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ANNEX 11

ANNEX

CROATIA

to the

EU Anti-Corruption Report

CROATIA

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. In recent years, with intensive reforms in preparation for its accession to the EU, Croatia has invested considerable efforts in establishing a wide-ranging legal and institutional anti-corruption framework so as to foster a more comprehensive approach. It has put in place a number of anti-corruption strategies, the most recent in 2008¹, accompanied by action plans that have been subsequently updated, including in 2013.² While covering a wide range of objectives, the strategy and its action plans would have benefited from a more unitary vision. Also, most of the measures as well as deadlines, budget and responsibilities, are insufficiently defined. Further amendments were made to the action plans in 2013, adding more detailed operational measures notably with regard to the verification tools concerning conflict of interests and asset declarations, monitoring of political party funding and prevention of corruption in public procurement. Currently, there is a clear imbalance between repression and prevention of corruption, to the detriment of the latter.³

Legal framework. As highlighted by the Commission's last Monitoring Report on Croatia's accession preparations, 'the legal framework for the suppression of corruption and organised crime is adequate.'⁴ A new criminal code which increased the level of sanctions for some corruption offences entered into force on 1 January 2013. The legal framework for the prevention of corruption has also largely improved, including on aspects relating to access to information, asset disclosure and public procurement. A reformed criminal procedure code was adopted in late 2008 aimed, *inter alia*, at enhancing the efficiency of proceedings. The code was subsequently amended several times, the most recent and extensive amendments entering into force in December 2013. These latest amendments aimed to align the code with an earlier decision of the Constitutional Court⁵ which declared that a number of its provisions were unconstitutional. Nevertheless, the new amendments also drew public criticism, including from some representatives of the judiciary, as to their potential to make investigations more cumbersome and lead to delays in concluding criminal proceedings in complex corruption and organised crime cases.

Institutional framework. Specialised prosecution services (i.e. Bureau for Combating Corruption and Organised Crime–USKOK) and the more recently established specialised police for the fight against corruption and organised crime (PNUSKOK) are now well equipped to carry out effective investigations. They have proven to be proactive, and have developed a good track record of investigations into allegations of high-level corruption. However, at judicial level, corruption-related crimes are frequently punished with low or even conditional sanctions, creating a climate of impunity.⁶ The recent first instance conviction of a former prime minister for corruption and the ongoing criminal proceedings against a number of former ministers illustrate allegedly illegal links between politicians and businesses, often

1 Anti-Corruption Strategy. Official Gazette No: 75/2008: <http://narodne-novine.nn.hr/default.aspx>.

2 Ministry of Justice (2008) Action Plan of the Anti-Corruption Strategy: <http://www.antikorupcija.hr/Default.aspx?sec=502>

3 This is also supported by the findings of the European Commission's Monitoring Report on Croatia's accession preparations of March 2013: http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

4 http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

5 Decision of the Constitutional Court of the Republic of Croatia No. U-I-448/2009 from July 19, 2012. Official Gazette 091/2012:

<http://cadial.hidra.hr/searchdoc.php?query=&lang=hr&annotate=on&bid=tOF7aAnPaLBnOASNxDMOaw%3D%3D>

6 The European Commission's Monitoring Report on Croatia's accession preparations of March 2013:

http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

related to public procurement. On the other hand, the high-level investigations also signalled that there is a will to prosecute high-level corruption. The sustainability of this trend will need to be assessed on a longer time perspective. Challenges still remain, notably when it comes to the effectiveness of the institutional framework and internal control mechanisms at both central and local levels, and the inter-institutional coordination, both horizontal and vertical, of anti-corruption policies.

Opinion polling

Perception surveys. According to the 2013 Eurobarometer Survey on Corruption, 94% of the Croatian respondents believe that corruption is widespread in their country (EU average: 76%).⁷ 55% believe that corruption affects their daily lives (EU average: 26%). 89% of the respondents say that bribery and the use of connections is often the easiest way to obtain certain public services in Croatia (EU average: 73%). A 2011 study conducted by the United Nations Office on Drugs and Crime (UNODC) revealed that Croatian citizens rank corruption as the third most important problem⁸ facing their country.⁹ The same study showed that 16% of those interviewed secured a job in the public administration with the help of a bribe.¹⁰ In the 12 months prior to the UNODC survey, 18% of Croatian citizens had either direct or indirect exposure to a bribery experience involving a public official. According to the study, the healthcare sector and the police are particularly vulnerable to petty corruption in Croatia.

Experience of corruption. 6% of the Croatian respondents to the 2013 Eurobarometer Survey on Corruption admitted that over the past 12 months they were asked or expected to pay a bribe for services (EU average: 4%).

Business surveys. According to the 2013 Eurobarometer Business Survey on Corruption,¹¹ 81% of Croatian businesses believe that favouritism and corruption hamper business competition in Croatia (EU average: 73%), while 59% say that corruption is a problem for their company when doing business (EU average: 43%). According to the 2013–14 Global Competitiveness Report, corruption is mentioned as the third most problematic factor¹² for doing business in Croatia.¹³

Background issues

Access to information. Croatia adopted dedicated legislation on the right to access public information already in 2003 and subsequently amended it in 2010 and 2011.¹⁴ The results of testing the law by Transparency International remained somewhat mixed: while most information about anti-corruption policies, conflict of interests and licensing was made available, no information at all was provided on privatisation, and little information on public procurement and the financing of political parties has been made available over time.¹⁵ A new

7 2013 Special Eurobarometer 397.

8 The first two being unemployment and performance of the Government.

9 Corruption in Croatia: bribery as experience by the population. UNODC Vienna and the Institute of Economics, Zagreb. 2011. http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Croatia_corruption_report_web_version.pdf

10 Corruption in Croatia: bribery as experience by the population. UNODC Vienna and the Institute of Economics, Zagreb. 2011. http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Croatia_corruption_report_web_version.pdf

11 2013 Flash Eurobarometer 374.

12 The first two being inefficient government bureaucracy and policy instability.

13 http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf.

14 Right to Access Information Act. Official Gazette No: 172/03, 144/10, 37/11, 77/11: <http://narodne-novine.nn.hr/clanci/sluzbeni/307079.html>.

15 Access Info Europe - Anti-Corruption Transparency Monitoring Methodology. A practical guide to using the right of access to information for preventing and exposing corruption. October 2011. <http://www.access->

law on access to information was adopted in February 2013, introducing proportionality and public interest tests in all cases of denial of access to information, implementing the EU *acquis* on the re-use of information and establishing a new independent body (the Information Commissioner) for monitoring its implementation.¹⁶

Financing of political parties. Croatia made considerable efforts to meet all the recommendations of the Council of Europe Group of States against Corruption (GRECO) on transparency in political funding. In 2011 and December 2013, GRECO stated that all its recommendations in this area had been satisfactorily fulfilled by Croatia.¹⁷ New legislation was adopted to enhance the transparency of general party funding and supervision of the annual financial reports of political parties.¹⁸ In addition, independent lists and candidates had been complemented by specific campaign finance monitoring carried out by the State Audit Office and the State Election Commission, while the criminal sanctions for violations of the political funding provisions had been complemented with more flexible administrative sanctions. In February 2013, new amendments to the Act on the Financing of Political Parties and Electoral Campaigns were adopted, simplifying the overall regulation and streamlining financial information.¹⁹ The State Election Commission and the State Audit Office notified the State Attorney's Office of cases of non-submission or non-publication of financial reports for 2011. The overall verification and sanctioning systems are still to prove their effectiveness, notably as regards electoral campaigns at local level. Verifications regarding the financing of the 2013 local elections' campaign are ongoing. Some steps have already been taken to strengthen the enforcement of dissuasive sanctioning in the event of political parties failing to submit financial reports. In one case, the ruling party was fined for submitting its report only a couple of days late. In 2013, the Ministry of Finance adopted a regulation widening the scope of the obligations on keeping records, issuing confirmations of receipt of donations and membership fees, and keeping election campaign expense reports and financial statements.²⁰

Transparency of lobbying. Lobbying is not regulated in Croatia. There is no obligation for lobbyists to be registered and no transparency standards are set in this field. Although over time there has been some reflection at government level on the possible regulation of lobbying, no legislative initiative has materialised to date. Some ad-hoc initiatives are being implemented, such as that of the Croatian Society of Lobbyists consisting of 80 members, which has taken steps to promote ethics and transparency in lobbying activities, including the setting-up of a voluntary registration system.²¹

Organised crime poses particular challenges in Croatia.²² Corruption is used as a facilitator in this context (e.g. letting a shipment pass the border unchecked or laundering proceeds of crime by reinvesting them in real estate).²³ A recent study estimated that the shadow economy reached 29.5% of GDP in 2012 in Croatia.²⁴ Being situated on the 'Balkan Axis', Croatia is a

info.org/documents/Access_Docs/Using/Anticorruption/Anti_Corruption_Transparency_Monitoring_Methodology_25_Oct_2011.pdf

16 Right to Access Information Act, Official Gazette No. 25/13 of 28 February 2013.

17 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)12_Croatia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)12_Croatia_EN.pdf) and [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)28_Second_Croatia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)28_Second_Croatia_EN.pdf)

18 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)12_Croatia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)12_Croatia_EN.pdf)

19 Political Activity and Electoral Campaign Financing Act. Official Gazette No: 24/11, 61/11, 27/13.

20 Ministry of Finance (2013) Regulation on amending and widening of the regulation on keeping records and issuing confirmations on receipts of voluntary contributions (donations) and membership fees, reports on received donations for campaign finance and expense reports (expense) of election campaign and financial statements for campaign finance. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_55_1124.html.

21 OECD (2012), Lobbyists, Governments and Public Trust, Volume 2: Promoting Integrity through Self-regulation, OECD Publishing. <http://dx.doi.org/10.1787/9789264084940-en>

22 http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf

23 Croatia: Corruption, Organized Crime and the Balkan Route. By Katelyn Foster, Research Associate, Adriatic Institute for Public Policy. January 25, 2012 <http://adriaticinstitute.org/?action=article&id=32>

24 http://ec.europa.eu/europe2020/pdf/themes/06_shadow_economy.pdf.

transit country (and to a lesser extent a country of origin) for the trafficking of persons and a range of illicit commodities, including drugs, arms and cigarettes.²⁵ Following its accession to the EU, the risk of the country becoming also a country of destination may increase. Specialised law enforcement and prosecution services have been set up to target organised crime activities. While their track record of investigations has improved slightly over time, the Commission's March 2013 Monitoring Report concluded that 'overall the level of sentences in organised crime cases remains low.'²⁶

2. ISSUES IN FOCUS

Conflict of interest and asset disclosure

Croatia has had a dedicated Conflict of Interest Prevention Act since 2000 which was substantially amended in 2010, 2011 and 2012, notably with regard to the scope of provisions, the disclosure obligations, the verification procedures and the sanctioning regime.²⁷ The Act applies to high-level elected and appointed officials at both central and local level. It also provides for cooling-off periods after officials have left public office and for the obligation to disclose assets. Annual asset declarations to be submitted by public officials must include assets owned by spouses and dependent children.

The criminal code criminalises certain acts relating to conflict of interests, notably abuse of office by a public official who gives preferential treatment in a competitive process in order to obtain pecuniary gain.²⁸ The number of successful prosecutions on such charges is very low however.²⁹

In spite of the existence of dedicated legislation, the verification mechanisms concerning the wealth and assets of public officials and the corresponding sanctioning systems have still not shown their effectiveness.³⁰

A Commission for the Resolution of Conflicts of Interest was set up in 2003, following the first piece of legislation on conflict of interests. Members must have an apolitical profile (i.e. no affiliation to political parties) and a good reputation. Currently, the Commission for the Resolution of Conflicts of Interest has five members appointed by Parliament and is tasked with verifying the compliance of elected and appointed officials with their obligations under the Conflict of Interest Prevention Act, notably as regards conflict of interests and asset declarations. The Commission for the Resolution of Conflicts of Interest had a poor track record up to the end of 2011, when its members' mandate expired. The level of the sanctions applied at the time was low, with little or no deterrent effect.³¹ Only four decisions were taken within this reference period to cut officials' monthly salary (the most severe sanction applied at the time),³² the highest sanction amounting to around EUR 2 700.³³

25 https://www.europol.europa.eu/sites/default/files/publications/octa_2011_1.pdf

26 http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

27 Conflict of Interest Prevention Act. Official Gazette No: 26/11, 12/12.: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.html

28 Article 338 of the Croatian Criminal Code.

29 Only three reported convictions between 2009 and 2011: <http://expertforum.ro/wp-content/uploads/2013/03/Conflicts-of-interest-and-incompatibilities-in-Eastern-Europe.-Romania-Croatia-Moldova.pdf>.

30 The European Commission's Monitoring Report on Croatia's accession preparations of March 2013: http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf

31 Of 342 decisions issued by the Commission between 2006 and 2011, only 19 were related to conflict of interests, while all others concerned breaches of asset disclosure obligations (following administrative checks) or incompatibilities.

32 The rest of the sanctions consisted of reprimand (2) and publication of Commission decisions at the expense of the official (9): <http://expertforum.ro/wp-content/uploads/2013/03/Conflicts-of-interest-and-incompatibilities-in-Eastern-Europe.-Romania-Croatia-Moldova.pdf>

33 Three of these pecuniary sanctions concerned the same mayor.

With the entry into force of substantial amendments to the Conflict of Interest Act in March 2011, a new Commission for the Resolution of Conflicts of Interest was to be established within 90 days. The new Commission was appointed by Parliament only in January 2013 and took office in early February 2013.³⁴ Previously, it only performed administrative checks of asset declarations.³⁵ In its new composition, the Commission was tasked with checking asset declarations on substance (i.e. the origin of assets and truthfulness of statements), although it is not yet entirely clear how this is being done in practice.

Apart from a number of opinions issued at officials' request, the Commission for the Resolution of Conflicts of Interest reported that 79 proceedings on conflict of interests had been initiated as of mid-April 2013, of which 21 had been concluded. As with asset declarations, there is no clarity as to the detailed verification methodology applied by the Conflict of Interest Commission. It has adopted an ordinance on the working methodology that covers general aspects of organisation but does not spell out the detailed verification methods to be followed, the type of data to be checked and the tools to be used for this purpose. It is unclear how verifications are prioritised, and how specific account is taken of particularly vulnerable positions or targeted checks considered where conflict of interest risks seem higher (e.g. at local level).

The Conflict of Interest Prevention Act provides for limited sanctions applicable in case of breach of obligations regarding conflict of interest or asset disclosure, ranging from reprimand to reductions in salary and the publication of the decisions of the Conflict of Interest Commission. Soon after the adoption of the Conflict of Interest Prevention Act in 2011, a political party filed an unconstitutionality claim with the Constitutional Court. At the end of 2012, the Court repealed a number of provisions referring to the powers of the Conflicts of Interest Commission which it found to be in contravention of the principle of separation of powers.³⁶ Following this ruling, several competences of the Conflict of Interest Commission were repealed, in particular its power to issue decisions that can trigger dissuasive sanctions, including its right to call on employers to initiate procedures to dismiss officials found to be in serious breach of the law. Another issue covered by the ruling was access to data, in particular bank data. The Court found that the Conflict of Interest Commission was not specialised in taxation, financial and accounting services and that it is not its duty to establish whether office-holders have declared incorrect and untrue data for the purpose of keeping secret the size of their property. According to the Constitutional Court, this falls within the jurisdiction of the courts only.

A working group involving public authorities and civil society was set up a few months after the ruling, at the beginning of 2013, to consider possible new amendments to the Conflict of Interest Prevention Act that would still guarantee an effective verification and sanctioning mechanism, while complying with the Constitutional Court decision. The prerogative of proposing such legislative amendments belongs to the Commission for the Resolution of Conflicts of Interest, which announced that it would rather establish a solid track record before developing any such proposals.

The Commission for the Resolution of Conflicts of Interest cannot annul contracts or repeal decisions taken in breach of the Conflict of Interest Prevention Act. Separate civil action is

34 The uncertainty about the setting up of the Commission over the past two years also led to additional ambiguity on the scope of its verification powers over time: i.e. it was not entirely clear whether, once fully operational, the Commission will also check retroactively the declarations of interests and assets of the officials who ended their mandate in 2011. Once set up, the Commission gave assurances that such verifications will be carried out.

35 i.e. verifications as to whether the asset declaration templates were filled in as required by law and whether they were submitted on time.

36 Constitutional Court of the Republic of Croatia (2012), Decision on constitutionality of the Conflict of Interest Prevention Act, Official Gazette No: 126/12.

needed in such cases. The Commission cannot submit in court a request for seizure or confiscation of unjustified wealth (the only public authority that may do so is the public prosecutor). Some recent cases, such as that of a former minister of tourism who resigned as a result of a failure to accurately declare the assets of his spouse, have shown that political accountability may play an important role in ensuring effectiveness of the verification mechanisms.

The Commission's 2013 Monitoring Report stressed that 'Croatia needs to ensure that immediate measures are taken to put in place a strong and effective mechanism for preventing, detecting and sanctioning conflict of interest cases, based on thorough checks and deterrent sanctions'.³⁷ At present, the verification powers of the Conflict of Interest Commission rely heavily on the competences and proactiveness of other authorities such as the tax administration. The Croatian authorities nevertheless stress that cooperation among these bodies has been working smoothly. While it is indeed important to have a clear separation between the verification and enforcement powers granted to the Conflicts of Interest Commission and those of other (tax administration, law enforcement, prosecution) authorities, the setting up of a specialised structure for checking the interests and wealth of public officials should serve the purpose of prioritising checks that cannot be covered in a systematic manner by the other institutions. All authorities must cooperate closely, while also having their own adequate powers and tools, including access to relevant information and databases, and the power to impose deterrent sanctions.

The Conflict of Interest Commission is working on setting up its own databases and integrated registers that would comprise relevant data regarding public officials and legal entities in which public officials may hold interests; this would allow them to carry out verifications more swiftly. The national anti-corruption action plan also provides for the development of more user-friendly electronic forms for asset declarations that would facilitate registration and cross-checking.

For civil servants (at both central and local level), conflicts of interest and asset disclosure are regulated by other pieces of legislation.³⁸ Breach of these rules is treated as any other breach of duty, disciplinary sanctioned with reprimand up to demotion and termination of service, depending on the seriousness of the deed. The top management of the central or local authority where the civil servant is employed is responsible for such disciplinary procedures. In cases of severe breaches, the Civil Service Tribunal and High Civil Service Tribunal, both appointed by government, may decide at first instance and on appeal.³⁹ Consistency of disciplinary procedures in such cases, including clarity on the role of internal control mechanisms or ethics commissioners within each public administration authority pose challenges in practice.⁴⁰

Conflicts of interests in the judiciary are governed by its statutory legislation and supervised by the Judicial Council and the State Prosecutorial Council. Recent amendments to the legislation on the organisation of the judiciary require that the asset declarations of judges and prosecutors are made public. Over 20 disciplinary sanctions were applied for non-disclosure of declarations. Decisions on conflicts of interest and asset declarations in the judiciary are scarce.

37 http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

38 Civil Servants Act, Law on Public Administration and Law on Civil Servants and Employees in Local and Regional Government.

39 Administrative procedures.

40 <http://expertforum.ro/wp-content/uploads/2013/03/Conflicts-of-interest-and-incompatibilities-in-Eastern-Europe.-Romania-Croatia-Moldova.pdf>.

The Commission's 2010 Progress Report stated that 'the concept of conflict of interest is still little understood in Croatia'.⁴¹ Since then, some efforts have been made to raise awareness. Guidelines on Conflicts of Interest for Public Officials were issued in September 2011, which also provided instructions on the submission of asset declarations. While this is laudable, a more proactive approach to raising awareness and increasing training is needed, notably at local level and within state-owned and state-controlled companies, where the risks associated with conflicts of interest are higher. The issue of conflicts of interest is especially important with regard to these companies, given the share of the Croatian public sector in the overall economy (which is still significant), the prominence of these companies and the challenges they are facing with regard to appropriate resource allocation and efficiency of operations.

Integrity in public administration

A number of safeguards are in place (e.g. code of ethics for civil servants, hotlines to report corruption, internal control mechanisms in most of the public administration bodies) to ensure integrity within the Croatian public administration. Still, according to the 2013 Special Eurobarometer on Corruption, 89% of the Croatian respondents considered that bribery and the use of connections is often the easiest way to obtain certain public services in Croatia (EU average: 73%).⁴² With the appointment of each new government, systematic reshuffles of public officials in mid-management positions create a climate of instability and contribute to the perception of favouritism in the public administration. The Commission's 2011 Monitoring Report underlined the need to 'improve the professionalism of the public service' and the need 'to address the administrative capacity constraints'.⁴³ In the 2013 Report, the Commission called for the completion of a new legal basis for a professional civil service through a salary system that would ensure merit-based promotion and retention of skilled staff.⁴⁴ The draft legislation is now in preparation at government level and consultations with the trade unions are ongoing.

As regards state-owned companies, legislative amendments were adopted at the beginning of 2012 whereby, although the same general criteria for recruitment were maintained, the previous competitive selection procedure for the supervisory boards was replaced with direct political appointments.⁴⁵ While public officials covered by the Conflict of Interest Prevention Act cannot be members of these supervisory boards, members of their political parties can. Some general criteria apply to the background of the nominees for such position, but these do not relate to expertise in that particular field or experience on similar boards. It is not entirely clear how ex ante and ex post integrity checks are carried out for these appointments or how actual, potential or apparent conflicts of interests are checked before and after the appointment.

The Commission's 2012 Monitoring Report stressed that 'Croatia needs to ensure that a strong system is in place for preventing corruption in state-owned companies'.⁴⁶ The Monitoring Report of March 2013 noted that there was no further progress.

Moreover, the state-owned companies have discretionary rights to make donations or grant sponsorships without following transparent and competitive procedures. It should be noted that there is a total ban on state-owned companies making donations to political parties or to politicians. A 2012 report on state-owned companies showed that such donations/sponsorships

41 http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/hr_rapport_2010_en.pdf.

42 2013 Special Eurobarometer 397.

43 http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf.

44 http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

45 Conflict of Interest Prevention Act. Official Gazette No: 26/11, 12/12: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_26_547.html.

46 http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf.

were as high as EUR 20 million. The updated anti-corruption action plan provides for the laying down of criteria, benchmarks and procedures for the transparent allocation of sponsorship through public company donations to associations and NGOs. The Government is therefore currently working on a set of guidelines regarding the transparency of donations and sponsorship in state-owned and state-controlled companies. The Ministry of Justice has started monitoring and publishing a list of donors and sponsors from local state-owned and state-controlled companies.⁴⁷ These companies have an obligation to develop anti-corruption action plans and to publish online a list of beneficiaries of donations and sponsorships.⁴⁸ It is not yet clear how the implementation of these action plans will be monitored.

Integrity of elected and appointed officials

A number of recent cases indicate that ethics in politics remains an outstanding issue, but also illustrate a relatively solid track record of USKOK investigations into allegations of high-level corruption at both central and local level. Several former ministers (e.g. a former minister of defence, a former deputy prime minister and minister of economy, a former minister of the interior, and a former minister of agriculture), and a political party have been investigated for corruption-related offences. In November 2012, a former prime minister was convicted at first instance to 10 years' imprisonment for receiving a commission from a bank and bribe taking in exchange for controlling rights in an oil company.

Cases against high-level officials at local level (i.e. mayors, heads of municipalities), some of which resulted in convictions, revealed corrupt practices at the interface between politicians and businesses, notably in areas such as urban planning, land acquisition, exchange of land, construction and the granting of loans. USKOK is able to carry out impartial investigations into allegations of corruption irrespective of the political affiliation or connections of those involved. However, final court decisions against high-level officials remain scarce.

Currently there are no codes of conduct for elected officials at central and local level. Such codes of conduct, accompanied by regulatory provisions on sanctions applicable in case of breaches of ethical rules, would enhance integrity and accountability standards and ensure a wider range of non-criminal sanctioning of unethical behaviour to the detriment of the public interest. Given the particularities of non-criminal sanctions applicable to elected officials as compared with other categories of public official (i.e. appointed officials, civil servants, etc), it would also ensure more effective implementation of integrity rules through self-regulation.

Although an Electoral Code of Ethics⁴⁹ has been in force since 2007, research shows that vote buying is not yet eradicated in Croatia.⁵⁰ The practice of offering goods, favours and money to attract voters was in evidence during the last local and national elections when reportedly 4% of citizens were approached at local elections and 3% at the last parliamentary or presidential elections. Also the accuracy of voter lists was reported as a concern by OSCE election observers.⁵¹

47 <http://www.antikorupcija.hr/popis-korisnika-i-iznosa-donacija-i-sponzorstava-u>; <http://www.antikorupcija.hr/p-alignjustifydonacije-i-sponzorstva-trgovackih-dr>.

48 <http://www.antikorupcija.hr/p-alignjustifyakcijski-planovi-za-trgovacka-drustv>.

49 http://www.legislationline.org/download/action/download/id/2266/file/Croatia_Electoral_Code_Ethics_2007.pdf.

50 Corruption in Croatia: bribery as experienced by the population. UNODC Vienna and the Institute of Economics, Zagreb. 2011.

http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Croatia_corruption_report_web_version.pdf p35-36.

51 <http://www.osce.org/odihr/87655>

Public procurement

Public procurement in Croatia was worth about EUR 5.4 billion in 2009 and EUR 3.3 billion in 2010.⁵² Overall, Croatia has put in place a fairly sound legal and institutional framework. As part of its preparations to join the EU, it has repeatedly amended its public procurement legislation to bring it in line with EU legislation. A new Public Procurement Act came into force on 1 January 2012, which included specific conflict-of-interest rules applying to public procurement officials.⁵³

Good practice: transparency requirements

Steps have been taken to enhance transparency in public procurement. The State Commission for Monitoring Public Procurement Procedures (DKOM) publishes all its decisions on its website.⁵⁴ Moreover, all public bodies are obliged to publish concluded and executed contracts. It is not yet clear, however, how the sound implementation of public contracts is being monitored. The contracting authorities are obliged to publish their procurement plans and the register of public contracts on their websites. Where they are not in a position to publish data on their websites, these are published on the public procurement portal coordinated by the Ministry of Economy.⁵⁵ Web-links to the information published by the contracting authorities are listed on the central public procurement portal.

E-procurement has been in place and easily accessible since early 2012. However, the system is still not used by all contracting authorities.⁵⁶

Contracting authorities are also obliged to publish on their websites declarations regarding conflict of interest. The public procurement documentation must contain a list of businesses with regard to which conflicts of interest may arise or expressly confirm the absence of such situations. A public contract concluded in breach of these provisions is null and void.

In March 2013, a web portal and public procurement electronic database⁵⁷ was launched by a local NGO as a result of an EU-funded project.⁵⁸ The database consolidates information on the implementation of public procurement procedures and companies involved and is available to the public free of charge. It also contains information on the assets and interests of public officials, in line with asset disclosure rules. Such aggregated data allow the carrying out of cross-checks.

The impact of corruption-related offences on public procurement in Croatia has been estimated at 10 to 15% of the value of public contracts.⁵⁹ According to the 2013 Eurobarometer Business Survey on Corruption,⁶⁰ 64% of Croatian businesses consider that corruption is widespread in public procurement managed by national authorities (EU average: 56%)⁶¹ and 63% in that managed by local authorities (EU average: 60%). In particular, Croatian respondents stated

52 IPA 2008 twinning light project 'Strengthening capacities to remedy irregularities in public procurement procedures'.

Public Procurement against corruption:

http://www.javnabava.hr/userdocsimages/userfiles/file/Razne%20publikacije/Brochure_anticorruption_ENG.pdf.

1€ equals 7,5 HRK on 1 December 2012

53 Public Procurement Act. Official Gazette No: 90/11.

http://narodne-novine.nn.hr/clanci/sluzbeni/2011_08_90_1919.html.

54 www.dkom.hr.

55 www.javnabava.hr.

56 Electronic Announcement of Public Procurement. Available from: <https://eojn.nn.hr/Oglasnik/>.

57 integrityobservers.eu.

58 Anti-Corruption Response to Implementation of the Procurement Policies (ACRIP) – IPA 2008.

59 Corruption in Croatian public procurement. by Jagoda Radojčić. 2012.

<http://www.docstoc.com/docs/136907647/Corruption-in-Croatian-public-procurement>.

60 2013 Flash Eurobarometer 374.

61 Highest percentage in the EU.

that the following practices were widespread in public procurement procedures: specifications tailor-made for particular companies (62%); abuse of negotiated procedures (50%); conflicts of interests in the evaluation of the bids (54%); collusive bidding (58%); unclear selection or evaluation criteria (53%); abuse of emergency grounds to avoid competitive procedures (51%); and amendments of contractual terms after conclusion of contract (51%). As illustrated by this survey, tailor-made specifications targeting certain companies appear to be one of the most frequent irregularities associated with public procurement in Croatia. These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures.

The ex ante and ex post control mechanisms for public procurement procedures and the implementation of public contracts could be further improved. Sound risk assessment tools are not being systematically used, in particular at local level. There appears to be no prioritising of vulnerable sectors where corruption risks are more prominent. There is no systematic publication by (central or local) administrative entities of annual accounts and balance sheets, including details on costs of public works and contracted services. In order to address some of these shortcomings, the Ministry of Justice has started monitoring the level of transparency of local governments, including on issues relating to public procurement.⁶²

The Commission's 2013 Monitoring Report mentioned that corruption at local level deserves attention, in particular as regards public procurement. It also pointed to the need for additional measures to prevent irregularities and reinforce management and control systems in relation to the procurement procedures for Cohesion Policy projects.⁶³ A brochure with recommendations to contracting authorities and suppliers on how to prevent corruption and conflict of interest has been produced with the support of an EU-funded project.⁶⁴ Such initiatives could be pursued further, targeting in particular vulnerable sectors or administrations. The capacity of the Central Office for Procurement tasked with overseeing the implementation of public procurement procedures, is rather low (less than 20 staff) given the considerable challenges it faces in relation to big procurement procedures.

Protection of whistleblowers

Croatia has no dedicated whistleblower protection legislation. Protection of whistleblowers in the public and private sectors is however covered by a variety of legislative acts.⁶⁵ In December 2009, new provisions were inserted in the Labour Act regarding protection against dismissal for those who have reported an instance of corruption in good faith, while putting the burden of proof on employers in cases when the latter would claim that discrimination or retaliation against the whistleblower are unrelated to the reporting of the alleged illegal practices. With subsequent amendments to the Civil Service Act, the above-mentioned provisions of the Labour Act also apply to civil servants. Nevertheless, the existing legal and institutional framework appears to be unable to fully protect whistleblowers. This was illustrated by certain recent cases. Two police officers who reported alleged corruption within the Ministry of the Interior were not relocated and protected by the management of the Ministry, which kept them in the same groups they reported about, indirectly allowing harassment and other disruptive behaviour. In another case, the workers' representative on the supervisory board of the Institute

62 <http://www.antikorupcija.hr/p-alignjustifyrezultati-istrzivanja-o-transparent>.

63 http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf.

64 IPA 2008 twinning light project "Strengthening capacities to remedy irregularities in public procurement procedures". Public Procurement against corruption pp 5-7

[.http://www.javnabavava.hr/userdocsimages/userfiles/file/Razne%20publikacije/Brochure_antikorruption_ENG.pdf](http://www.javnabavava.hr/userdocsimages/userfiles/file/Razne%20publikacije/Brochure_antikorruption_ENG.pdf).

65 including the Labour Act, the Civil Servants Act, the Civil Servants and Employees in Local and regional Self-Administration Act, the Data Confidentiality Protection Act and the Act on the System of Internal Financial Controls in the Public Sector.

of Immunology in Zagreb and member of the works council was suspended from work and banned from entering the Institute's premises after denouncing a lack of transparency in the Institute's decision-making regarding a purchase of swine flu vaccine.⁶⁶

It also appears that there is insufficient awareness-raising in this regard. According to the UNODC study, more than half of all Croatians think that people who report corruption are likely to regret it, and nothing constructive will come of reporting it.⁶⁷

The Croatian Parliament has however called for specific measures to raise the quality of whistleblower protection.⁶⁸ The Ministry of Justice is currently working on an analysis of the implementation of the existing legal framework. It has also published guidelines on whistleblowing and the potential protection of whistleblowers.⁶⁹

Healthcare

A 2011 UNODC study pointed to healthcare as one of the sectors most vulnerable to corruption in Croatia. More than half of bribe-payers in Croatia make informal payments to doctors (56%) and more than a third to nurses (36%).⁷⁰ In relation to informal payments, according to the 2013 Special Eurobarometer on Corruption, 20% of the Croatian respondents who admitted to having made informal payments felt they needed to give an extra payment or a valuable gift before medical care was given.⁷¹

The problems in the healthcare sector were also illustrated by recent large-scale anti-corruption cases. In November 2012, following an operation dubbed "Hippocrates", 350 doctors were put under investigation for bribery. At a press conference on the case the Croatian Health Minister stated that 'in the last few years, corruption has become socially acceptable behaviour, which is intolerable'.⁷²

Favouritism and conflict of interests appear to pose the highest risks both when it comes to provision of medical services and the procurement of medical equipment. Medical equipment is often donated to public hospitals without a transparent overview of the follow-up of the relationship between the donating company and the hospital and in particular of public contracts granted to the company.⁷³ The Healthcare Act does not sufficiently cover the issues relating to the prevention of corruption. While all the above-mentioned aspects are dealt with by general legislation, the specific risks of the healthcare sector should be taken into account when developing suitable measures to address corruption. Currently, the control mechanisms within the healthcare sector are rather weak, with a low capacity for carrying out targeted and ad-hoc inspections and controls. Such mechanisms do not have a specific focus on the prevention and detection of corruption within the healthcare system.⁷⁴

On the positive side, some ethics agreements in the healthcare sector appear to be a step in the right direction, although it remains to be seen what impact these will have in practice. One example is the Agreement on Ethical Advertising of Medical Products according to which

66 Tasks and challenges: Making whistleblowing work in Croatia. Dr. Snjezana Vasiljevic, Faculty of law, University of Zagreb <http://www.whistleblowing-cee.org/countries/croatia/research/>

67 Corruption in Croatia: bribery as experienced by the population. UNODC Vienna and the Institute of Economics, Zagreb. 2011.

68 <http://www.sabor.hr/Default.aspx?sec=2726>.

69 <http://www.antikorupcija.hr/p-alignjustifybrosura-o-pravima-zvizardacap>.

70 http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Croatia_corruption_report_web_version.pdf.

71 2013 Special Eurobarometer 397.

72 <http://dalje.com/en-croatia/minister-350-family-doctors-suspected-of-bribery-health-care-not-in-danger/450502>

73 Study on corruption in the healthcare system in the EU, ECORYS, December 2013: http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131219_study_on_corruption_in_the_healthcare_sector_en.pdf.

74 Idem.

healthcare workers should not be encouraged or influenced to procure or prescribe certain drugs.⁷⁵

The updated national anti-corruption action plan also includes a number of prevention measures targeting the healthcare sector, including action aimed at strengthening supervisory powers, although it is not yet clear what capacity is in place for their implementation.

3. FUTURE STEPS

Croatia has made considerable efforts to improve the anti-corruption framework, although implementation has still to demonstrate sustainable results. In the field of law enforcement, the Bureau for Combating Corruption and Organised Crime (USKOK) is carrying out important high-level corruption investigations. There appears to be more emphasis on repression of corruption than on prevention, and the overall sanctions applied, with the exception of some notable high-level cases, appear to be insufficient deterrents. Favouritism and politicising of the public administration, as well as integrity standards in politics, remain causes for concern. More steps need to be taken to strengthen anti-corruption safeguards concerning state-owned companies. Further key issues include: the verification mechanisms for conflicts of interest and asset disclosure of public officials; risk control in public procurement; the protection of whistleblowers; and the need to address effectively corruption risks in the healthcare sector.

The following points require further attention:

- Carrying out substantial checks of the asset declarations and conflict of interests of **public officials at central and local levels**, in line with the Constitutional Court decision of 2012; ensuring prioritisation of checks, improved methods and techniques of verification, including use of electronic tools, access to relevant information, cooperation with other authorities and accessibility of public interest information in a user-friendly format. Ensuring that the Conflict of Interest Commission has sufficient powers to impose deterrent sanctions. Ensuring a fully professional and merit-based recruitment, promotion and dismissal system for public officials at mid-management and lower levels. Developing comprehensive codes of conduct for **elected officials** at central and local level and ensuring corresponding accountability tools and dissuasive sanctions for potential violations of such codes.
- Establishing an effective mechanism for prevention of corruption in **state-owned and state-controlled companies**, including aspects relating to donations and sponsorships. Ensuring implementation of effective anti-corruption action plans within state-owned and state-controlled companies to promote comprehensive prevention policies, effective reporting mechanisms and high accountability standards. Ensuring access to public interest information relating to these companies presented in a user-friendly format.
- Implementing a comprehensive strategic approach to preventing and reducing corruption risks in **public procurement** at both central and local levels, including effective monitoring of the implementation of transparency and access to public information rules, systematic risk assessments, prioritisation of controls in vulnerable sectors and procedures, enhanced checks on compliance with public procurement rules and on the implementation of public contracts. Ensuring effective control mechanisms in the **healthcare** sector, including public procurement aspects.

75 Idem.

- Implementing effective protection mechanisms and raising awareness in both the public and private sectors for **whistleblowers** who report corruption and malpractice.