the distribution of seats in the Parliament and prior consultations – enjoys the confidence of a majority of Members of the Parliament (*Sabor*<sup>9</sup>).

17. The President is commander-in-chief of the armed forces (Article 100, Constitution), with in practice most prerogatives and decisions pertaining to this function being carried out by or in co-ordination with the Minister of Defence. The President is furthermore required to co-operate with the government “in the formulation and implementation of foreign policy” and “in directing the work of security services” (Article 99 and 103, Constitution).<sup>10</sup> In addition, s/he may propose to hold a session of the government to consider specific issues, as well as attend governmental sessions (Article 102, Constitution). Various presidential powers are carried out on proposal of the government: these need to be countersigned by the Prime Minister or need approval of the Parliament (e.g. the establishment of diplomatic missions, appointments of ambassadors and various other officials<sup>11</sup>, declaration of a state of war, issuance of decrees with the force of law during a state of war, dissolution of the Parliament etc.).

18. As agreed by GRECO, a head of state would be covered in the Fifth Evaluation Round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions or advises the government on such functions. These may include determining and implementing policies,

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<sup>8</sup> At the time of writing this report Ms. Kolinda Grabar-Kitarović is the President of Croatia (since February 2015, for a first term).

<sup>9</sup> The unicameral *Sabor* is Croatia's legislature, composed of 151 members elected for a four-year term. Seats are allocated according to electoral districts with 140 members elected in multi-seat constituencies, eight from minorities and three from the Croatian diaspora. For more information on the *Sabor*, please see GRECO's [Fourth Round Evaluation Report on Croatia](#) (June 2014).

<sup>10</sup> In addition, the President has a duty to call parliamentary elections and referenda, convene the first session of the Parliament, grant pardons (on the proposal of the relevant minister) and confer decorations and awards as specified by law.

<sup>11</sup> For example, the President and Prime Minister co-sign decisions on the appointment of the director and deputy director of the security intelligence agency and the military security intelligence agency (following an opinion provided by the relevant committee of the Croatian Parliament), as well as the head of the office of the National Security Council and heads of diplomatic missions (on the proposal of the government and with the opinion of the competent committee of the Croatian Parliament).



enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

19. In discussing this issue on-site, there seemed to be general consensus that the President did not participate on a regular basis in the development and/or execution of governmental functions. Even if s/he could propose to hold a session of the government and participate, the GET was told that, since 2000, not a single government session had been held on the proposal of the President and in this time the President has only participated in nine government sessions in total.<sup>12</sup> Furthermore, even in cases where the Constitution gives the President a clear role, this is either framed as being carried out in co-operation with the government (as in the case of foreign policy and the work of security services) or being of a formal nature (e.g. when it comes to selecting the Prime Minister-designate or appointing various officials). While there is no denying that the President in Croatia can wield considerable informal power, the GET does not equate this to participating on a regular basis in the development and/or execution of governmental functions. It follows from the foregoing that the functions of the President in Croatia do not fall within the category of “persons entrusted with top executive functions” (PTEFs) as spelled out above. Nevertheless, the GET welcomes the President being explicitly included within the remit of the Law on the Prevention of Conflicts of Interest (see paragraph 37 and further below). The recommendations in this report pertaining to this law will thus have a bearing on the functions of the President as well, where applicable.

#### *The government*

20. The government is the main executive power of Croatia.<sup>13</sup> Its organisation, operation and decision-making processes are regulated by Law on the Government. The government is headed by a Prime Minister<sup>14</sup> and additionally comprises one or more Deputy Prime Ministers and Ministers. The person to whom the President has entrusted the mandate to form the government proposes the other members of the government. Within 30 days of accepting this mandate, the Prime Minister-Designate is to present his/her government and its policies to the Parliament for a vote of confidence (by a majority of all MPs). Based on the vote of confidence in the government, the President is to adopt a decision on the appointment of the Prime Minister with the counter-signature of the President of the Parliament, following which the Prime Minister takes a decision on the appointment of members of the government with the counter-signature of the President of the Parliament (Article 4 of the Law on the Government).

21. The GET was told that the background of candidate ministers is checked by the security services (on the basis of the Act on Security Checks), to provide clearance to access classified information. Information from these security checks is shared with the Prime Minister, who is

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<sup>12</sup> These were sessions to celebrate Croatian National Day and sessions on negotiations with the European Union and their impact on the economic development of the Republic of Croatia.

<sup>13</sup> Pursuant to Article 113 of the Constitution, the Government of the Republic of Croatia shall propose bills and other acts to the Croatian Parliament; propose the central budget and annual accounts; execute laws and other decisions of the Croatian Parliament; adopt decrees to implement laws; conduct foreign and domestic policy; direct and control the operation of the civil service; tend to the economic development of the country; direct the performance and development of public services; perform other duties determined by the Constitution and law.

<sup>14</sup> The Prime Minister is officially called “President of the Government of the Republic of Croatia”, but for the purpose of this report the term Prime Minister will be used.

then to decide whether s/he wants to maintain the candidature of the minister in question. Questions were raised about the level of scrutiny of these checks in 2016, when Croatia's minister for war veterans resigned after only six days in office, following media reports that he had registered himself at a non-existent address in an area with low taxes.<sup>15</sup>

22. Decision-making by the government is collegial: it decides by a majority vote of all members of the government. In case the votes are split, the Prime Minister has the deciding vote. The Prime Minister and members of the government are accountable to the Parliament, both jointly for decisions made by the government and personally for decisions within their respective purviews.<sup>16</sup> If a vote of no confidence in the Prime Minister is adopted (by a majority of members of the Parliament) or if the Prime Minister otherwise resigns, the whole government is deemed to have resigned. If the Parliament adopts a vote of no confidence in a minister, the Prime Minister may replace him/her and seek a new vote of confidence.

23. The government took office on 19 October 2016, but has changed composition several times since then (the last time on 22 July 2019).<sup>17</sup> It is composed of a Prime Minister, four deputies (who also serve as ministers) and 16 other ministers. Currently, out of the 21 members of government, four are female (19%) and 17 male (81%). In this connection, the GET calls the attention of the Croatian authorities to [Recommendation Rec\(2003\)3](#) of the Committee of Ministers of the Council of Europe to members states on balanced participation of women and men, which outlines that the representation of either women or men in any decision-making body in political or public life should not fall below 40%.

#### *Governmental appointees in executive functions*

24. Other than members of the government, there are two more categories of political appointees who in the view of the GET should be considered as PTEFs, as they participate on a regular basis in the development or execution of governmental functions: state secretaries<sup>18</sup> and assistant ministers<sup>19</sup>. Both categories of political appointees are state officials, in accordance with the Law on Rights and Obligations of State Officials, fall within the remit of the Law on the Prevention of Conflicts of Interest and are subject to similar security clearances as members of the government (due to their access to confidential information). In July 2019, amendments to the Law on the State Administration System, which aim to facilitate the de-

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<sup>15</sup> The minister maintained he had done nothing wrong, as he had the intention of building a house there, but resigned in order "not to be a liability for the government".

<sup>16</sup> Certain decisions of the government can also be appealed before an administrative court (Article 16, Law on the State Administration System). In the period 2014-2019, there have been 10 such appeals.

<sup>17</sup> The cabinet was originally constituted by a coalition agreement between the Croatian Democratic Union (HDZ) and Bridge of Independent Lists (Most) and was voted into office by the Croatian Parliament on 19 October 2016 (with 91 out of 151 votes). In April 2017, however, disagreements between HDZ and MOST over the on-going crisis involving Agrokor (see context above as regards this case) and the role of the Minister of Finance led to the collapse of the coalition. HDZ agreed on a coalition with the Croatian People's Party-Liberal Democrats (HNS), with HNS being given two ministries in the cabinet, as approved on 9 June 2017 by the Parliament with 78 out of 151 votes.

<sup>18</sup> A state secretary is appointed by the government upon the proposal of the Prime Minister and is accountable for his/her work to the minister and the government (Article 40 of the Law on the State Administration System). A minister can have one or more state secretaries; if s/he has several, the minister decides who of those will be his/her substitute in case of the minister's absence.

<sup>19</sup> An assistant minister is appointed by the government, upon the proposal of the minister, and accountable for his/her work to the minister and the government (Article 41 of the Law on the State Administration System). One or more assistant ministers can be appointed in a ministry.

politicisation and professionalisation of the state administration system, entered into force. Once directors have been appointed in the various ministries following these amendments, the function of assistant minister will no longer exist in the Croatian state administration system.

25. In addition, the Law on the State Administration System recognises the following two categories as state officials: state secretaries of central state offices<sup>20</sup> (Article 45), who represent and lead such institutions as the State Inspectorate, Central State Offices of Public Procurement, for Croats Abroad or for Sport, and director generals of state administration organisations<sup>21</sup> (Article 51), who represent and lead such institutions as the State Intellectual Property Office and the State Bureau of Statistics. To this the Law on Government adds the position of general secretary of the government (Article 20, Law on Government), who coordinates the administration of the government, and assists the Prime Minister in preparing governmental sessions and other tasks of the government, and head of office of the prime minister (Article 18, Law on Government), who manages the work of the office of the prime minister, co-ordinating with other government offices. The GET does not consider these officials as PTEFs for the purpose of this report (given that they do not participate on a regular basis in the development or execution of governmental functions, but rather carry out decisions and policies of the government in a very specific field). Nevertheless, it is to be welcomed that these categories of functions are explicitly covered by the Law on the Prevention of Conflicts of Interest.

26. Additionally, the Law on the State Administration System mentions various civil servants holding managerial positions, such as the secretary general in a ministry (Article 42), the deputy secretary and secretary general of a central state office (Article 46 and 47) and the deputy director of a state administration organisation (Article 52). In addition, the Law on Government recognises the position of head of office of a deputy prime minister (Article 22, Law on Government). The GET does not consider these categories of positions to be PTEFs for the purpose of this report. Even if these positions may (and often do) change upon a new government or minister coming to power, they are clearly civil service positions (to which the integrity and other requirements of the Civil Servants Act apply), filled following a public competition. It cannot be said that persons in these positions actively participate on a regular basis in the development and/or the execution of governmental functions.

27. In addition, in accordance with Article 23 of the Law on Government, the Prime Minister may appoint advisers, special advisers or councils (council members), for the duration of the term of office of the Prime Minister or for a certain period of time as the nature of the work requires. Advisers are recruited following a public competition and are civil servants (and are thus subject to the provisions of the Civil Servants Act and the Code of Ethics for Civil Servants). The legal status of special advisers on the other hand is less clear: they can be hand-picked, do not fall within the remit of the Civil Servants Act, nor are they – for example – subject to other legislation applying to state officials, such as the Law on the Prevention of Conflicts of Interest. The Prime Minister's Office, the President's Office and individual ministers may appoint special advisers at their discretion, without any integrity checks. As for

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<sup>20</sup> State secretaries of central state offices are appointed by the government upon proposal of the Prime Minister and are accountable for their work to the Prime Minister and government.

<sup>21</sup> Director generals of state administration organisations are appointed and dismissed by the government, upon the proposal of the Prime Ministers and a previously obtained opinion of the line minister in question. They are accountable for their work to the government, or rather the line minister.

councils and their members, the GET was informed that, even if Article 23 of the Law on Government provides for this possibility, to date no such councils have been established at the level of the government.

28. Various interlocutors pointed out during the on-site visit that the position of special advisor is not particularly sought-after. Special advisors are usually hired for a specific task for a certain period of time (for example, to provide a specific expertise or to lead an EU-funded project), like consultants (but paid much less). In March 2018, there were 29 special advisers across the government, some of whom worked *pro bono* and others received remuneration between 2.000 to 10.000 HRK for a specific task or period of time (approximately 270 to 1.350 EUR), sometimes combining this with their other, more regular job.<sup>22</sup> Further regulation of their legal status and obligations seemed for these reasons (i.e. the low remuneration and lack of popularity of these positions) to be regarded as heavy-handedness. However, in the opinion of the GET there are clearly issues at stake in Croatia with certain work being carried out in an unregulated capacity for the government.<sup>23</sup>

29. The GET understands that a certain amount of flexibility should be preserved regarding the conditions of recruitment and work of special advisers and other consultants of the government, also given the wide variety of work that is being carried out by these categories of persons, which is indeed sometimes of a purely administrative or project-management nature. However, this flexibility in recruitment should be counterbalanced by a necessary amount of transparency, a formalised check upon recruitment in a similar manner as is reportedly being done for civil servants, and the unambiguous applicability of certain standards of ethical conduct, in particular with a view to preventing conflicts of interest and use of confidential information obtained through their work for the government. In view of the foregoing, **GRECO recommends that the legal status, recruitment and obligations of special advisers and others working in an advisory capacity for the government be regulated, ensuring that they undergo an integrity check upon selection, that their names, functions and possible remuneration (for the tasks they carry out for the government) are made public and that appropriate regulations on conflicts of interest and use of confidential information apply to them.**

#### *Status and remuneration of persons with top executive functions*

30. As indicated above, ministers, state secretaries, state secretaries of central state offices and director generals of state administrative organisations are to be considered state officials, in accordance with the Law on the System of State Administration.

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<sup>22</sup> Information on special advisers (names, functions and possible remuneration) is not routinely published on web-sites of ministries but can be provided when requested (through the Law on the Right of Access to Information). This information on the number of special advisers in March 2018 was provided following a request by an MP.

<sup>23</sup> This was for example demonstrated by the involvement of an unofficial group of consultants in drafting *Lex Agrokor* (see context). Even if these consultants did not have the status of “special adviser” and the developments surrounding *Lex Agrokor* were of an exceptional nature, the case acutely shows the potential for conflicts of interest in the work of people working in an unremunerated advisory capacity for the government (raising questions for example as to whether the content of certain advice was influenced by the possibility of acquiring lucrative contracts thereafter and/or whether persons benefited from access to certain privileged information). It should be noted however that in relation to the aforementioned consultants specifically, USKOK found no evidence that potential investors had any prior knowledge of *Lex Agrokor* before the draft was adopted and dismissed all charges in this respect in July 2019.

31. The range of gross salaries for the abovementioned positions is as follows<sup>24</sup>:

Post	Coefficient <sup>25</sup>	Salary HRK/month	Salary EUR / month
Prime-Minister	7.86	30.575 HRK	4.120 EUR
Deputy Prime-Minister	7.14	27.775 HRK	3.743 EUR
Minister	6.42	24.974 HRK	3.365 EUR
State Secretary	5.7	22.173 HRK	2.988 EUR
Assistant Minister	5.27	20.500 HRK	2.762 EUR

32. As for all state civil servants and public service employees, the salaries for the above-mentioned positions increase by 0.5% for each year an official is in that position, up to 20%. Information on the salaries of state officials is public information.

33. In accordance with Article 13 of the Law on Obligations of State Officials, state officials are allowed to receive additional allowances, in the form of separate living allowances, reimbursement of travel expenses and costs of meals.<sup>26</sup> State officials can also be given compensation during a limited period after the termination of their duties until they have found a new occupation or retire (50% to 100% of the salary of an official in that position for a period of six months to a year, depending on the duration of their time in office).<sup>27</sup>

### **Anticorruption and integrity policy, regulatory and institutional framework**

#### *Anticorruption and integrity policy*

34. On 27 February 2015, the Parliament adopted the Strategy for Combating Corruption for the period 2015-2020 (Official Gazette No. 26/2015). The Strategy has seven horizontal strategic topics, which include “Integrity within the political system and administration”, “prevention of conflicts of interest” and “right to access information”, in addition to seven specific priority (sectoral) areas (i.e. the judiciary; economy agriculture; public finance; health; science, education and sport; infrastructure, environment and transport), proposing various measures to manage identified risks.

35. Under the aforementioned horizontal strategic topics, it includes the following measures to be taken in the period 2015-2020:

<sup>24</sup> Range of salaries as per data of 2018.

<sup>25</sup> The basis for these salaries is 3.890 HRK (approximately 524 EUR) on which a coefficient per position is applied (in accordance with the Decision on the Amount of the Base for the Calculation of Salaries of State Officials, Official Gazette No. 151/2014).

<sup>26</sup> These allowances are regulated in a separate regulation, which *inter alia* provides that state officials, junior officials and other state employees whose rights are not regulated by a collective agreement can receive up to 1.000 HRK (approximately 135 EUR) a month as a “Separate Family Life Fee” and 150 HRK a day (approximately 18 EUR) and reimbursement of overnight stay (upon provision of an invoice) in travel costs.

<sup>27</sup> State officials, who have been in position for at least one year, are – from the day when they cease to perform their duty until they begin to receive a salary on some other basis or until they meet the requirements for retirement – entitled to a salary equal to the salary for that office for a period of six months, followed by 50% of that salary for the following six months. State officials, who have been in position for less one year but more than three months, are – from the day when they cease to perform their duty until they begin to receive a salary on some other basis or until they meet the requirements for retirement – entitled to remuneration for a maximum period of three months in the amount of the salary of an official performing that duty and in the following three months in an amount of 50% of the salary of an official performing that duty.

- Strengthening the integrity and accountability of holders of public functions in all branches of government (*inter alia* pointing out the necessity of strengthening ethical standards of – amongst others – members of the government and the President);
- Regulating lobbying (which has not happened yet – see further in paragraph 53 below);
- Reinforcing the administrative and technical capacities of the Commission for the Prevention of Conflicts of Interest, by further developing legal, technical and IT tools and setting up international and bilateral programmes of professional training. The GET was informed in this connection that a new IT system has indeed become operational;
- Expanding the circle of officials covered by the Law on the Prevention of Conflicts of Interest to holders of public duties within public authorities or those who - because of the scope of their powers – are at a higher risk of corruption<sup>28</sup>;
- Strengthening mechanisms for the verification of the income status of public officials, (which is planned to be taken up in the elaboration of a new draft Law on the Prevention of Conflicts of Interest in 2020);
- Raising awareness on conflicts of interest among all categories and levels of officials covered by the provisions of the Law on the Prevention of Conflicts of Interest (which is reportedly also planned to be taken up when elaborating a new draft Law on the Prevention of Conflicts of Interest).

36. The Strategy is being implemented through action plans, which are reviewed every two years. The latest Action Plan (2019-2020) was recently adopted and foresees *inter alia* the drafting of an on-line manual for state officials on combating corruption, preventing conflicts of interest, public procurement, transparency and access to information, fiscal accountability (etc.), as well as training of employees of public administration bodies, evaluation (through a self-assessment tool) of local and regional self-government units, development of a one-stop shop for administrative services and the adoption of a Code of Conduct for MPs (following from GRECO's Fourth Round Evaluation Report).

### *Legal framework*

37. A key component of the legal framework on integrity for PTEFs is the Law on the Prevention of Conflicts of Interest (hereafter LCI), which in its current version was adopted in 2011 and amended in 2012, 2015 and 2019. The LCI applies to a broad category of officials which includes not only the PTEFs mentioned in paragraphs 20 and 24 above but also the President, MPs, judges at the Constitutional Court, the Director General of the police, mayors etc.<sup>29</sup> The Law's official aim is to "prevent conflicts of interest in the exercise of public office, to prevent private matters from influencing decision-making in exercising public office, to strengthening integrity, objectivity, impartiality and transparency in exercising public office

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<sup>28</sup> The GET was however informed that the sole purpose of the latest amendment to the Law on the Prevention of Conflicts of Interest was to align it with the new Law on the State Administration System (which will ultimately abolish the function of assistant minister).

<sup>29</sup> According to Article 3 of the Law, the term "official" for purposes of the law includes the President of the Republic, the Prime Minister and other members of the government, deputy ministers, heads of state offices, the Director General/Chief of Police, the Secretary and Deputy Secretary General of the government, the Head and Deputy Head of Office of the Prime Minister, assistant ministers, the spokesperson of the government, heads of state administrative organisations, officials of the Office of the President, as well as the acting officials appointed by the government or President (with the exception of those appointed to the armed forces). Certain provisions of the Law (*inter alia* Articles 8-10 on financial declarations, title III on the checking of declarations, Articles 42-46 on sanctions) furthermore also apply to senior civil servants appointed by the government.

and to strengthen the trust of citizens in bodies vested with public authority” (article 1 of the Law).

38. The LCI, *inter alia*, requires officials covered by the law to “act in an honourable, honest, conscientious, responsible and impartial manner”; prohibits them from using “public office for their personal gain or the gain of a person who is connected with them”, receiving or soliciting “benefits for exercising public office”, exerting “influence in obtaining jobs or contracts through public procurement” or using “an official position in any other manner to influence decisions of legislative, executive or judicial authorities in order to achieve person gain”. It also requires the officials concerned to submit financial declarations, and contains further provisions on the receipt of gifts, incompatibilities and confidential information (etc.).

39. During the on-site visit, the GET was made aware of plans to amend the LCI. It was not provided with a copy of the draft amendments, but it would seem that the proposals would have made the law weaker (in particular in relation to post-employment restrictions), which would be a worrying development.<sup>30</sup> Since then, these amendments have been shelved and only a small technical amendment was made to align the LCI with the new Law on the State Administration System (which abolishes the position of assistant minister). It is planned to draft a completely new law, for which an [e-consultation](#) has been announced for 2020. The GET trusts that the recommendations contained in this report will be taken into account in the context of this process and that the premise of the law will not be diluted.

#### *Ethical principles and rules of conduct*

40. A Code of Ethics is in place for civil servants (in addition to the integrity requirements of the Civil Servants Act, which will be further discussed in the second part of this report on law enforcement), but not for PTEFs. In May 2017, the Ministry of Public Administration issued Guidelines for Managing Conflict of Interest of Public Sector Employees, which includes a Manual for Managing Conflicts of Interest in the Public Sector. The GET was not provided with a copy of this manual, but was told that it *inter alia* requires public sector employees to behave in any situation as an example of integrity and would be applicable to PTEFs as well (even if the reference to “employees” would suggest otherwise). Furthermore, the 2019-2020 Action Plan for the Anti-Corruption Strategy foresees the development in the second half of 2020 of an on-line anti-corruption manual for state officials on combating corruption, preventing conflicts of interest, transparency and access to information, public procurement and fiscal responsibility.

41. Even if there are binding (and to a certain extent enforceable – see for the issues with this paragraph 92 and further) integrity standards for PTEFs in place, the GET finds the fact that the central level currently lacks a stand-alone code a missed opportunity. The GET sees much benefit in a code of conduct applying specifically to PTEFS, covering all pertinent issues (conflicts of interest, incompatibilities, gifts, contacts with third parties seeking to influence decision-making, post-employment restrictions, financial declarations, the use of confidential information etc.) supplemented with detailed guidance containing concrete examples connected to government work. Such a document would have a dual purpose in providing a clear overview to PTEFs of integrity standards in place (with appropriate guidance) while at the same time clarifying to the public what conduct should be expected from PTEFs.

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<sup>30</sup> See in this context also GRECO’s [Second Compliance Report on Croatia](#) of Fourth Evaluation Round, paragraph 42.

Furthermore, it is also important to hold PTEFs to account in case of breach of these standards to ensure their effectiveness. Such a code would thus need to be coupled with some form of enforcement, in line with GRECO's standard practice. In light of the foregoing, **GRECO recommends (i) that a code of conduct for persons with top executive functions be adopted, complemented with clear guidance regarding conflicts of interest and other integrity-related matters (e.g. gifts, outside activities, third party contacts, post-employment restrictions, financial declarations, handling of confidential information etc.) and (ii) that such a code be coupled with a mechanism of supervision and enforcement.**

### *Institutional framework*

42. Croatia does not have a dedicated entity responsible for preventing corruption and promoting integrity, but a network of authorities contribute to policy-making and preventing corruption, across all branches of power. The Anti-Corruption Sector in the Ministry of Justice co-ordinates the development, implementation and monitoring of the implementation of national strategic documents related to the prevention of corruption. In addition, the Committee for the Prevention of Corruption, a governmental advisory body composed of relevant public institutions and civil society organisations, is involved with monitoring the implementation of national anti-corruption instruments, which is complemented at the parliamentary level by the National Council for Monitoring the Anti-Corruption Strategy Implementation.

43. Furthermore, a network of specialised institutions contribute to the prevention of corruption, which include the abovementioned Commission for the Prevention of Conflicts of Interest (see paragraph 83 and further below), which focuses *inter alia* on PTEFs (while – as will be outlined in the part on law enforcement further below – the so-called Ethics Officers are mainly concerned with civil servants), the Information Commissioner, which protects, monitors and promotes the right to access to information - guaranteed by the Constitution - and to reuse this information (see further paragraphs 47-51 below)

### *Awareness*

44. The Commission for the Prevention of Conflict of Interest is tasked with developing guidelines and instructions for officials covered by the LCI and conducting training on the prevention of conflicts of interest and the requirements of the LCI for officials covered by the LCI (Article 30, LCI). Apart from publishing the guidelines and instructions on the Commission's website, they are also sent electronically to the officials covered by the Law. Furthermore, the Commission can also provide an opinion to officials upon request as to whether their conduct "complies with the principles of public office" (which is notably broader than a conflict of interests) (Article 6, LCI).

45. The GET learned on-site that, following the elections, the Commission had sent a letter of congratulations to the new government, together with a brochure containing further information on the obligations of members of the government under the LCI. In addition, the government has been invited twice by the Commission to have a roundtable organised on issues related to the LCI but has so far not responded to this invitation. The GET takes the view that more can be done to pro-actively familiarise PTEFs with the standards on integrity. As a minimum, PTEFs should be properly briefed upon taking up their functions about the integrity standards applying to them (and the conduct expected of them in terms of conflicts of interest,



financial declarations, contacts with third parties, gifts etc.) and their role when it comes to ensuring integrity within their own ministries. This would be facilitated by the adoption of a code of conduct for PTEFs, as recommended earlier in the report. However, the content of such a code would remain words on paper if not adequately communicated and instilled.

46. In addition, GRECO already noted in its Fourth Round Evaluation Report in respect of Croatia (paragraph 73) in respect of MPs, as well as judges and prosecutors, that the provision of dedicated counselling (including of a confidential nature) could further assist in preventing conflicts of interest and addressing integrity dilemmas.<sup>31</sup> The same can be said for PTEFs. While already now PTEF could informally contact someone in their ministry for advice, this may not always suit certain more sensitive situations, which require that confidentiality be imbedded in a counselling procedure, and may lead to dissonant practices. In addition, the Commission for the Prevention of Conflicts of Interest can be asked (and is being asked by certain PTEFs) to provide an opinion when officials are in doubt how to proceed (*inter alia* as to whether their “conduct complies with the principles of public office”, pursuant to Article 6 of the Law on the Prevention of Conflicts of Interest).<sup>32</sup> However, the need for confidential advice may pertain to another integrity issue than a conflict of interests and may additionally place the Commission in a difficult position, in that it could concern a matter normally requiring its intervention as an enforcement body. The GET would thus find it useful to designate someone at governmental level, as appropriate, as a confidential counsellor on integrity issues for the PM, ministers, state secretaries and assistant ministers. In view of the above, **GRECO recommends that (i) systemic briefings on integrity issues be imparted to persons with top executive functions upon taking up their positions and at certain intervals thereafter and ii) confidential counselling on integrity issues be established for them.** The establishment of a mechanism for confidential counselling should be closely coordinated with the Commission for the Prevention of Conflicts of Interest.

## **Transparency and oversight of executive activities of central government**

### *Access to information*

47. Access to information held by any public authority is guaranteed by the Constitution, which also provides that restrictions on this right must be proportionate to the need for such a restriction (Article 38, Constitution). This constitutional right is given shape by the Law on the Right of Access to Information, which *inter alia* provides that all information held by public authorities must be available to citizens, requests for access to information must be fulfilled within 15 days and may only be denied in certain specific cases.<sup>33</sup> Furthermore, public authorities are obliged to inform the public on the agenda of the sessions or meetings of official bodies, the times these meetings are held, the method of work of public authorities and the possibilities for direct insight into their work (Article 12, Law on the Right of Access to Information). Croatia has been a member of the Open Government Partnership since 2011. It, however, has not signed nor ratified the Council of Europe Convention on Access to Official

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<sup>31</sup> See GRECO's [Fourth Round Evaluation Report on Croatia](#) (June 2014).

<sup>32</sup> Various PTEFs (Deputy Prime Minister, state secretaries and assistant ministers) have indeed sought an opinion of the Commission for the Prevention of Conflicts of Interest, which are made publicly available on the website of the Commission ([www.sukobinteresa.hr/hr/misljenja](http://www.sukobinteresa.hr/hr/misljenja)).

<sup>33</sup> Article 15 of the Law on the Right of Access to Information mentions such issues as state, military, professional or business secrets; personal data protection regulations; hindering criminal proceedings, court proceedings or administrative supervision (etc.).

Documents (ETS 205) (although the authorities consider that the Law on the Right of Access to Information is fully in line with this Convention). The GET encourages the authorities to do so.

48. The right of access to information is monitored by an Information Commissioner (elected by the Parliament for a period of five years, following a public call for candidates), an independent body which reports to the Parliament on the implementation of the Law on the Right of Access to Information and also acts as a second instance for complaints, following appeals to the head of the public authority in question against a rejection of a request for information. The Commissioner conducts regular education programmes (around 40 a year, both on-line and off-line) and promotion campaigns on access to information, and prepares publications (handbooks, guides, leaflets etc.) to promote the right of accessing information.

49. The GET found the Law on the Right of Access to Information to provide for a solid legal framework to enable citizens to obtain information. Strong features of the Law include the emphasis on pro-active publication of information (even if the practice has not always caught up with this stated aim), the appointment of information officers in public authorities, the strict deadlines to respond to information requests and the proportionality and public interest test embedded in the law. The GET acknowledges the assessment by the Information Commissioner in its 2018 annual report to the Parliament that legal obligations have prompted public authorities to handle information in their possession in a more responsible manner, *inter alia* by carrying out the proportionality and public interest test and through the proactive publication of certain information.<sup>34</sup>

50. The GET also welcomes the continuous commitment to further improve in this area, as is evident from the Anti-Corruption Strategy for the period 2015-2020. This includes access to information as one of the horizontal strategic pillars, and for which the successive Action Plans outline a number of measures to address key weaknesses<sup>35</sup> (such as an increase in staff of the Information Commissioner's office, which now – in addition to the Commissioner himself – includes 14 staff members up from five in 2013), as well as the more recently adopted Third Action Plan for the Implementation of the Open Government Partnership Initiative 2018-2020 (as adopted in 2018).<sup>36</sup>

51. Notwithstanding this overall positive impression of the law in place and the work of the Information Commissioner, and a relatively high number of information requests granted within the legal deadlines, some issues nevertheless remain with the enforcement of the

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<sup>34</sup> Please see for the 2018 Annual Report of the Information Commissioner: <https://www.pristupinfo.hr/hrvatski-sabor-prihvatio-izvjesce-o-provedbi-zppi-za-2018-godinu/>

<sup>35</sup> Weaknesses identified concern insufficient capacities of the Commissioner, insufficient compliance with the legal provisions, inadequate regulation of certain types of access and protection of information (such as business secrets and access to information for the media), insufficient institutional capacity of public authorities, insufficient awareness of citizens of their right to access information, lack of use of the law by journalists and a lack of systematic, proactive publication of information by public authorities.

<sup>36</sup> Please see: [https://www.opengovpartnership.org/wp-content/uploads/2019/02/Croatia\\_Action-Plan\\_2018-2020\\_EN.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/02/Croatia_Action-Plan_2018-2020_EN.pdf), which *inter alia* notes that "In spite of the increased quantity of publicly accessible information on the internet pages of public authority bodies, and the availability of information on demand to citizens, they and other users cannot yet rely on the fact that all information will be easily or quickly accessible. This is clear from the number of complaints due to administrative silence or misrepresentations of the provisions of the Act on Access to Information when approaching public authorities. (...) It is necessary to continue to encourage and monitor the proactive publication of information by public authorities and their competent conduct according to the exigencies of existing legal deadlines"

law.<sup>37</sup> In accordance with Articles 61 and 62 of the Law on the Right of Access to Information, in case of failure to act as instructed by the Commissioner, the Commissioner is authorised to “file an indictment”. Prior to filing indictment with the competent misdemeanour court, the “responsible person” in a public authority is to be notified that an indictment will be filed against them. The offender must sign this notification in person, in order to confirm its receipt (i.e. it is not enough that the notice of a fine is served), which significantly affects the efficiency of the procedure. In addition, proceedings before the Misdemeanour Court can last three to four years, at which point the usefulness of the sought information may be obsolete. It would therefore be useful if, for example, the possibility were explored to provide the Information Commissioner him/herself with the authority to enforce his/her decisions, rather than making him reliant on other authorities for the enforcement of his/her decisions. In short, in view of the GET, more can be done to provide for a simpler and quicker procedure to make access to information for citizens more effective. In this connection, it welcomes that amendments to the provisions governing the enforcement of decisions of the Information Commissioner are being foreseen for 2020 (according to the draft Legislative Activities Plan of the government). Therefore, **GRECO recommends that measures be taken to strengthen the enforcement of decisions adopted by the Information Commissioner in accordance with the Law on the Right of Access to Information.**

#### *Transparency of the law-making process*

52. The Law on the Right of Access to Information (which is complemented by the Code of Practice on Public Consultation in Drafting Legal Regulations<sup>38</sup>) prescribes an obligation upon state bodies to conduct an online consultation procedure for draft legislation, by-laws or other regulation or act (strategies, plans and programmes) which affect the interests of citizens and legal persons for a period of 30 days. The public consultation process is conducted through a central internet portal (“e-Consultations”) for a period of 30 days, after which a report containing the received proposals and objections and the reasons for not accepting individual suggestions and objections is to be published. According to the Rules of Procedure of the Government (Article 30), the report is to be attached to the draft legislative proposal. In addition, possibilities are foreseen to conduct the consultation by organising round tables, focus groups, public events or through other appropriate means.

#### *Third parties and lobbyists*

53. There are no rules in place that regulate contacts of PTEFs with lobbyists and other third parties seeking to influence the government’s decision-making process. There are no reporting or disclosure requirements applicable to those who seek to influence government actions and policies. However, the need to provide for increased transparency of lobbying activities has been recognised in the Anti-Corruption Strategy and in the preparation of the corresponding Action Plan for 2019 and 2020. To date, however, no legislative or other initiative in this field has seen the light. The GET heard several times during the visit that there

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<sup>37</sup> The GET was informed that, in 2018, out of 18 092 requests submitted, 94,58% were granted within the legal deadlines. Public authorities denied requests for access to information in 780 cases (4.4%) and dismissed the request in 420 cases (2.37%). This resulted in 1010 complaints submitted to the Information Commissioner as a second instance body. This number, although lower than in 2017, is significantly higher than in the period 2012-2016 (when on average 640 complaints were submitted to the Information Commissioner annually).

<sup>38</sup> Code of Practice on Public Consultation in Drafting Legal Regulations: <http://www.uzuvrh.hr/userfiles/file/code%20of%20practice%20on%20consultation-croatia.pdf>

was a real need to address the issue of lobbying, as there was a clear lack of transparency surrounding the interests and people influencing policies and decisions of the government. It learned that the professional lobbying sector is relatively small in Croatia. Direct contacts between representatives of businesses and members of the government are commonplace, so any regulation of lobbying should explicitly include other third parties seeking to influence government's decision-making, for example by registering "who met whom about what", by providing more transparency about the interests people represent when they enter governmental working groups or other measures to contribute to this purpose. In light of this, **GRECO recommends that (i) rules be introduced on how persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence governmental legislative and other activities; and (ii) sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

### *Control mechanisms*

54. The monitoring function of the Parliament includes the setting-up of commissions of inquiry on issues of public interest (Article 92, Constitution, which is further detailed in the Law on Investigative Commissions, Official Gazette No. 24/1996), questions to individual ministers and the government as a whole (Article 86, Constitution) – both orally and in writing – interpellations and votes of confidence.<sup>39</sup>

55. The Ministry of Finance carries out financial and budget supervision. Financial and budget supervision is carried out by a specialised inspection service, on the basis of requests of state administrative entities as well as natural and legal persons, when doubts are raised about irregularities (or fraud) in the management of budget resources.<sup>40</sup> This supervision is not carried out according to a work plan, but in accordance with certain criteria setting the priorities (with requests by the State Attorney's Office, USKOK and PN-USKOK getting priority in this regard).<sup>41</sup>

56. The State Audit Office is the highest body for the supervision of state accounts, the state budget and all public spending in Croatia. As prescribed by the Constitution, the State Audit Office is autonomous and independent in its work. It is led by the Auditor General who reports to the Parliament. In carrying out its audits, in line with its Annual Programme and

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<sup>39</sup> In the last two years the Parliament has established two committees of inquiry, namely the committee of inquiry for establishing liability for the results of management and disposal of financial and other resources of the Immunological Institute (which was established in early 2017 and issued a report in early 2018) and the committee of inquiry for establishing the fact concerning the circumstances of the creation of the business concern Agrokor, its present day market position and occurrence of its business problems (which was established in October 2017. The latter committee terminated its work when a decision was taken to launch a criminal investigation against the ex-CEO and other members of the management board of Agrokor (as the Law on Inquiry Committee stipulates that a committee of inquiry is to immediately cease its operations if legal proceedings are instituted on any matter in relation to which the committee was founded).

<sup>40</sup> Any natural or legal person can report irregularities in the management of budget resources through a dedicated e-mail address ([neprovilnosti@mfin.hr](mailto:neprovilnosti@mfin.hr)).

<sup>41</sup> In 2018, the Financial and Budget Supervision Sector of the Ministry of Finance carried out 211 supervision procedures, out of which in 15 procedures there was a reasonable suspicion of a criminal offence having been committed (which were forwarded to the State Attorney's Office). In 87 other proceedings actions contrary to the legal provisions were identified, for which fines can be imposed upon a legal person (in an amount of 67 568 to 270 270 EUR) or a responsible person in the legal person (in an amount of 6 758 to 13 514 EUR).

Work Plan and in response to justified requests by the Parliament, the State Audit Office can access any information regarding the government's financial transactions. The scope of its Annual Programme and Work Plan is decided on the basis of provisions of the State Audit Office Act, risk assessment, financial materiality of audit subjects, results from previous audits, information gathered on the operations of audit subjects, and other criteria set out in the internal acts of the State Audit Office.

57. Furthermore, procurement by the state is controlled by the State Commission for the Control of Public Procurement Procedures, which decides on the legality of proceedings, acts, omissions and decisions adopted in the procurement procedures. It can also submit indictments for misdemeanours, in accordance with the law on the State Commission for the Control of Public Procurement Procedures. The State Commission for the Control of Public Procurement receives around 1 300 complaints a year of which a staggering 52% reportedly leads to an annulment of the contract. The decisions of the State Commission (which are all public) are in turn used by the State Audit Office when assessing risks and thus directing its audits.

58. The GET came away with a positive impression of the financial and budget supervision carried out by the Ministry of Finance (including the fact that it can act upon information by any natural or legal person). It had similarly positive impressions of the work done by the State Audit Office and the State Commission for the Control of Public Procurement (and other positive features of the system in place, such as a contract register and the possibility of submitting electronic complaints to the State Commission, as well as the advanced level of e-procurement in Croatia).

59. Finally, the Ombudswoman promotes and protects human rights and freedoms and the rule of law, either *ex officio* or on the basis of complaints by citizens on unlawful practices and irregularities in the work of public authorities. With the entry into force of the new Act on the Protection of Reporters of Irregularities (Whistleblowers Act) on 1 July 2019, the Ombudswoman has been designated as the external reporting channel for whistleblowers (see further paragraphs 162-163 in the second part of this report).

### **Conflicts of interest**

60. The LCI (i.e. the Law on the Prevention of Conflicts of Interest) is the main piece of legislation regulating the prevention of conflicts of interest of PTEFs. It was adopted in 2011 and has been amended several times since then, and has already been extensively commented on in GRECO's Fourth Evaluation Round Report on Croatia.<sup>42</sup>

61. The LCI provides that when exercising public office, officials may not put their private interest above the public interest (Article 2). It provides that a conflict of interests arises when the private interests of an official are contrary to the public interest, in particular where the private interest of an official affects or may affect his/her impartiality in exercising public office or if there is a founded opinion that this is the case. Personal interests in turn cover their own interests, as well as interests of "connected persons".<sup>43</sup>

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<sup>42</sup> See footnote 31 above.

<sup>43</sup> This covers family members (spouses/partners, children, parents, grand-parents and descendants, siblings and adopted parents or children, as well as other persons who on other grounds and according to other circumstances may justifiably be deemed to have connections of interest with the official.

62. The law contains a general prohibition on using public office for personal gain (of the official in question or a “connected person” to this official) (Article 4) and requires officials to arrange their private affairs in such a way that foreseeable conflicts of interest are prevented (Article 6, paragraph 4). If a conflict of interests nevertheless occurs, the official is obliged to solve it in a manner that protects the public interest, and – in case of doubt – s/he is to do everything necessary to separate private from public interests (Article 6, paragraph 4).

63. The Law in addition contains a list of prohibited actions, which includes such issues as receiving or soliciting benefits for exercising public office, using privileged information for personal gain and using his/her position to influence decisions for personal gain.<sup>44</sup> In addition, the law contains further provisions on gifts (Articles 11 and 19, see paragraph 72 below), incompatibilities (Articles 13-14 and 16, see paragraphs 67-69 below) and post-employment restrictions (Article 20, see paragraphs 75-78 below) and requires officials to also declare their assets (and income and certain financial interests) to the Commission for the Prevention of Conflicts of Interest (Article 8, see further paragraphs 83-88 below).

64. If an official is in doubt whether certain conduct complies with the principles of public office (and thus with the necessity to prevent and/or resolve conflicts between an official’s private interests and the public interest), the official can request the Commission for the Prevention of Conflicts of Interest for an opinion (which is to be provided within 15 days) (Article 6).

65. While the notion of conflict of interest is defined in the LCI, it was not immediately clear to the GET how a person covered by the law is to resolve a possible conflict of interest, if it does not fall within one of the categories already regulated by the LCI in another way (such as incompatibilities, for example) and what the consequences are if s/he does not do so. In the view of the GET, there is a crucial need for practical guidance in this respect, with concrete examples of situations that can arise from working in and for the government. This would explicitly need to be addressed when implementing recommendation ii (paragraph 41 above). In addition, the current provisions need to be complemented with an obligation for PTEFs to report various situations of conflicts as they occur (on an *ad hoc* basis) as a necessary additional safeguard. Consequently, **GRECO recommends that a requirement of *ad hoc* disclosure be introduced in respect of persons entrusted with top executive functions in situations of conflicts between private interests and official functions, when they occur.**

66. The GET heard on-site that the High Administrative Court had endorsed the practice of the Commission for the Prevention of Conflicts of Interest in establishing that there was a conflict of interest by reference to Article 2 of the Law. The GET welcomes this, but also notes

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<sup>44</sup> Prohibited actions according to the LCI are: to receive or solicit benefits or a promise of benefits for exercising public office; to obtain or receive a right if the principle of equality before the law is violated; to misuse the special rights of an official which stem from or are necessary for exercising public office; to receive additional compensation for tasks stemming from exercising public office; to solicit, accept or receive something of value or a service for voting on any issue, or to influence a decision made by a body or a person for personal gain or the gain of a connected person; to promise employment or any other right in exchange for a gift or the promise of a gift; to exert influence in obtaining jobs or contracts through public procurement; to use privileged information about the activities of state bodies for personal gain or for the gain of a connected person; to use an official position in any other manner by influencing decisions of legislative, executive or judicial authorities in order to achieve personal gain or the gain of a connected person, a privilege or a right, to conclude a legal affair, or in any other manner to receive benefits of personal interest or of interest to another connected person.

that since then (in July 2019) the Constitutional Court has referred one case back to the administrative court in order to provide further interpretation of Articles 2 and 5 LCI (on the general integrity principles), posing the question as to whether the Commission would need to link this to a more specific provision of the LCI. As will be outlined further in paragraph 92 below, the GET considers the general article on conflicts of interest a central feature of the LCI of which the enforceability needs to be ensured.

### **Prohibition or restriction of certain activities**

#### *Incompatibilities, outside activities and financial interests*

67. The Constitution (Article 109) provides that the Prime Minister and members of the government may not perform any other public or professional duty without the consent of the government. The LCI furthermore provides that officials covered by the remit of the LCI may not exercise any other public office, except if explicitly regulated differently by law, and may not perform any other remunerated activities. Derogations to this principle are possible subject to prior approval by the Commission for the Prevention of Conflicts of Interest (Article 13, LCI). If the Commission establishes a breach of the aforementioned principle, it orders the person concerned to put an end to the secondary activity within a minimum of 15 to a maximum of 90 days.

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

69. Membership in supervisory and management boards of business entities is additionally prohibited, with the exception of a maximum of two management boards of institutions or supervisory boards of extra-budgetary funds which are of special interest to the state or a local or regional self-government body or if required by law by virtue of the official's position (Article 14, LCI). They are however not entitled to receive any remuneration for these positions, except those derived from travel and related justifiable expenses. Furthermore, if an official owns 0.5% or more shares in a private company, the relevant management rights must be transferred to another person; this other person cannot be connected to the public official (Article 16, in connection with Article 4, LCI).

#### *Contracts with state authorities*

70. It is not possible for a company in which an official holds 0.5% or more of its shares to enter into contract (whether as a single contractor or in a consortium) with a public authority in which the official in question exercises his/her office (Article 17, LCI). This restriction is further detailed in the Public Procurement Act. The aforementioned restriction also applies to business entities in which a member of the official's family holds 0.5% of the shares, if these shares were acquired, directly or indirectly, in the period of two years prior to the official taking up his/her position to the end of his/her office (Article 17, LCI).

71. Officials are required to inform the Commission for the Prevention of Conflicts of Interest, within 30 days of assuming office, of the name, registration number and seat of the business entities in which s/he or his/her family members hold 0.5% of the shares, as well as to report any related changes, as necessary (Article 17, LCI). The Commission publishes a regularly updated list of business entities covered by the aforementioned restrictions on its website. If the institution in which the official serves enters into contract with a business entity in which a member of the official's family holds 0.5% or more ownership, the official concerned must promptly notify the Commission thereof (Article 18, LCI). In discussing this issue on-site civil society organisations placed great faith in a beneficial ownership registry, which should become public by the end of the year.

### *Gifts*

72. Officials are prohibited from accepting benefits or gifts – money, items regardless of their value, rights and services provided without compensation – or promises of benefits or gifts in connection with their duties (Articles 7 and 11, LCI). Acceptance of money, securities (e.g., shares, bonds, etc.) or precious metal is specifically banned (Article 11, paragraph 4, LCI). In addition, the LCI provides that officials are only allowed to keep gifts of a symbolic value, i.e. gifts valued under HRK 500 (approximately 67 EUR) received from the same donor in a given year. Any gift that exceeds the afore-mentioned threshold has to be reported to the Commission for the Prevention of Conflicts of Interest and subsequently becomes national property. Further procedures on gifts have been regulated through the Ordinance on gifts for Public Officials, No. 141/04). In the view of the GET, it would be advisable to provide further guidance on the issue of gifts in connection with recommendation ii, given that the line between acceptable and non-acceptable gifts is not always easy to draw and compliance with these provisions is not easy to supervise.

### *Misuse of public resources*

73. The misuse of public resources is specifically banned in Article 7 of LCI, and includes the misuse of public rights, public salaries and public procurement processes. Depending on the circumstances it may also be a crime.

### *Misuse of confidential information*

74. The LCI explicitly bans the use of privileged information about the activities of State bodies for personal gain (Article 7(1), indent h), LCI). It can also be a criminal offence, pursuant to Article 300 of the Criminal Code (Disclosure of Official Secrets), but only if the information disclosed is to be considered an official or state secret.

### *Post-employment restrictions*

75. Within one year following the end of his/her term in office, an official covered by the provisions of the LCI may not accept an appointment to / election to / employment in a legal person with which the body in which s/he exercised public office (Article 20, LCI) had a business relationship. This cooling-off period is also applicable if, from the circumstances of the case, it is clear that the public body concerned intends to establish a business relation in the near future with such a legal person. The Commission may give approval for the



appointment, election or employment of the (former) official in question, if it has been established that there is no conflict of interest.

76. In addition, various restrictions of the LCI continue to apply for one year after the official duties end (Article 20, paragraph 3, LCI), namely the prohibitions on influencing public decision-making processes (Article 7, LCI), membership in management and supervisory boards (Article 14, LCI), membership and shares in companies (Article 17, LCI), as well as the obligation to report income and assets (Articles 8 and 9, LCI).

77. Failure by the former public official to observe the obligations entails sanctions consisting of a warning, suspension of salary from 2-000 HR (approx. 270 EUR) to 40-000 HRK (approx. 5-400 EUR), and publication of the sanctioning decision. Failure by the responsible person in the business entity to respect a cooling-off period consist of fines from 5-000 HRK (approx. 675 EUR) to 50 000 HRK (approx. 6 750 EUR), confiscation of the illegally acquired sums and professional bans of up to one year. The level of sanctions is considerably higher for the business entity itself which enters into a business relation with the former official during the cooling-off period, with fines ranging up to 1 000 000 HRK (approx. 135 000 EUR).

78. As indicated before, the GET was made aware of certain legislative initiatives to further restrict the cooling-off period from the LCI.<sup>45</sup> The GET welcomes that this initiative is apparently no longer being pursued, in particular as the GET finds the current cooling-off period already too limited in scope, given that it is restricted to legal persons with which the public body had a business relationship. In the view of the GET, the post-employment restrictions should go further to cover other potential conflicts of interest resulting from PTEFs seeking or having sought new employment. Similarly, for certain positions a cooling-off period of one year may be too short. The GET finds it advisable to give the Commission for the Prevention of Conflicts of Interest authority to grant or withhold approval for the appointment, election or employment of the (former) official in question for a broader range of employment opportunities than just legal persons with which the public body concerned has had a business relationship and, in certain instances, beyond a period of one year. **Consequently, GRECO recommends that post-employment restrictions be broadened in scope in respect of persons with top executive functions.**

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements*

79. Officials within the remit of the LCI are required to declare assets and their sources, whether acquired or inherited, and to identify the source of income from professional and non-professional activities. They are also required to declare the assets and income of their spouses or partners and any underage children.

80. A standardised form for the declarations (with separate listings for work performed by the official 12 months before starting his/her duties, income, grants/donations/subsidies, income/other revenue of the spouse/partner, debts/claims, real estate, moveable assets entered in a public register, moveable assets with an individual value of more than 30 000 HRK/approx. 4 000 EUR, business interests and company shares, savings and

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<sup>45</sup> See in this respect also the [Second Compliance Report](#) of the Fourth Evaluation Round in respect of Croatia, para. 14.

membership/functions in other legal entities/associations/organisations) has been established.

81. The Commission for the Prevention of Conflicts of Interest publishes the contents of the declarations on a [public website](#). Declarations are publicly available, both online and in person on the premises of the Commission for the Prevention of Conflicts of Interest. The hard copies of declarations are stored at the Commission for ten years after which they are sent to the State archive. These declarations are to be submitted to the Commission for the Prevention of Conflicts of Interest within 30 days of the official taking up office and within 30 days of leaving office (Article 8, LCI). If an official has been reappointed or re-elected to the same office, s/he must again submit a declaration. While in office, officials must also declare any significant change in the data in respect of their declarations, by the end of the year in which the change occurred.

82. In discussing this issue on-site, the GET was informed that very few ad-hoc declarations were being made (*inter alia* as it was not always clear what a “significant change in data” would entail) and that the large majority of officials would only submit a declaration once every four years (i.e. upon taking up their position and upon termination or re-election/re-appointment). The data in the declaration initially submitted can undergo many changes over this period of time, but as long as it is harmonised upon terminating his/her office with the data submitted in his/her earlier declaration, it would currently not lead to any red flags. The GET has taken note of the explanations of the Croatian authorities that on the basis of Article 26 of the LCI, the Commission can also request an official to provide a written statement with the necessary evidence, if it receives information that the declaration submitted by an official is incorrect. Nevertheless, the GET considers that more can be done to ensure that meaningful information is at the disposal of the Commission (and the public at large) in a timely manner. In this respect, in comparison with other categories of officials, persons with top executive functions can be expected to be subject to more stringent accountability and transparency standards. Therefore, the GET would find it useful to oblige persons with top executive functions to submit their declarations more frequently. In light of the foregoing, **GRECO recommends obliging persons with top executive functions to submit their financial declaration to the Commission for the Prevention of Conflicts of Interest on an annual basis.**

#### *Review mechanisms*

83. The Commission for the Prevention of Conflicts of Interest is the key body supervising compliance with the regulations of the LCI. It is a standing, independent and autonomous State body, which is composed of five distinguished professionals drawn from business, media, NGOs and academia. The president of the Commission and its four members are elected by a majority vote of all members of the Parliament (by secret ballot) for a period of five years (renewable once), following an open call in the Official Gazette of Croatia. Candidates are selected on the basis of their professional experience and reputation. The Commission, in its current reformed composition, started to operate in the first trimester of 2018.

84. Funds for the operation of the Commission are earmarked in the state budget and amounted to 6 493 939 HRK for 2019 (approximately 876 000 EUR, with a budget of 7 810 718 HRK / approximately 1 054 078 EUR projected for 2020). The Commission has a staff of twelve persons (to be further complemented with two advisors in 2019).

85. With particular reference to the asset and income disclosure regime, the Commission is responsible for receiving, reviewing and storing financial declarations. The Commission performs two types of checks: (i) a pro-forma or “preliminary / administrative” check, which is done immediately after receiving the declaration and looks into whether an official is required to submit a declaration (i.e. whether all officials who are required to do so have submitted a declaration), and if the declaration was submitted on time, was signed and was correctly filled in and completed; and (ii) a “regular check”, which cross checks the data in the declaration with information held with other authorities (e.g. tax administration, land registry, court registries, etc.) (Article 24, LCI). For the purpose of checking data from the declaration, the competent authorities are required to submit the requested information to the Commission without delay.

86. The checks by the Commission have been facilitated by a significant upgrade of the IT-system in recent years. The GET heard that there are, furthermore, plans to set up a new department for the abovementioned “regular checks”, to increase the efficiency and efficacy of these checks. Currently only around 50 officials (out of approximately 3 500 officials subject to the provisions of the LCI) are subject to a “regular check”. In this connection, members of the government are perhaps not a priority, as the information in their financial declarations would already be scrutinised by the media. The GET encourages the Commission to develop a methodology to select the most pressing declarations to undergo a “regular check”, as based on an assessment of risks.

87. In checking the data of the financial declarations, the Commission is dependent on information sent to it by other authorities, when it requests them to do so. It also has a direct connection to certain other databases (such as those of the tax authorities and the Ministry of the Interior). Following a judgment of the Constitutional Court in November 2012, which annulled some of the attributions of the Commission (i.e. it ruled that the LCI incorrectly equated conflicts of interest with criminal behaviour and wrongly vested the Commission with powers which are inherent to the prosecution of criminal activity), the Commission no longer has access to banking information on officials. As there is no capital tax in Croatia, the Commission can thus for example not check data on savings of officials. In this connection, the GET would find it helpful that other ways be explored in which the Commission can obtain a more complete picture of the financial situation of officials, in appropriate cases within the parameters set by the Constitutional Court decision (for example, through more intensive co-operation with tax authorities).

88. Certain other information the Commission would need in order to carry out its work is not easy to access, *inter alia* because it is outdated or hampered by officials’ refusal to hand it over. For example, the GET heard about the Ministry of Interior referring to “official secrecy” provisions when refusing to hand over certain information and the explicit refusal of certain high-level officials to submit documentation requested by the Commission. Representatives of the Commission reportedly have no authority to go on-site to double-check information. Notwithstanding the improvements made to the review of data by the Commission in the last years, GRECO finds that further measures need to be taken to enable the Commission to carry out its “regular checks” of data contained in the submitted financial declarations and to have its requests for certain information to be handed over enforced. It was therefore pleased to note that the objective “strengthening mechanisms for the verification of the income status of public officials” has been included in the 2015-2020 Anti-Corruption Strategy (see

paragraph 34 above) and that it is planned for this to be taken up in the course of drafting the new Act on the Prevention of Conflicts of Interest (to be adopted in the second half of 2020). In light of the foregoing and within the parameters set by the Constitutional Court, **GRECO recommends further improving possibilities for the Commission for the Prevention of Conflicts of Interest to obtain information necessary for the verification of financial declarations (including by giving the Commission the authority to oblige officials to hand over requested information).**

89. The GET additionally finds that the Commission, despite the upgrade of its IT system (which at least ensured that information did not have to be transcribed into a computer), does not have enough technical capacities, which would allow it to act *ex officio*. In short, even if the Commission is certainly willing to act pro-actively, it currently does not have the resources to sufficiently carry out its mandate, in particular when bearing in mind that the verification of financial declarations is only one of the many tasks bestowed upon it by the LCI. GRECO already recommended in the Fourth Evaluation Round Report on Croatia to reassess the technical and personnel resources of the Commission.<sup>46</sup> Given the scale of the tasks of the Commission, the GET welcomes that it is planned to further increase the budget of the Commission for 2020 (i.e. from 6 493 939 HRK / approximately 876 000 EUR in 2019 to 7 810 718 HRK / approximately 1 054 078 EUR projected for 2020).

### **Accountability and enforcement mechanisms**

#### *Non-criminal enforcement mechanisms*

90. In addition to checking financial declarations as outlined in the previous paragraphs, the Commission for the Prevention of Conflicts of Interests is pursuant to Article 30 LCI also competent for (i) instigating conflict of interest proceedings and rendering decisions on infringements; (ii) adopting its working procedures; (iii) drawing up guidelines and instructions on conflicts of interest; (iv) conducting regular training on conflicts of interest and on submitting financial declarations; (v) cooperating with other bodies in implementing conflict of interest prevention policies and proposing recommendations, as necessary; (vi) cooperating with civil society and maintaining international cooperation on matters related to conflicts of interest. The Commission submits an annual report to Parliament on its activities and expenditures. In its reports, the Commission can recommend changes in the conflict of interest system in response to the type of flaws it identifies when performing its monitoring function.

91. Sessions of the Commission are public (and usually well-attended by representatives of the media). All decisions and opinions of the Commission are published on its website. As an additional sanction (if the suspension of salary does not achieve its punitive goal alone), the Commission may decide to publish its decision in a daily newspaper. In practice, if anomalies or irregularities are spotted in the forms while being processed, the Commission contacts the filer for clarification or correction. Where acts of corruption are suspected or

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<sup>46</sup> This part of the recommendation was assessed to have been implemented in the Fourth Round Compliance Report, when the authorities of Croatia reported that, in spite of the economic recession, five new permanent employees had been added to the staff of the Commission. Other important steps had also been taken to improve the IT system of the Commission, e.g. computerisation of work processes enabling the tracking of a case and its deadlines, setting-up of a registry of officials, development of electronic forms with drop-down menus and tailored guidance for their completion, launching of a new website of the Commission.

revealed in the course of the Commission's action, the case is referred to USKOK. The GET heard that with the amendments to the LCI planned in 2018, it was envisaged to explicitly lay down in the law that the official would have the right to correct his/her data if the Commission found out that an official did not declare all his assets or income. The GET would find this a step back upon the current process and trusts that this idea will not be included in the new Law on the Prevention of Conflicts of Interest, planned to be drafted in 2020.

92. The Commission can impose administrative sanctions for non-compliance with the LCI, in the form of a reprimand, a suspension of salary in an amount of 2 000 to 40 000 HRK (approximately 270 to 5 400 EUR, but no more than half of the official's salary) for a period of up to 12 months. Fines would be paid from the monthly salary of an official. The GET has several misgivings about the system of sanctions under the LCI. First of all, as already noted in the part on conflicts of interest above, the Constitutional Court has referred a case back to the competent administrative court in order to provide further interpretation of Article 2 of the LCI, which the GET considers a key provision of the LCI, and Article 5 of the LCI (on the general principles of action in the exercise of public office), posing the question whether this would need be linked to a more specific provision of the LCI. Already now, when it comes to Articles 2 and 5 of the LCI, the Commission can only establish that there was a violation, but cannot impose a sanction. It is currently not possible to reverse decisions by officials which were taken in violation of the conflicts of interest provisions nor to overturn the advantage the official may have obtained by placing his/her private interest above the public interest, in violation of the provisions of the LCI, if this does not at the same time rise to the level of crime. Similarly, lack of cooperation with the Commission (e.g. not providing the required information) seems to have no consequences. In this connection, the GET stresses the importance for all officials (irrespective of their position) in Croatia to show full co-operation with the Commission, so that it can properly and effectively fulfil its mandate.

93. Secondly, as the fines under the LCI are explicitly linked to the salary of an official, they cannot be enforced when a person ceases to be an official. When discussing this issue on-site, the Commission itself did not see much of a problem with this for the PTEFs covered by this report, as its decision that a conflict of interest had occurred or a financial declaration was flawed would be sufficient as a sanction, for example, for a member of the government. The GET understands this argumentation but is also aware that this has created problems in the past with certain officials who are less in the public eye, leaving the public with the impression that they are above the law.

94. Thirdly, the GET finds that no criteria are set to determine the appropriate sanction in a given case. It is currently not clear enough which violations of the Law are to be considered "manifestly light forms of violations" (Article 43), for which an official may be reprimanded and which are to be considered more severe ones. The GET takes the view that it would be useful to clarify the proportionality of sanctions under the Law. In light of the foregoing paragraphs, **GRECO recommends that (i) the available sanctions for violations of the Law on the Prevention of Conflicts of Interest be reviewed, to ensure that all violations of the Law have proper consequences and (ii) the proportionality of sanctions under the Law be clarified.**

95. In a period of five years (2014-2018), the Commission has launched a total of 65 proceedings against PTEFs in the framework of the LCI. In these 65 proceedings, 59 decisions were taken on merit, which resulted in no sanctions being imposed in 13 proceedings (either

because violations of Articles 2 and 5 of the LCI do not provide for any sanctions or because more than 12 months had passed since the officials had ended their public duties), in eight cases a reprimand was issued and in 30 proceedings part of the salary of the official concerned was suspended. In the same period, 112 decisions were taken not to institute proceedings as there were no indications that a violation of the LCI had taken place.

### *Criminal proceedings and immunities*

96. Pursuant to Article 34 of the Law on Government, members of the government cannot be prosecuted for a criminal offence for which up to five years' imprisonment is foreseen, without prior approval of the government. It would appear that no exceptions are made to this, not even when a member of the government is caught *in flagrante delicto*.

97. Already in its First Evaluation Round Report on Croatia, GRECO was critical of the system of immunities.<sup>47</sup> While it considered the circle of beneficiaries, who benefitted from procedural immunities, being "relatively broad" (as at that time it included the President of the Republic, Members of Parliament, members of the government, the State Judicial Council, judges and public prosecutors), it still considered this to fall within the scope of guiding principle 6.<sup>48</sup> At that point in time it recommended the adoption of clear and transparent rules for the lifting of immunity, especially with regard to Members of Parliament and the government, and an increase in the sanctions for corruption offences *inter alia* so that a beneficiary of immunity could be detained without prior approval of the competent body. While the latter recommendation was addressed, the first recommendation has never been fully implemented. Coming back to this issue in the Fourth Evaluation Round Report on Croatia<sup>49</sup> as regards MPs, GRECO considered the scope of immunity afforded to MPs in Croatia "generally acceptable" and considered that this – according to the data provided by the authorities – had not constituted an obstacle to the prosecution and subsequent adjudication of corruption offences.

98. The authorities indicate that the immunity provided to members of the government pursuant to Article 34 of the Law on Government does not mean that a member of the government will not be prosecuted for these offences at the end of his/her term. It furthermore considers this a "minimum protection", enabling members of the government to perform their work and exercise their powers without interruption or difficulties (in light of the possibility of "private prosecution" in Croatia). According to the authorities, the immunity provided to members of the government has to date never constituted an obstacle in the prosecution and subsequent adjudication of corruption offences.

99. Notwithstanding these arguments, the GET has several concerns about the current provisions on immunity for members of the government. First of all, it notes that some corruption offences (for example, in case of legal acts or omissions) have a maximum sanction of five years or less with a corresponding limitation period, which would mean that even if the prosecution would be suspended a member of the government could likely only be successfully prosecuted for certain corruption offences if at the same time the limitation period has also been suspended. Secondly, the GET considers that - given that the government

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<sup>47</sup> GRECO, [First Evaluation Round Report on Croatia](#) (May 2002), paragraphs 160-163.

<sup>48</sup> Guiding principle 6 calls upon member states "to limit immunity from investigation, prosecution or adjudication of corruption offences in the degree necessary in a democratic society".

<sup>49</sup> See footnote 31 above.

is the one to give approval for the prosecution of one of its own members - impartiality of the procedure is not guaranteed. Thirdly, unlike for MPs, the President and judges, the immunity of members of the government is not vested in the Constitution but regulated by law and no provisions are made for members of the government caught *in flagrante delicto*.<sup>50</sup> In short, the GET cannot see any reason for providing the government with the authority to give approval for the prosecution of one of its members for a criminal offence for which up to five years' imprisonment is foreseen. It considers the immunity provided to members of the government neither necessary nor falling within the remit of Guiding Principle 6. In view of this, **GRECO recommends that the Law on Government be amended to limit the procedural immunity provided to members of the government, by excluding corruption-related offences which are subject to public prosecution.**

### Statistics

100. Data from the Office for the Suppression of Corruption and Organised Crime (USKOK) provides the following insights into instances of corruption and related misconduct by PTEFs in the last five years:

	Investigations	Indictments	Judgments
2014	2 (1 minister for abuse of position, Art. 291 CC; 1 assistant minister for trading in influence, Art. 295 CC)	1 (1 minister for passive bribery, Art. 293 CC)	4 (1 minister - final acquittal of abuse of position, Art. 291 CC; 1 assistant minister - final conviction to 11 months' imprisonment for abuse of position, Art. 291 CC; 1 assistant minister - charges of abuse of position rejected; 1 prime-minister - non-final conviction to nine years' imprisonment for abuse of position, Art. 291 CC)
2015	1 (1 minister for abuse of position, Art. 291 CC)	3 (1 minister and 1 assistant minister for abuse of position, Art. 291 CC; 1 assistant minister for trading influence, Art. 295 CC)	0
2016	2 (1 minister and 1 assistant minister for abuse of position, Art. 291 CC)	2 (1 minister and 1 assistant minister for abuse of position, Art. 291 CC)	0
2017	1 (1 head of office of the prime-minister for abuse of position, Art. 291 CC, and forgery, Art. 279 CC).	2 (1 head of office of the prime-minister for abuse of position, Article 291 CC, and forgery, Art. 279 CC; 1 minister for abuse of position, Article 291 CC).	2 (1 minister: non-final acquittal for abuse of position, Art. 291 CC; 1 prime-minister – non-final conviction to four years' and six months' imprisonment for abuse of positions, Art. 291 CC)
2018	0	0	2 (1 assistant minister – non-final conviction to three years' imprisonment for passive bribery, Art. 293 CC; 1 prime-minister - non-final conviction to two years' and six months' imprisonment for abuse of position, which were reopened procedures due to the Constitutional Court judgment of 2015)

<sup>50</sup> In this connection, the authorities also state that in 2018 the Constitutional Court did not accept the proposal to initiate the procedure for reviewing the conformity of Article 34 of the Law on Government with the Constitution.

## V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

### Organisation and accountability law enforcement/police authorities

#### *Organisation and accountability of selected law enforcement authorities*

101. Croatia's main law enforcement body is the police, which is a directorate of the Ministry of Interior. It is a civilian organisation. Its activities are regulated by the Police Act and the Police Duties and Powers Act (which are complemented by various ordinances regulating specific aspects of police activities). The remit of the police covers the entire area of Croatia, and includes border control.

102. The police is organised in three hierarchical levels, the General Police Directorate (at the level of the Ministry of the Interior), police administrations organised territorially (in 20 regions) and police stations. The Director General (or chief of police) heads the General Police Directorate (divided in seven directorates<sup>51</sup>) and reports directly to the Minister. The heads of the 20 police administrations manage the work of the police administrations under their authority and account for their work to the Director General, with in turn the head of police stations accounting for their work to the respective head of the police administration in which their police station is situated.

#### *The Croatian police in numbers*

	<b>Total</b>	<b>Male</b>	<b>Male %</b>	<b>Female</b>	<b>Female %</b>
<b>Police</b>	24 980	17 520	70.1%	7 460	29.9%
<i>Police officers</i>	20 270	16 560	81.7%	3 710	18.3%
<i>Civil servants and employees</i>	4 710	960	20.4%	3 750	79.6%

#### *Access to information*

103. The police, as any other public administration body, falls under the Act on the Right of Access to Information, prescribing that every natural and legal person has the right to access information by submitting oral and written requests to the competent authority (in this instance, the Ministry of the Interior), as has been guaranteed by the Constitution. The public authority in question can limit access to information in specific cases stipulated by the abovementioned law.<sup>52</sup>

#### *Public trust in law enforcement authorities*

104. The 2017 Eurobarometer on Corruption shows that only 34% of the surveyed would turn to the police to complain about a corruption case (EU average: 60%). The survey also refers to a bigger proportion of Croatian citizens (55%) than EU average (31%) who think that bribery and the abuse of power are widespread in police/customs.<sup>53</sup> In discussing this lack of trust on-site, it was considered to be representative of a general lack of trust in public

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<sup>51</sup> These seven directorates are the Uniformed Police Directorate, Criminal Police Directorate (in which the Police National Office for the Suppression of Corruption and Organised Crime is located), Border Police Directorate, the Special Security Affairs Directorate, the Special Police Command, the Operational Communications Centre and the Police Academy.

<sup>52</sup> See footnote 33 above.

<sup>53</sup> See footnote 5 above.



institutions in Croatia and/or an issue of bad PR of the police. It was emphasised to the GET that this should not lead to the conclusion that bribery and/or abuse of power were indeed widespread in the police. The GET was pointed to a different study, specifically relating to Croatian youth, indicating that out of all institutions active in Croatia (including the Church, the EU, IMF and NGOs), Croatian youth place the highest level of trust in repressive institutions (armed forces and the police), with 41% of respondents trusting the police (with the lowest-rated institution, political parties, at nine percent).<sup>54</sup>

#### *Trade unions and professional organisations*

105. Staff of the Ministry of the Interior are members of nine trade unions: the Police Union of Croatia, the Independent Union of Employees of the Ministry of the Interior, the Union of Croatian Civil Servants at the National and Local Level, the General Union of the Ministry of the Interior, the National Police Union of the Ministry of the Interior, the Independent Union of Police Officers and Employees, the Union of Police Officers, the Union of Employees of the Ministry of the Interior and the Union of the Crime Police. Of these trade unions the first three are so-called representative trade unions, which means that they take part in negotiating collective agreements with the government (every four years).

106. No official figures are available on the number of members specifically from the ranks of the police, but the GET was told that it was estimated that around 75% of staff of the Ministry of the Interior was a member of a trade union. The unions have a primary role in protecting the employment rights of their members (for example, in a case of 700 million EUR, which was brought by the trade unions against the Croatian government for failing to provide adequate compensation for over-time). Amongst other things, the unions seek to improve material conditions of their members and *inter alia* provide legal aid (in disciplinary and court proceedings) to their members.

#### **Anti-corruption and integrity policy**

##### *Anti-corruption strategy and implementation*

107. There are no dedicated anti-corruption policies for the police as a whole, but a plan focused on the border police, which is part of the police, does exist. The GET was told that the police participates in the realisation of the general Anti-Corruption Strategy and related Action Plans (see paragraphs 34-36 above). It however does not seem that any measures contained therein have a direct focus on the police.

##### *Risk management measures for corruption prone areas*

108. Various measures and mechanisms are in place in the Croatian police, to prevent corruption within its own ranks, including training on integrity (see paragraph 119-121 further below), disciplinary tools in case of breaches of duties, systems of internal and external control and other tools (regular IT check logs, rotation of border guards, video surveillance at border crossings etc.). In addition, specifically for the border police, in May 2012, a special plan for implementation of anti-corruption measures entered into force. The GET was informed that as a basis for the plan, a comprehensive overview of risks and threats was made in relation to

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<sup>54</sup> Friedrich Ebert Stiftung, [Youth Study Croatia 2018/2019](#).

the work carried out by border police officers, identifying those situations in which a lot of discretion is left to border police officers, where they are subject to a lesser degree of control, where salaries are (too) low, where there are no norms of behaviour which would actively deter them from possible corrupt behaviour, where the controls carried out have insufficient preventive value and/or where there is a lot of direct contact between police officers and citizens. To date, this plan is updated by all police administrations every six months, and currently focuses on rotation of border guards, oversight and training.

109. Furthermore, the Internal Control Division (see on the Internal Control Division paragraphs 150-153 below) analyses data (including from complaints) on illegal actions and misconduct of police officers and other employees of the Ministry. To this end, an IT application has been established, called “Internal Control Affairs”. This application makes it possible for managers to supervise the handling of complaints and allows the Internal Control Division, in analysing the data of the application, to detect deficiencies in legal regulations and workflows and identify high-risk behaviour and individuals, allowing these issues to be addressed (for example, by proposing to the head of the police department to transfer a certain police officer).

110. The GET believes that there is room for improvement in this area, also in light of the absence of any measures pertaining specifically to the police in the general Anti-Corruption Strategy and Action Plans. In this context, the GET was for example surprised to hear that fines can still be paid directly in cash to police officers. Notwithstanding the arguments from the authorities that it would be very costly and in some cases technically difficult to have this practice phased out (especially in light of the fact that more than 35% of fines are collected from non-residents of Croatia), the GET is of the strong opinion that the practice of paying fines in cash directly to police officers should be abandoned. When it comes to analysing risks in the police force, the GET notes that the emphasis in this regard is on the border police and that the analysis on which the plan for the border police was developed is by now more than 8 years old (a period of time in which certain vulnerabilities may have changed, and may perhaps be too heavily reliant on rotation as a preventive measure). In addition, as regards the police as a whole, while the GET appreciates the analyses by the Internal Control Division of the complaints received (and the development of an application to track the follow-up to this process throughout the police), it considers at the same time this approach could lead to certain blind spots.

111. The GET takes note of the arguments of the authorities that many corruption risks in the (border) police have been reduced with Croatia’s accession to the EU and the fulfilment of the technical conditions for accession to the Schengen area, as well as the better equipment of the border police (video surveillance etc.). For the reasons outlined above, it however sees great value in having a risk assessment focusing not just on the border police, but the police as a whole. A more pro-active approach would need to be developed (which is reliant not just on information from complaints) by carrying out a preventive analysis of corruption risk-prone services, situations and procedures. Such an analysis could also look more closely into the possible reasons for the high number of respondents in the abovementioned Eurobarometer believing that the taking of bribes and use of power for personal gain is widespread in the police. Such a risk analysis necessitates the use of a wide variety of sources, in addition to the current analyses of complaints, such as IT logs, information from screening processes, disciplinary cases, possible staff surveys, etc. and should lead to the development of a targeted integrity policy, either as a stand-alone strategy or as part of a future general Anti-Corruption

Strategy and Action Plan. In light of the two preceding paragraphs, **GRECO recommends that (i) the practice of paying fines directly in cash to police officers be abandoned and (ii) a comprehensive risk assessment of corruption prone areas and activities be undertaken in the police, to identify problems and emerging trends, and that the data is used for the proactive design of an integrity and anti-corruption strategy for the police.**

#### *Handling undercover operations and contacts with informants and witnesses*

112. The use of undercover agents and controlled deliveries is regulated by the Criminal Procedure Act (Article 332), the Police Duties and Powers Act (Article 5) and the Ordinance “On the manner of carrying out special investigative actions”, which *inter alia* provide that such measures can only be used for a catalogue of serious offences (which for example includes various forms of corruption and abuse of power) in proportion to the seriousness of the offence, when an investigation cannot be otherwise conducted. Use of such measures cannot instigate the commission of a criminal offence.

113. Rules are in place for the protection of witnesses and other persons who cooperate with the police, notably the Police Duties and Powers Act (which *inter alia* provides in Article 23 that police officers are obligated to undertake measures to conceal the identity of a person from whom information was collected if revealing the identity of that person would pose a serious threat to his/her life, health, physical integrity or property, and is obligated to immediately inform his/her supervisor of this). Informants may be compensated for costs they make and can receive a monetary reward for the information provided. The conditions under which this is done and the monitoring of these funds is regulated by the Instruction on Operating Costs. The Code of Practice of Police Officers furthermore establishes that the personal data on informants and information providers is “classified” data, requiring a high security clearance for police officers. The rules regarding the use of informants, the responsibilities of police officers contacting informants and the responsibilities of their supervisors are regulated by the Instruction on Working with Informants, which is a classified document.

#### *Ethical principles and rules of conduct*

114. In accordance with Article 30 of the Police Act (which provides that a police officer is obliged to perform his/her duties in accordance with the law and other regulations, professional regulations and the Code of Ethics issued by the Minister of the Interior); the Minister of the Interior adopted a Code of Ethics for Police Officers in 2012. The Code provides a short overview of the basic principles of policing (such as equality before the law, protection of the reputation, incorruptibility, mutual respect etc.) and, in an annex, outlines the values applicable to police officers (service to the people, integrity etc.). The official aim of the Code is to “raise awareness of police officers about the importance of respecting ethical principles and steering ethical and moral behaviour in practice” (Article 1). The Code does not contain any provisions on enforcement, but instead refers to the Code of Ethics for Civil Servants (indicating that for any situation not regulated by the Code of Ethics for Police Officers, the provisions of the Code of Ethics for Civil Servants apply), which in turn relies on the Civil Servants Act for its enforceability.

115. The Code of Ethics for Civil Servants (which – as indicated above – is also applicable to staff of the police), as adopted in 2005 and last amended in 2011, includes such notions as

respecting the dignity of citizens, harassment, protecting the reputation of the civil service, prohibiting abuse of authority and disclosure of information for unauthorised purposes. It outlines more at length the responsibilities of ethics commissioners, who are appointed in each administrative entity (including the Ministry of the Interior), and complaint proceedings.<sup>55</sup> It further refers to the duties of a civil servant as outlined in the Civil Servants Act. These are divided in this Act into “conduct of civil servants” (i.e. refusal of offered gifts, abuse of authority, non-disclosure of official secrets), “orders” (duty to refuse orders, prohibition to exceed authority etc.) and “conflicts of interest” (incompatibilities, duty to report etc.). Violations of the Civil Servants Act can be characterised, depending on the circumstances, as either minor or serious breaches of official duty (see further in paragraph 164 below).

116. While the GET welcomes the existence of a specific code of ethics for the police and the impression it got during the on-site visit that police officers are aware of its existence (and – to a certain extent – of the Code of Ethics for Civil Servants), it found the code of ethics rather general. As such, it has less value in guiding the behaviour of police officers in practice. In the absence of further guidance, it may be unnecessarily difficult for an officer to translate some of the requirements into daily practice. For instance, the Code of Ethics for Police Officers refers to bribery and to corruption (Article 5) but there are no definitions, guidelines or examples on what these concepts actually encompass. No mention is made of conflicts of interest and related matters (gifts, invitations, secondary activities etc.), use of social media, third party contacts etc. It cannot be said that the Code of Ethics for Civil Servants fills this gap for staff of the police (as it is not tailored to the specifics of the police profession).

117. The GET considers it necessary to revise the Code of Ethics for Police Officers, preferably through joint preparation by police management, employees, trade unions and other stakeholders. Such a revision should take into account the latest developments in corruption prevention and be connected to a future anti-corruption strategy for the police (as outlined in recommendation xii, paragraph 111 above). It would, furthermore, need to be supplemented with proper written guidance, which is easily accessible (on the police intranet and in paper copy at each police station). Each article containing such a code should be explained so that the code becomes more than a rather generic statement of principles, as is currently the case. Guidance should be understood as a manual or handbook including practical examples, based on experiences of the police force in Croatia, to illustrate specifically for police staff the complexity of the situations covered by these principles and steps to be taken to avoid or defuse corruption threats.

118. A manual or handbook should, furthermore, be used in training courses and become a living instrument that takes stock of recent developments, taking the outcome of the abovementioned risk assessment into account. As such a revision of the Code of Ethics, illustrated with examples and explanations, would not only provide valuable guidance on the required conduct, but would also serve to inform the public of the existing regulations and the behaviour to be expected from police officers. This implies not only making the code available to the public but taking active steps to publicise it. For these reasons, **GRECO recommends that (i) the Code of Ethics for Police Officers is updated and covers in detail all relevant integrity matters (such as conflict of interest, gifts, contacts with third parties, outside**

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<sup>55</sup> For the Code of Ethics for Civil Servants, please see: <https://vlada.gov.hr/UserDocImages/2016/Glavno%20tajništvo/ENG/documents%20in%20english/Code%20of%20Ethics%20for%20Civil%20Servants.pdf>.

**activities, the handling of confidential information), supplemented with a manual or handbook illustrating all issues and risk areas with concrete examples; (ii) the Code of Ethics be made known to the public.**

#### *Advice, training and awareness*

119. Training is provided by the Police Academy, which is a unit of the Ministry of the Interior, responsible for carrying out the basic 12-month training of future police officers, university-level training and specialised training courses. The Police College (higher education, accredited as such by the Ministry of Science, Education and Sport), the Josip Jović Police School (basic education of future police officers) and the Department for Professional Development and Specialisation (planning, programming and supervision over all education programmes) all form part of the Police Academy. Various training modules on corruption-related criminal offences are offered in both the initial and in-service training.<sup>56</sup> “Police ethics” in turn is taught as an optional subject for part-time students enrolled in the specialist graduate studies on criminalistics at the Police College.<sup>57</sup> There is, furthermore, a mandatory subject “Prevention of corruption” for those majoring in “Police Studies” (30 hours in the sixth semester), as well as a subject “Methods for the prevention of corruption” (30 hours) as part of the specialist graduate professional study of criminalistics for 63 students. Finally, more targeted training is provided to police officers of the Internal Control Division, specifically focused on their analytical and investigative work.

120. The basic training programme for uniformed police officers has been amended, as the previous programme was not considered sufficiently practical. More specifically as regards integrity and unlawful conduct, the GET was told that such issues were mainstreamed in every subject of the basic training, in addition to the specialised courses mentioned above. Furthermore, upon admission to the police, police officers are required to sign a statement on the rights and obligations of a police officer, pursuant to Article 27 of the Police Act, with which they pledge to comply with the law and other regulations on the police, including the provisions of the Code of Ethics of Police Officers.<sup>58</sup> Police staff could furthermore find information on the prevention of corruption within the police on the website of the Ministry of the Interior and could address ethics commissioners within the Ministry of the Interior for any advice on ethical dilemmas.

121. While the GET appreciates that issues linked to corruption prevention and integrity are mainstreamed in the initial and in-service training of police officers, it takes the view that this is not sufficient. The current focus seems to be more on investigating corruption than on the required (ethical) behaviour within the ranks of the police. Furthermore, the training for serving officers is largely demand driven (at the request of officers themselves or their superiors) and seem to be of a rather *ad hoc* nature. As noted above, the GET already found the Code of Ethics for Police Officers an insufficient tool for guiding everyday behaviour of police staff, in particular as it leaves out some problematic issues and lacks practical guidance.

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<sup>56</sup> For example, the basic police training at the Josip Jović Police School includes one hour on abuse of position and/or power, taking and giving bribes etc. as part of the course on Criminal Law and one hour as part of the course on Basic Knowledge of Criminalistics and Criminal investigations; a specialised five-day Seminar on Economic Crime and Corruption was organised in 2018 by the Department for Professional Development and Specialisation, as part of the specialist undergraduate study in criminalistics at the Police College.

<sup>57</sup> Two-thirds of the 63 students enrolled in these studies are following the optional subject “Police Ethics”.

<sup>58</sup> In the statement, particular attention is furthermore devoted to the need to keep information acquired in the course of police duties confidential, the rules on secondary activities and political activities.

Training on ethics and integrity, both for new recruits and already serving officers, should cover all areas of concern, using as the main reference tool a revised code, supplemented by practical guidance, and should be based on identified risks, thereby taking into account the specificity of the duties and vulnerabilities of different categories of police officers. The GET welcomes that the need for further improvements of the current training programme has been acknowledged: amendments to the blueprint of the vocational training programme for police officers are being developed, which will also look further into training on police integrity. In light of the foregoing, **GRECO recommends that both the initial and in-service training of police officers on ethics and integrity matters be considerably enhanced, taking into consideration the specificity of their duties and vulnerabilities, as provided in a future code of conduct or ethics.**

## **Recruitment, career and conditions of service**

### *Appointment procedure*

122. Recruitment requirements are outlined in Article 47 of the Police Act: persons who have Croatian citizenship, have completed secondary education, are under 30 years of age at the time of their first employment (if this is employment to a post which requires secondary school qualifications), have good mental and physical abilities, meet the prescribed level of physical motor skills, are determined suitable to perform the police service<sup>59</sup> and are not members of a political party.

123. Article 49 of the Police Act prescribes that the posts of police officers are filled by means of a public recruitment procedure. However, before a public recruitment procedure is opened, vacant posts can be filled through an internal vacancy announcement, transfer or another way stipulated by the same Police Act.

124. The Police Act provides for three different categories of police officers, managerial police officers, senior police officers and junior police officers, in addition to the employees and civil servants working in the police force. Recruitment at entry level (junior police officers) takes place through competitive examinations. Pursuant to Article 52 of the Police Act, persons recruited to the police without any work experience are employed as trainees.<sup>60</sup>

125. As regards the vetting of police officers, upon entering the Police Academy it is checked if applicants have a clean criminal record (not just for crimes but also certain misdemeanours involving, for example, violence) in accordance with the Order on the determination of suitability of persons who are to work in the police force (Official Gazette No. 98/12), and to be physically and mentally fit. In addition, the background of the applicant, people associated with him/her, his/her work references and other information held in police registers will be checked. Usually, this type of vetting does not include a financial check, but if there are indications of financial problems further information can be sought.

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<sup>59</sup> In Article 47 of the Police Act, it is in this connection prescribed that “Any person who is convicted for a criminal offence committed for personal gain or impure intentions by a legally effective decision is not worthy to perform the police service, as well as person punished for a misdemeanour against public law and order with the elements of violence or some other misdemeanour making him/her unsuitable for performing police services or persons whose conduct to date, habits or inclinations show a lack of reliability required to perform the service”.

<sup>60</sup> If the position to which they are recruited requires completed secondary education, the traineeship will last for six months; in case of an academic degree, the traineeship will last 12 months.

126. Police officers and other civil servants (or employees) who have access to classified data are subject to a specific security clearance procedure. To this end, the Ministry of the Interior is to submit an application to the Office of the National Security Council (UNVS), which includes a completed security clearance questionnaire corresponding to the level of classified data s/he is to access at his/her workplace (i.e. “confidential”, “secret” or “top secret”). This questionnaire requests information identifying partners, parents, siblings, children, includes questions on military service, mental health, criminal proceedings (etc.) and requires applicants to give consent to the competent agencies to check their personal bank accounts and any financial transactions above 100 000 HRK (approximately 13 475 EUR) in the last two years. Following this security check, a report is provided to the Independent Service for Information Security (SSIS) of the Ministry of the Interior. On the basis of the report by the UNVS, the SSIS either issues or declines to issue a personal security clearance for the police officer concerned and informs the head of the organisational unit who requested the clearance accordingly. Security clearances have to be renewed every five years. The GET was, however, told that if there were indications of a problem, a random check could be carried out before five years had passed, unbeknownst to the police officer in question.

*Performance evaluation and promotion to a higher rank, transfers*

127. Evaluation of the performance of police officers is carried out by the head of the organisational unit of the police officer in question. S/he is to evaluate the work of his/her subordinate police officers three times a year (taking into account the Code of Ethics for Police Officers), which results in an “annual rating” (in the categories not satisfactory, satisfactory, good, successful and extremely successful). The Ordinance “On the evaluation of police officers” outlines the procedure of assessment and criteria for each of these ratings. The annual rating affects the employment rights of the police officer in question (i.e. the number of rest days, qualification exam etc.). A police officer can lodge a complaint against his/her annual rating with the Civil Service Committee (a Committee at the Ministry of Public Administration).

128. The Director General of the Police is selected following a public recruitment procedure.<sup>61</sup> S/he is appointed for a period of five years by the government of Croatia, on the proposal of the Ministry of the Interior (Article 59 of the Police Act). Vacancies for other managerial posts, namely the Deputy and Assistant Director General<sup>62</sup>, heads of police administrations and heads of police stations, are announced internally. A commission appointed from amongst the ranks of managerial, senior and lower-ranking police officers and representatives of unions subsequently carries out the selection of candidates (Article 60, Police Act). With the exception of heads of police stations (who – following the changes to the Police Act, which entered into force in July 2019 – are appointed for an indeterminate period of time, until they are transferred or promoted), candidates for these posts are appointed for a period of five years. They may reapply but have to go through the selection process again.

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<sup>61</sup> The Director General is to have at least 15 years’ work experience in the police, of which at least 10 in a managerial position and must have acquired or passed the rank of chief police advisor (Article 59, Police Act).

<sup>62</sup> For these positions at least 15 years’ work experience, of which 10 years in a managerial position is required, with candidates having to have acquired or passed the rank of police advisor (Article 61, Police Act).

129. Vacancies for other positions (i.e. neither the abovementioned managerial positions nor entry-level positions) are announced internally and may also be filled by transferring police officers, in accordance with the Regulation on launching and implementing public vacancy competitions in the civil service (Official Gazette No 78/2017), which also applies to the police. Pursuant to this Regulation, candidates for the positions are selected following a competition, in which the candidates' knowledge, competences and skills, as well as the results of their work to date are ascertained through a test and interview, conducted by a commission of an uneven number of members (at least three) appointed by – depending on the level of the vacancy involved – the head of the police station, the head of the police administration or other organisational unit. The candidate ranked first, as based on the total score obtained in the test and interview, is to be selected.

130. Transfer of police officers can take place either on the basis of a personal request or if the needs of the service so require. Transfers can take place to positions requiring the same level of qualifications and the same rank the police officer already has and may occur both in the same or another place of work, but cannot be longer than six months or until the absent police officer has returned. Following the amendments to the Police Act of July 2019, transfers of police officers, without their consent, to a lower-ranking police post (not only as a disciplinary measure but also if the human resource needs of the police require this) are now also possible if s/he has had a “satisfactory” annual rating in the previous year. The GET heard that following negotiations with the trade unions, the police officers, who are transferred to a lower position, will nevertheless keep the salary of their previous position.

131. Termination of service takes place upon retirement (at a certain age or number of service years), personal request or as a disciplinary measure. The Director General, his/her Deputy and Assistant, the heads of police administrations and police stations may be relieved from their position at personal request, because of permanent incapacity to work in this function, as a disciplinary measure or retirement. The Director General of the police can be dismissed by the government, on the proposal of the minister of the interior; the Deputy and/or Assistant Director General and heads of police administration can be dismissed by the minister on the proposal of the Director General.

132. The GET heard mixed reactions to the appointment and promotion process in the police from its interlocutors. On the one hand, it was generally acknowledged that in recent years the situation had improved, in that at least the appointments of heads of police stations and heads of police administration had become more transparent and merit-based (i.e. these positions were now filled following proposals by a commission, which also included trade unions, rather than through discretionary decisions of the police hierarchy). On the other hand, it also heard that even if there was a good legal framework on paper, the practice was different, in that before the start of the proceedings it would already be clear who would get the job (with some interlocutors even speaking of nepotism in transfers, recruitment and promotions).

133. During the on-site visit, the GET was told several times that the appointment of the Director General was a political decision, which had a direct bearing on the selection of heads of police administrations and police stations. While it cannot be ruled out that there are other considerations than merit and suitability for the position at play in the appointment process, the GET could not find any *prime facie* evidence of this by looking at the dates of appointment of heads of police administrations and police stations. The most recent appointments to these



positions seem to simply follow the expiration of a five-year period of the previous appointment (even if the GET did note that most of these mandates expired around the same date). However, as even the impression of “hand-picking” practices and favouritism is detrimental for the level of trust in the police, the GET would welcome that the Croatian authorities review the current recruitment and promotion processes to identify opportunities to improve this process (beyond the recent changes to have heads of police stations appointed for an indeterminate period of time), to address any concerns about the lack of objectivity and transparency therein, including as regards the process of appointing the Director General, his/her Deputy and Assistant. Notwithstanding indications that the number of women in the police is slowly on the rise, it would be helpful if such a review would also look at opportunities for having women better represented in the police force, given their relative under-representation among police officers at all levels.<sup>63</sup> Therefore, **GRECO recommends that possibilities to further improve the current appointment and promotion processes within the police be explored, with a view to improving the objectivity and transparency of decisions, paying particular attention to the representation of women in the police at all levels.**

### *Rotation*

134. As indicated above, a system of regular rotation is in place for border guards within the police: they can suddenly be rotated or have the border crossing they are required to guard changed, even within the same work shift. This practice of rotation is one of the main measures of the anti-corruption plan specifically adopted for the border police. The GET was told that, in 2018, 426 134 rotations took place. Usually, the head of a certain shift would decide where the rotation be carried out, with the aim of making this as unpredictable as possible (with the possible exception of airports, where it was not so easy to rotate to another border crossing). Monthly reports on the conducted rotations are submitted to the Border Police Directorate.

### *Salaries and benefits*

135. Gross annual salaries in the police are the following

Categories	Gross annual salaries	
	HRK	EUR
Police officer at the beginning of his/her career	66.360	8.960
Patrol leader with five years of service	71.406	9.640
Head of sector in a police station of the first category with 10 years of service	93.751	12.656
Shift supervisor in a police station of the first category with 15 years of service	99.256	13.400
Deputy chief of the police station of the first category with 20 years of service	145.590	19.655
Chief of the police station of the first category with 25 years of service	161.023	21.738

<sup>63</sup> As indicated in paragraph 102 above, currently women make up 29.9% of the staff of the police, but only 18.3% of police officers. However, for the year 2019/2020, 39.9% of applicants to the Police Academy were women (of which 96.5% met the required conditions). Following the selection procedure, 33.2% of new admissions are women.

136. Police officers are not provided with any additional allowances, with the exception of situations in which they are temporarily transferred more than 100 kilometres away from their place of residence.<sup>64</sup> These additional allowances in case of transfer are overseen by the organisational unit competent for material and financial affairs and human resource management.

### **Conflicts of interest**

137. Conflicts of interest for police officers (and other civil servants employed in the police) are primarily regulated by the Civil Servants Act, which provides that a civil servant may not make decisions or participate in the decision-making which affects the financial or other interests of 1) his/her spouse, common-law partner, child or parent; 2) individuals or legal persons, with whom s/he has had formal or business contacts within the past two years, who have financed his/her election campaign within the past five years, for which s/he is an official representative, legal representative or bankruptcy trustee, or with whom s/he, his/her spouse, child or parent is involved in a lawsuit or to whom they are indebted; 3) companies, institutional or other legal persons in which the civil servants intends to seek employment; 4) associations or legal persons in which s/he holds the post of administrator or membership in the board of directors (Article 37, Civil Servants Act). In addition, both the Civil Servants Act and the Police Act contain various incompatibilities, meant to avoid conflicts of interest (see paragraphs 139-142 further below).

138. The GET welcomes the provisions on conflicts of interest in the Civil Servants Act, but finds that these are not always readily translatable to the work of a police officer. What appears to be missing is a general obligation of notification to a superior or obligation of recusal when a police officer is confronted with an actual or potential conflict of interest (or a situation which may be perceived in such a way); for example, police investigations involving friends or family members, proceedings in which s/he has intervened as an expert or witness etc. The GET finds that this is an area, which would clearly benefit from further guidance through its inclusion in a revised code of conduct (see paragraph 118), with practical examples of situations in which such conflicts of interests may occur in daily police routines and possible ways and internal channels to address them.

### **Prohibition or restriction of certain activities**

#### *Incompatibilities, outside activities and post-employment restrictions*

139. Pursuant to the Civil Servants Act, police officers and other civil servants working for the police may not establish a company or other legal person to operate in the field of activity in which s/he is employed as a civil servant or the field of activities under the jurisdiction of the body in which s/he is employed (Article 32, Civil Servants Act). Civil servants are, however, allowed to perform tasks or render services to a legal or natural person, if the activities or operations of the legal or natural person in question are not overseen by the state body for which s/he works or if this work is not prohibited by separate legislation and does not constitute a conflict of interests (Article 33, Civil Servants Act). Such outside activities are,

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<sup>64</sup> In cases of temporary transfer, police officers have the right to a one-off allowance (amounting to their average salary of the last three months before the transfer, seven days of paid leave for a visit to their family every three months and the reimbursement of travel expenses related to such visits, a monthly separation allowance if they support their family as well as adequate accommodation and allowances for meal costs)

however, only allowed to be performed with the permission of the head of the state body in question (with the exception of activities involving the publication of academic articles and other publications, lectures and consultations, for which no prior approval is required). Furthermore, a civil servant may not be a member of executive or supervisory bodies of companies or other legal persons if the latter are subject to oversight by the State body in which s/he is employed and may not conduct administrative oversight of companies or other legal persons in whose operation s/he participates. In addition, s/he is prohibited during working hours from encouraging other civil servants to join in the work of political parties.

140. The Police Act, which is a *lex specialis* to the Civil Servants Act, is however more restrictive than the Civil Servants Act and provides that police officers may not perform independent economic or professional activities or perform work or render services to a legal or natural person (Article 37, Police Act). Similar to the Civil Servants Act, exceptions can be made for work (independently or in a legal or natural person) outside regular working hours, if s/he has first obtained written approval of the Director General (or a person designated by him/her) and if the work does not affect the lawful and proper performance of police work. The procedure for authorising such outside activities is laid down in the Ordinance “On the procedure of issuing authorisation to a police officer for performing an independent economic or professional activity or providing services to a legal or natural person” (Official Gazette No. 34/2011).

141. Furthermore, the GET noted that police officers may not be members of political parties, be politically active within the Ministry or be a candidate in state or local elections (Article 38, Police Act).<sup>65</sup> A police officer who is found to be a member of a political party will be transferred to a vacant post as a civil servant in the Ministry of the Interior.

142. When discussing this issue on-site, the GET was told that it was quite common for police officers to perform other remunerated activities outside working hours, due to the relatively low salaries of police officers.<sup>66</sup> Authorisations for engaging in secondary activities are usually granted for a one year period (after which a police officer must again obtain written approval from the Director General) and are centrally registered. The GET learned that in authorising secondary activities particular attention was being paid to risks of conflicts of interest.

143. There are no post-employment restrictions for police officers and other civil servants working for the police. In this regard, the GET acknowledges that certain specialist skills and knowledge police officers can bring to the private sector can be invaluable and provide welcome employment opportunities for (former) police officers. At the same time, however, moves to the private sector by police specialists can entail certain risks (for example, that certain information gained in the police service is misused, that a police officer is influenced in the exercise of his authority by the hope or expectation of future employment or that communication channels with former colleagues are being used for the unwarranted benefit of the new employer). The GET points out that Recommendation No. R (2000) 10 on Codes of

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<sup>65</sup> In this context, the GET reminds the authorities of the [European Code of Police Ethics](#), which outlines that “Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.”

<sup>66</sup> Following the visit, the GET was informed that, in 2018, 414 authorisations were provided and, in 2019 (until November 2019) 315 authorisations.

Conduct for Public Officials includes special guidelines on leaving the public service (Article 26). As from the information gathered during the on-site visit, it was unclear how much of an issue this is in Croatia, **GRECO recommends that a study be conducted concerning the activities of police officers after they leave the police and that, if necessary in light of the findings of this study, rules be adopted to ensure transparency and limit the risks of conflicts of interest.**

### *Gifts*

144. The acceptance of gifts is prohibited pursuant to Article 17 of the Civil Servants Act, which provides that civil servants (including police officers) are “prohibited from seeking or receiving gifts for their personal gain, or for the gain of their family or an organisation, or for favourable settlement of an administrative or other proceeding”. The Code of Ethics for Police Officers additionally mentions “police officers do not seek any privileges for themselves or others and are determined to expose all forms of bribery and corruption”. In discussing this issue on-site, the GET was told that police officers cannot accept any gift, with the provisions on bribery being cited. The GET finds that the acceptance of gifts cannot only be seen from a criminal law perspective, as there may be a number of areas in which it is impossible to refuse a gift (e.g. during the visit of a foreign police delegation) or which would otherwise benefit from further guidance (hospitality, social courtesy gifts etc.). Further attention would thus need to be paid to this issue in the revision of the Code of Conduct and the guidance to be provided (e.g. practical scenarios and procedures for situations in which gifts are offered, reporting and registering of gifts etc.), as per recommendation xiii above.

### *Misuse of public resources*

145. The use of public resources for personal interests in the form of “unauthorised use of resources of the Ministry or using them for undesignated purpose” is considered a serious breach of official duties pursuant to the Police Act. It is also considered to be a violation of the Civil Servants Act, which provides that a civil servant is “obliged to use property entrusted to him/her for the purpose of performing his/her duties with due care and may not use this property for person gain or another illegal activity” (Article 24, Civil Servants Act). Any damage caused to the property of the police in service or pertaining to the service or “inflicted wilfully or due to extreme negligence” is to be compensated. The GET takes the view that this is yet another topic, which would benefit from being included in a revision of the Code of Police Ethics (for example as regards the use of official police vehicles, seized items etc.) as per recommendation xiii above.

### *Third party contacts, confidential information*

146. Unofficial contacts are not expressly prohibited, but police officers are bound by professional secrecy and any act that compromises the confidentiality of information or impartiality of police officers entails disciplinary or even criminal responsibility. To this end, the Police Act (Article 35) provides that police officers “shall keep confidential information learnt in the performance of work”. Information in this context refers to both “unclassified” and “classified” categorisations of information. Similarly, civil servants are obliged to maintain as a secret “all data to which they gain knowledge during procedures concerning clients and their rights and obligations and legal interests pursuant to law” and are to “maintain official or other secrets as specified by law or other regulations” (Article 21, Civil Servants Act). Misuse

of confidential information can in some cases rise to the level of crime if it pertains to so-called official secrets, pursuant to Article 300 of the Criminal Code (Disclosure of Official Secrets).

147. The GET heard on-site that attempts to access information for other purposes than an investigation was a problem in the Croatian police, as it is in many other countries (even if the GET notes that there are – as seen from the statistics below – relatively few cases dealing with this). The Internal Control Division would make use of IT logs, and follow up with inquiries to police officers as to why they access certain information. In most situations this reportedly would have a deterrent effect. As with various other issues mentioned above, protection of information, misuse of information and unauthorised access to certain information would also be an issue to be dealt with when implementing recommendation xiii above.

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements*

148. The Civil Servants Act *inter alia* provides that a civil servant (whether a police officer or other staff of the police) is obliged to provide a written report to his/her superior on 1) any financial or other interest in which s/he, his/her spouse or common-law partner, child or parent may have in the decisions of the state body in which s/he is employed, 2) any financial or other interest of natural or legal persons with whom s/he has had business dealings within a period of two years prior to his/her admission to the civil service and with which the state body in which s/he is employed is performing administrative operations 3) ownership of shares and bonds or financial and other interests in companies with which the state body in which s/he is employed is performing administrative operations and which may constitute a conflict of interest (Article 34, Civil Servants Act).

149. Prior to assuming his/her post the civil servant is also to report on any high-level posts his/her spouse, common law partner, child or parent holds in a political party, vocational association or company or other legal person engaged in operational relations with the state body in which the civil servant is assuming a post, or over which the state body is performing administrative or inspectorial oversight (Article 34, paragraph 4, Civil Servants Act). The superior of the civil servant in question is to examine the circumstances outlined in the notifications submitted by the civil servant and notify the head of the state body (i.e. in this case the Director General of the police), who can have the civil servant recuse him/herself from working in a particular area. In addition, the most senior post in the police, i.e. the Director General, is bound by the financial disclosure system of the LCI, as explained in paragraphs 79-82 of the first part of this report.

### **Oversight and enforcement**

#### *Internal oversight and control*

150. Internal control within the police is, first and foremost, the responsibility of the immediate superior of the police officer (or civil servant/employee) concerned. Furthermore, the Internal Control Division of the Ministry of the Interior examines the legality, professionalism and ethics of the work of police officers, other civil servants and employees of the Ministry of the Interior (in accordance with Ordinance “On the manner of implementation of internal control”). The GET was informed that the organisation of internal

control was revised substantially in March 2019, with the establishment of four dispersed units of the Internal Control Division situated in the biggest cities of Croatia (mirroring the system of Disciplinary Tribunals).

151. The Internal Control Division *inter alia* examines the legality of the powers exercised by staff of the Ministry, collects and analyses data on illegal and inappropriate conduct by staff of the Ministry, implements preventive measures, prepares cases for disciplinary proceedings and prepares documentation for the Complaints Committee. It acts on internal and external complaints, on the Minister's instruction (but only to look at a general area or topic, or – exceptionally – the conduct of the Director General), as well as *ex officio*. In general, prior to conducting internal control within the headquarters of the General Police Directorate, the Director General is to be informed. Likewise, the head of the police administration where internal control is carried out is to be informed. The Minister can order an internal investigation to be carried out into the conduct of police officers of the Internal Control Division and has to be notified prior to such investigations being carried out into the conduct of the Director General of the police.

152. The Internal Control Division can delegate some of its internal control activities to the police administrations, to police officers in charge of “lawfulness of conduct” who are hierarchically subordinate to the head of the police administration. The Minister of the Interior (or a person authorised by him/her) is responsible for overseeing internal control; the head of the police administration is responsible for the oversight of internal control carried out at a police administration.

153. Police officers of the Internal Control Division are high-ranking police officers having passed the state exam of professional competence and having completed a graduate degree in the area of social sciences, engineering or humanities. Given their access to classified documentation, they are subject to a security clearance every five years, in accordance with the Data Secrecy Act and the Security Clearance Act.

#### *External oversight and control*

154. External oversight over different parts of the work of the police is carried out by the Ombudsperson, who can act upon complaints by citizens. The GET heard that around 10% of the complaints the Ombudswoman received concerned the police. However, this mostly concerned police violence. In two cases, the Ombudswoman considered that a criminal offence may have been committed and referred these to the state attorney. These two cases did not concern corruption.

155. In addition, the Parliament performs oversight of police activities. Its Complaints and Grievances Committee can look into complaints by citizens or act on the basis of media reports and request a response from the competent authority. The GET was told that from the end of 2016 until April 2019, the Committee received 183 complaints on a wide variety of matters, involving various institutions (including at times the police). In addition, the National Security Committee would discuss the budget of the police and the annual report the Minister of the Interior is required to submit on the activities of the police. Furthermore, the amendments to the Police Act envisage that the to-be-established Complaints Committee (see below) will bring out an annual report to the Committee on Human and National Minority Rights of the *Sabor*.

## *Complaint system*

156. Pursuant to Article 5 of the Police Act (as amended in July 2019), any legal or natural person who believes that his/her rights and freedoms have been violated by actions of a police officer (or a failure to take action) can submit a complaint to the police administration where the police officer in question works, the Ministry of the Interior (if the police officers works at the headquarters of the ministry) or the head office in Zagreb of the Internal Control Division (which will then forward the complaint to the competent police administration or organisational unit of the Ministry).<sup>67</sup> All complaints, including anonymous ones, are to be registered in the “IS MUP” database of the Ministry of the Interior, allowing for statistical analyses and for the Internal Control Division to supervise the process of handling complaints by the respective police administrations and organisational units of the Ministry of the Interior, and for further preventive measures to be taken if the complaint refers to structural problems. In order to facilitate the process of submitting complaints, the Ministry of the Interior has published guidance to citizens on submitting complaints.

157. The head of the organisational unit to which the complaint relates will in principle always be the first instance to consider the complaints. Unless the complaint has been made anonymously, the complainant has to be informed within 30 days of the facts established and the measures that have been taken. If the complainant is not satisfied with this reply, s/he may appeal to the Internal Control Division, within 15 days thereafter. The Internal Control Division is in turn to inform the complainant within 30 days of possible additional investigations done and measures taken. The reply of the Internal Control Division may in turn be appealed to the Complaints Committee.

158. The recent amendments to the Police Act (which entered into force in July 2019) envisage the establishment of a central Complaints Committee, comprising nine citizens “enjoying a good professional and personal reputation”, appointed by the Parliament (on the basis of a proposal of the Parliamentary Committee for Human Rights and Right of National Minorities, following a public call and a proposal by professional and other civil society organisations).<sup>68</sup> Representatives of the Ministry of Interior will provide professional and assistance to Committee, but will (unlike initially foreseen) not sit on the Committee or participate in its proceedings. A further novelty is that the members of the commission will receive remuneration (five percent of the net salary paid in the Republic of Croatia in the previous year for their participation in Committee sessions, for each closed file) and are additionally subject to a security check.

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<sup>67</sup> Complaints are to be submitted in writing (by letter, fax or e-mail or handed over in person) within 30 days after the violation took place and are to include the name, surname and address of the complainant, the place, time and a description of the act concerned and a signature of the complainant. Citizens may also call the Internal Control Division, the Operations and Communication Unit of the police administration where the incident occurred or the toll-free special phone number of the Ministry of the Interior, where s/he will be given advice on what further actions to take. Before the July 2019 amendments to the Police Act complaints who could be submitted if a person found that someone else’s rights or freedoms had been violated.

<sup>68</sup> The previous Police Act envisaged complaints commissions in each police administration. However, discussing this issue on-site, the GET was told that the complaints commissions had in fact not been operational since 2015, with the exception of the one established at the headquarters of the Ministry of the Interior. In spite of repeated public calls, there were insufficient candidates to sit on the complaint commissions, which is why they have been replaced by a single, central complaints commission (which has as an added value that inconsistencies in resolution of complaints will be largely avoided).

159. The GET welcomes the efforts by the Croatian authorities to make the complaints system more operational, through the establishment of a single central commission of which the members are being paid. The most recent amendments to the Police Act address several misgivings the GET had about the previous system. In the view of the GET, external oversight of the police is a crucial tool to ensure full accountability of the police to the public. Not only should such oversight be independent but appear to be so for the public (especially considering the relative lack of trust in the Croatian police), and this is best achieved through a truly external body. It therefore welcomes in particular that the involvement of representatives of the Ministry of the Interior in the Complaints Committee has been substantially reduced to the extent that they only provide administrative support to the Committee (contrary to the ideas unveiled to the GET during the on-site visit). In light of the relative complexity of the system of complaints (i.e. a three-stage process of complaints and appeals, after which the complaint is referred back to the Internal Control Division, as well as the additional possibility of submitting complaints to the Committee of National Security of the Parliament), the GET finds it important that it be ensured that citizens are aware of the avenues to complain about the conduct of police officers. The GET therefore urges the Croatian authorities to properly communicate the available channels for complaints against the conduct of police officers to the public.

### **Reporting obligations and whistleblower protection**

#### *Reporting obligations*

160. Police officers and other staff of the police are required to report (suspected) corruption and other criminal offences, pursuant to Article 302, paragraph 2 of the Criminal Code, and are criminally liable if they do not report corruption they come across in the course of their duties.<sup>69</sup> Staff of the police can report such acts to their superior, to any other police officer or to the State Attorney's Office. The GET finds the lack of a requirement to report misconduct of a certain gravity (if it does not amount to a criminal offence) a weakness of the system, which needs to be remedied. The GET heard that very few disciplinary proceedings were initiated on the basis of reports within the police service (with mostly complaints by citizens being at the source of such proceedings), which could point to the prevalence of a "code of silence" in the Croatian police. Such a duty to report would usefully complement the new law on whistleblowing (adopted in July 2019). Consequently, **GRECO recommends that a requirement be established for police staff to report integrity related misconduct they come across in the service.** Such a requirement could well be part of a revised code of conduct, as recommended in paragraph 118.

#### *Whistleblower protection*

161. Article 14a of the Civil Servants Act provides that reporting corruption does not constitute a justified reason for a termination of employment. Furthermore, it outlines that in case the competent government body (in this case the Ministry of the Interior) deems the reported act to be a serious form of corruption, the civil servant reporting it is guaranteed

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<sup>69</sup> Paragraph 2 of Article 302 of the Criminal Code provides "(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on a public official or a responsible person who fails to report the commission of a criminal offense which he or she has come to know about in the course of performing his or her duties, provided that the criminal proceedings for the criminal offense in question cannot be initiated by private action or upon request."



anonymity, and protection against any kind of abuse or against limitation of his working rights. Abuse of the obligation to report corruption – such as actions taken by a superior officer resulting in a violation of the right to anonymity of the person reporting corruption, having his/her working rights restricted, or any other form of abuse due to the fact that s/he reported corruption – is considered a serious breach of official duty under the Civil Servants Act. The Croatian authorities indicated that they have not come across such cases in the police to date.

162. Moreover, after the visit by the GET, on 1 July 2019, the Act on the Protection of Reporters of Irregularities (Whistleblowers Act) entered into force. This law combines all legal standards for the protection of whistleblowers in one act (as a *lex specialis*), envisages a similar protection for people working in the private sector as people in the public sector. As such the law will also be applicable to the police (providing a broader protection than is envisaged by the Civil Servants Act, as described above). Before the end of 2019, all employers who have at least 50 employees are required to set up internal reporting channels, and have within three months thereafter to appoint a “trusted person” for internal reporting of irregularities on the proposal of at least 20% of the employees, in accordance with the procedures foreseen in the Act. In addition to internal reporting channels, the Act envisages the possibility of external reporting (to the Ombudsperson) as well as public disclosure. Whistleblowers are entitled to protection of their identity and confidentiality of their report, judicial protection and a possibility to claim compensation for any material and immaterial damages they have suffered. This protection can also be extended to persons associated with a whistleblower.

163. While it seems that the preparation of the Whistleblowers Act was not without criticism, the GET appreciates what seems to have been a thorough preparation of the new law, which has taken both [Recommendation CM/Rec\(2014\)7](#) of the Committee of Ministers of the Council of Europe on the protection of whistleblowers and the obligations of the new EU Directive (which was then still to be adopted) into account. It particularly welcomes various strong features of the law, such as the fact that “irregularities” include all breaches of the law, the detailed internal reporting provisions, the full reversal of the burden of proof in judicial proceedings, possibilities of public disclosure in certain circumstances and the designation of the Ombudsperson’s institution as the external reporting channel. Once the reporting and protection mechanisms have been used, the GET encourages the authorities to assess the effectiveness of the law, as stated in Recommendation CM/Rec(2014)7, to determine if there are any aspects which should be improved. In this connection, it would also be useful if the authorities keep the need for additional resources of the Ombudsperson to carry out the additional tasks assigned to this institution under the Whistleblowers Act under close review, given that the effective enforcement of the Whistleblowers Act could be to the detriment of other activities of this institution.

### **Enforcement procedure and sanctions**

#### *Disciplinary and other administrative proceedings*

164. The Police Act distinguishes between two types of disciplinary offences: minor and serious breaches of duty. Minor breaches carry sanctions in the form of a written caution or a fine in an amount of up to 10% of the last salary (for a full month’s work) (Article 95 of the Police Act).<sup>70</sup> The GET was told that integrity issues would usually be regarded as a serious

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<sup>70</sup> Minor breaches of duty involve being late for work or leaving the work place early; leaving the work place during working hours without the permission of the superior officer or for unjustified reasons; irregular or

breach of duty.<sup>71</sup> For serious breaches of duty (Article 96 of the Police Act) the following sanctions can be imposed: a fine in an amount of up to 20% of the last salary (for a full month's work) for a period from one to six months, freezing of a promotion in rank or service for a period of two to four years, transfer to another job for a period of two to four years, conditional dismissal from service or dismissal of service. The latter sanction is mandatory for serious breaches of duty with the characteristics of corruption.

165. The GET was told that most disciplinary proceedings stem from complaints. Disciplinary investigations are conducted by the Minister's Office, the Internal Control Division or police officers "in charge of lawful conduct" in the police administrations, in accordance with the Ordinance on disciplinary responsibility of police officers. Police officers suspected of a serious breach of duties have an opportunity to provide a written and signed statement before the case is referred to a Disciplinary Tribunal.

166. Disciplinary proceedings in cases of minor breaches of duty are conducted by the minister or competent manager and in cases of serious breaches of duty before the Disciplinary Tribunal of the Ministry of the Interior (for police officers) or the Civil Service Tribunal (for other civil servants) (Articles 97-98, Police Act). In case of serious breaches of duty by a police officer, the proceedings always involve an oral hearing, where the police officer in question can present evidence. Police officers can have legal representation and/or can ask for assistance from their trade union in representing their case before the Disciplinary Tribunal. The Disciplinary Tribunal in first and second instance is composed of a panel of a president and two members, who are all employees of the Ministry of the Interior (and perform this function professionally). Appeals against can be lodged with the Disciplinary Tribunal (which is a second instance body in both the proceedings for minor breaches of duties and – in a different composition than in the first instance – for serious breaches of duties) within 15 days of a decision having been taken. This can be followed by proceedings before an administrative court, in case the second instance decision is disputed.

#### *Criminal proceedings and immunities*

167. Police officers do not enjoy immunity or other procedural privileges. They are subject to ordinary criminal procedures. In case of suspicion that a police officer has committed a criminal offence, the criminal police is to take over the criminal investigation, which is to be conducted by the organisational unit assigned for this purpose by the Director General (which cannot be the same organisational unit where the person in question is employed). The Director General is to designate (in writing) which criminal investigation unit is to carry out

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irresponsible behaviour with police resources or official documents, disrespectful conduct towards citizens or colleagues during working hours; unexcused absence from work for one day; disorderly appearance or wearing the police uniform in an unauthorised manner; other breaches of official duty prescribed by secondary legislation.

<sup>71</sup> Serious breaches of duty involve a failure to perform, or irresponsible, untimely or negligent performance of official obligations; unlawful work or failure to take measures and actions which an officer is authorised to take in order to prevent unlawful activities; abuse of official position, both on duty and off duty, or exceeding authority whilst on duty; refusal to undertake a task for no justified reason; revealing information referred to in Article 35 of the Police Act to unauthorized persons; carrying out independent economic or professional activity in violation of the provisions of Article 37 of the Police Act; inappropriate behaviour on duty or off duty, when it harms the reputation of the police service; unexcused absence from work for two to four consecutive days; unauthorised use of the resources of the Ministry or their use for undesignated purposes; refusal or avoidance of obligations related to professional training and education or refusal to undergo testing of mental and physical abilities and special physical motor skills prescribed by special ordinances.

the investigation, depending on the hierarchical position of the police unit of the police officer in question and the severity and type of crime, in accordance with the Ordinance on the manner in which police officers are treated (Official Gazette, No. 89/10 and 76/15). In addition, especially if it concerned high-level police officers the State Attorney’s Office or USKOK (for corruption) would take over such investigations.

*Statistics*

*Disciplinary offences (breaches of professional duty)*

	2015	2016	2017	2018
<b>POLICE OFFICERS</b>	<b>7</b>	<b>18</b>	<b>6</b>	<b>10</b>
<i>Accepting gifts</i>	0	0	0	0
<i>Disclosing confidential information</i>	1	1	1	2
<i>Performing external activities</i>	2	7	4	5
<i>Use of confidential resources for undesignated purposes</i>	4	10	1	3
<b>OTHER POLICE STAFF</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
<i>Accepting gifts</i>	0	0	0	0
<i>Breach of official or other secrecy</i>	1	0	0	0

168. For the breaches of professional duty mentioned above various sanctions were imposed on police officers, such as a formal notice (which was imposed once in 2015, 2016 and 2017), fines (four in 2015, ten in 2016, four in 2017 and three in 2018), transfers to another post (two in 2016), conditional terminations of civil service (one in 2015, three in 2016, one in 2017 and three in 2018) and termination of civil service (one in 2015). In some cases (two in 2016 and one in 2018), no further action was taken and/or the responsibility of the police officer had not been determined and, in three cases from 2018, the process of determining disciplinary accountability was still on-going. In the one case involving a staff member who was not a police officer in 2016, s/he was fined for breach of official or other secrecy.

*Number of police officers reported for criminal offences (2016-2018)<sup>72</sup>*

	2015	2016	2017	2018
<b>Corruption-related offences</b>	<b>60</b>	<b>36</b>	<b>13</b>	<b>13</b>
- <i>Abuse of position and power</i>	43	22	10	9
- <i>Taking a bribe</i>	11	12	1	4
- <i>Giving a bribe</i>	1	1		
- <i>Giving a bribe for trading in influence</i>	1		1	
- <i>Trading in influence</i>	3		1	
- <i>Criminal conspiracy</i>	1	1		
<b>Other offences</b>	<b>16</b>	<b>17</b>	<b>8</b>	<b>12</b>
- <i>Bodily injury (para. 2)</i>	3	6	1	1
- <i>Unlawful deprivation of liberty (para. 3)</i>		1		
- <i>Violation of the inviolability of the home and business premises (para. 2)</i>	1			
- <i>Illegal use of personal data (para. 3)</i>	1	2		
- <i>Unauthorised manufacturing of and trafficking in illicit drugs (para. 3)</i>	1			1
- <i>Unauthorised performance of an official act</i>	1			
- <i>Aggravated theft (para. 1, item 10)</i>	1			

<sup>72</sup> “Reported” in this context means that a criminal complaint has been filed against a police officer by the competent State Attorney’s Office.

- <i>Disclosure of an official secret</i>		1		
- <i>Obstruction of justice (para. 2)</i>	1			
- <i>Insurance misuse</i>		1		
- <i>Abuse of trust in business dealings</i>		1		
- <i>Forging official or business documents</i>	7	4	7	8
- <i>Failure to report the commission of a criminal offence</i>				1
- <i>Taking or destroying an official seal or official document</i>				
- <i>Extortion of testimony (Art. 297, para. 1)</i>		1		1
- <i>Unlawful entry into, movement and stay in Croatia (para. 2)</i>				
<b>TOTAL</b>	<b>76</b>	<b>53</b>	<b>21</b>	<b>25</b>

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

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

*Regarding central governments (top executive functions)*

- i. that the legal status, recruitment and obligations of special advisers and others working in an advisory capacity for the government be regulated, ensuring that they undergo an integrity check upon selection, that their names, functions and possible remuneration (for the tasks they carry out for the government) are made public and that appropriate regulations on conflicts of interest and use of confidential information apply to them (paragraph 29);**
- ii. (i) that a code of conduct for persons with top executive functions be adopted, complemented with clear guidance regarding conflicts of interest and other integrity-related matters (e.g. gifts, outside activities, third party contacts, post-employment restrictions, financial declarations, handling of confidential information etc.) and (ii) that such a code be coupled with a mechanism of supervision and enforcement (paragraph 41);**
- iii. that (i) systemic briefings on integrity issues be imparted to persons with top executive functions upon taking up their positions and at certain intervals thereafter and (ii) confidential counselling on integrity issues be established for them (paragraph 46);**
- iv. that measures be taken to strengthen the enforcement of decisions adopted by the Information Commissioner in accordance with the Law on the Right of Access to Information (paragraph 51);**
- v. that (i) rules be introduced on how persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence governmental legislative and other activities; and (ii) sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 53);**
- vi. that a requirement of *ad hoc* disclosure be introduced in respect of persons entrusted with top executive functions in situations of conflicts between private interests and official functions, when they occur (paragraph 65);**
- vii. that post-employment restrictions be broadened in scope in respect of persons with top executive functions (paragraph 78);**

- viii. **obliging persons with top executive functions to submit their financial declaration to the Commission for the Prevention of Conflicts of Interest on an annual basis (paragraph 82);**
- ix. **further improving possibilities for the Commission for the Prevention of Conflicts of Interest to obtain information necessary for the verification of financial declarations (including by giving the Commission the authority to oblige officials to hand over requested information) (paragraph 88);**
- x. **that (i) the available sanctions for violations of the Law on the Prevention of Conflicts of Interest be reviewed, to ensure that all violations of the Law have proper consequences and (ii) the proportionality of sanctions under the Law be clarified (paragraph 94);**
- xi. **that the Law on Government be amended to limit the procedural immunity provided to members of the government, by excluding corruption-related offences which are subject to public prosecution (paragraph 99);**

*Regarding law enforcement agencies (Police and Border Guard)*

- xii. **that (i) the practice of paying fines directly in cash to police officers be abandoned and (ii) a comprehensive risk assessment of corruption prone areas and activities be undertaken in the police, to identify problems and emerging trends, and that the data is used for the pro-active design of an integrity and anti-corruption strategy for the police (paragraph 111);**
- xiii. **that (i) the Code of Ethics for Police Officers is updated and covers in detail all relevant integrity matters (such as conflict of interest, gifts, contacts with third parties, outside activities, the handling of confidential information), supplemented with a manual or handbook illustrating all issues and risk areas with concrete examples; (ii) the Code of Ethics be made known to the public (paragraph 118);**
- xiv. **that both the initial and in-service training of police officers on ethics and integrity matters be considerably enhanced, taking into consideration the specificity of their duties and vulnerabilities, as provided in a future code of conduct or ethics (paragraph 121);**
- xv. **that possibilities to further improve the current appointment and promotion processes within the police be explored, with a view to improving the objectivity and transparency of decisions, paying particular attention to the representation of women in the police at all levels (paragraph 133);**
- xvi. **that a study be conducted concerning the activities of police officers after they leave the police and that, if necessary in light of the findings of this study, rules be adopted to ensure transparency and limit the risks of conflicts of interest (paragraph 143);**

**xvii. that a requirement be established for police staff to report integrity related misconduct they come across in the service (paragraph 160);**

170. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Croatia to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2021. The measures will be assessed by GRECO through its specific compliance procedure.

171. GRECO invites the authorities of Croatia to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

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## About GRECO

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

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

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