



**UNODC**

United Nations Office on Drugs and Crime

# Country Review Report of Croatia<sup>1</sup>

Review by Laos and Montenegro of the implementation by Croatia of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

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<sup>1</sup> The report takes into account legislative and other policy-making developments until **30 April 2012**, the date when the text of its executive summary, as agreed by all parties involved in the review process, was finalized with a view to being brought to the attention of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC) through its Implementation Review Group (IRG).

## I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## II. Process

The following review of the implementation by Croatia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Croatia, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Laos and Montenegro on the one hand, and Croatia on the other, by means of telephone conferences, e-mail exchanges, joint trilateral meetings in Vienna and Marrakech (in the margins of the fourth session of the Conference of the States Parties to the UNCAC). and any further means of direct dialogue in accordance with the terms of reference of the Review Mechanism. The experts involved in the process were the following:

<b>Croatia</b>	Mr. Tomislav Matoc	Head, Criminal Law Department, Anticorruption Sector, Ministry of Justice
	Mr. Davor Dubranica	Head, Anticorruption Sector, Ministry of Justice
<b>Montenegro</b>	Ms. Vesna Ratkovic	Director, Directorate for Anti-Corruption Initiative for Montenegro
	Ms. Nina Krgovic	Head, International Cooperation Department, Directorate for Anti-Corruption Initiative
	Ms. Sonja Boskovic	Deputy Supreme State Prosecutor

	Ms. Ana Boskovic	Deputy Basic State Prosecutor
	Ms. Mirela Bakalbašić	Senior Advisor, Department for International Cooperation, Directorate for Anti-Corruption Initiative
<b>Lao (PDR)</b>	Mr. Bounpone Sansomsak	Central Control Committee member, Government Inspection Authority
	Ms. Viengvone Kittavong	Acting Director General of Treaties and Law, MoFA
	Bounsavath Boupoua	Director General of Inspection Department, Ministry of Justice
	Thoummy Thammavong	Deputy Chief of Cabinet, Government Inspection Authority
	Thiphasone Sengsourinha	Acting Director of Multilateral Treaties Division, Department of Treaties and Law, Ministry of Foreign Affairs (Secretariat)

### III. Executive summary

#### ***1. Introduction***

##### ***1.1. Incorporation of the UNCAC in Croatia's legal system***

*Croatia signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 4 February 2005. The instrument of ratification was deposited with the Secretary-General on 24 April 2005. The implementing legislation was adopted on 4 February 2005 and entered into force on 26 February 2005.*

*According to article 141 of the Constitution, international agreements shall be part of the internal legal order of the Republic of Croatia and shall be above the law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.*

##### ***1.2. Overview of the anti-corruption legal and institutional framework of Croatia***

*Croatia's legal framework against corruption includes provisions from the Constitution, the Criminal Code and the Criminal Procedure Act. It further contains specific legislation such as the Law on Civil Servants; the Labour Code; the Witness Protection Act; the Act on the Responsibility of Legal Persons for Criminal Offences; the Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour; the Public Procurement Act; the Law on the Office for the Suppression of Corruption and Organized Crime (USKOK); the Anti-Money Laundering and Terrorist*

*Financing Act; the Act on Mutual Legal Assistance in Criminal Matters; and the Act on Confidentiality of Data.*

*The specialized anti-corruption body is the Office for the Prevention of Corruption and Organized Crime (USKOK). Other anti-corruption bodies include the Anti-Money Laundering Department (AMLD), which performs the functions of the national FIU; the State Audit Office (SAO); the Tax Administration and the Customs Department which are independent services within the Ministry of Finance; Office for Public Procurements (OPP); the Commission for Prevention of Conflict of Interest in Performing Public Duties; and the Independent Anti-Corruption Sector in the Ministry of Justice.*

## **2. Implementation of Chapters III-IV**

### **2.1. Criminalization and Law Enforcement (Chapter III)**

#### **2.1.1. Main findings and observations**

##### ***Bribery offences; trading in influence (articles 15, 16, 18, 21)***

*Active and passive bribery in the public sector are criminalized through articles 348 and 347 CC, respectively.<sup>2</sup> In order to identify the perpetrators of those offences, the bribery provisions use the terms “official person” and “responsible person”, as defined in article 89, paragraphs 3 and 7 CC, respectively. The concept of “undue advantage” is transposed domestically through the use of the term “gift or some other gain”. The latter, although not defined in the CC, is interpreted in a broad manner by the courts and is understood to comprise money, any item regardless of its value, a right or a service provided without recompense or other quid pro quo, which creates or may create a sense of obligation on the side of the recipient towards the giver.*

*The relevant bribery provisions do not expressly specify whether the offences could be committed directly or indirectly. The national authorities confirmed that the general provisions of CC (articles 36 and 38) on aiding and abetting are applicable and cover situations of indirect bribery.*

*As regards third-party beneficiaries, the national authorities reported that the new CC covers expressly instances of passive bribery where the undue advantage is intended for a third party; with regard to active bribery, the scope of persons who could benefit from the offence is described in general. No further explanation was provided about the true meaning of the planned “general description” of the scope of persons who could benefit from the offence of active bribery.*

*Articles 348 and 347 CC criminalize active and passive bribery for the legal or illegal performance or omission of a public official “within the scope of his/her authority”. However, the national authorities reported that the new CC explicitly criminalizes acts and omissions within and without the scope of the public official’s authority. The latter confirmation was found by the review team to be conducive to ensuring compliance with article 15 of the Convention.*

*The national authorities confirmed that the term “confer or promise to confer a gift or other gain”, as foreseen in article 348 CC, also comprises offering and, added, however, that the new CC in article 294b on “giving bribe” explicitly mentions “offering” as an element of the offence. The latter confirmation was found by the review team to be conducive to ensuring compliance with article 15(a) of the Convention.*

*The bribery of foreign public officials and officials of public international organizations was reported to be covered by articles 347 and 348 CC, as the definition of an “official*

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<sup>2</sup> In the course of the review process, the Croatian authorities also provided information on the bribery provisions of the new Criminal Code (articles 293-294), which was adopted in October 2011 and will enter into force on January 1st 2013.

person” expressly includes “a foreign civil servant, a representative or an official of a foreign representative body and an official of an international organization of which the Republic of Croatia is a member ...”. However, the scope of this definition was seen by the reviewers to be narrower than the UNCAC definition in article 2, subparagraph (c), being limited to international organizations of which Croatia is a member.

Bribery in the private sector is criminalized both in its active (article 294b CC) and passive form (article 294a CC).<sup>3</sup> The national authorities confirmed that the new CC extends the scope of possible perpetrators beyond “responsible persons in a legal entity dealing with economic business transactions” by using the phrases “whoever in economic business operations solicits or accepts a bribe ...” (for passive bribery) and “... offers, promises or confers a bribe to another person ...” (for active bribery). The latter confirmation was found by the review team to be conducive to ensuring full compliance with article 21 of the Convention.

An issue raised by the review team when assessing the provisions of the domestic legal framework on bribery in the private sector was related to the — intended or real — behaviour of the bribe-taker. Whereas article 21 of the UNCAC covers all cases where bribe-takers “act or refrain from acting in breach of their duties”, articles 294a and 294b CC require an act of the bribe-taker which “causes damage to whom he represents”. The element of damage is maintained in the relevant provisions of the new CC (articles 252-253). The reviewers were of the view that this clause seemed to unnecessarily narrow down the requirement of the Convention and added an extra constituent element in the description of the offence.

Trading in influence is established as a criminal offence in section 343 CC both in its active and passive form. This provision transposes, to a large extent, the requirements of article 18 of the UNCAC in the domestic legal system. Interestingly, article 343 CC explicitly includes the concept of a third-party beneficiary. However, the review team noted that the abuse of “supposed” influence did not seem to be covered under article 343 CC.

### **Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)**

The criminalization of embezzlement is accomplished through article 345 CC. The review team noted the lack of reference in this provision of third-party beneficiaries as persons who could potentially benefit from the commission of the offence.

Abuse of functions is criminalized through articles 337 and 338 CC. The term “abuse of authority” is interpreted as any behaviour of the official or responsible person who uses his position or authority, oversteps the limits of their authority or omits to perform their duty, thus acquiring benefit for themselves or another person or causing damage to another person.

The Croatian authorities reported that article 20 on criminalization of illicit enrichment had not been transposed domestically due to specificities of Croatia’s legal system. However, they stressed that, in view of the obligation to only consider criminalizing this conduct, the discussion within the Working Group for drafting the new CC was sufficient enough to ensure compliance.

### **Laundering of proceeds of crime; concealment (articles 23, 24)**

The reviewers found that the basic domestic criminalization provisions for money-laundering (article 279 CC) and concealment (article 236 CC) were in line with the UNCAC requirements. Moreover, the national authorities reported that the new CC omits the limited scope of the offence of money-laundering to banking, financial or economic operations. The latter confirmation was found by the review team to be conducive to ensuring full compliance with article 23 of the Convention.

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<sup>3</sup> In the course of the review process, the Croatian authorities also provided information on the provisions of the new Criminal Code pertaining to bribery in the private sector (articles 252-253), which will enter into force on January 1st 2013.

*At the level of assessing the implementation of the money-laundering provision, the reviewing experts welcomed the increase of convictions from 2005 to 2008 and stressed the need for regular updates of statistics to assess if further progress is made in this field.*

***Obstruction of justice (article 25)***

*The review team found that the domestic provisions pertaining to the criminalization of obstruction of justice (articles 309, 317 and 318 CC) were in line with article 25 of the UNCAC.*

***Participation and attempt (article 27)***

*The review team noted that article 33 CC punishes attempt only of criminal offences carrying a penalty of five years of imprisonment or more or elsewhere when the punishment of attempt is specifically prescribed. The national authorities underlined that, since the sanctions for bribery offences are increased in the new CC, the attempt of such offences will also be criminalized. The review team welcomed the latter explanation.*

***Liability of legal persons (article 26)***

*Croatia has introduced in its legal system the criminal responsibility of legal persons. The Act on the Responsibility of Legal Persons for Criminal Offences foresees two types of sanctions where the legal person is found criminally liable: penalties consisting of fines and termination of the legal person; and security measures, including professional bans, confiscation and publication of the verdict.*

***Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)***

*Assessing the sanctions applicable to natural persons involved in corruption-related offences, the review team noted that there may be a need to consider increasing the penalties for active bribery offences in the public and private sectors. In response, the national authorities indicated that the penalties for both active and passive bribery offences in the public sector, as well as for active bribery in the private sector, are increased in the new CC. The review team welcomed this development.*

*In Croatia, public officials do not enjoy immunity, except for the President of the Republic and members of Parliament. Such immunity can, however, be lifted in accordance with the Constitution and law. It was reported that immunities as a practical matter had not affected prosecutions in corruption cases, as such immunity had always been waived when requested.*

*The criminal justice system in Croatia is based on the principle of mandatory prosecution and the prosecution services are bound by the legality principle. However, the legislation enables the State Attorney General to dismiss a crime report or abstain from prosecution in relation to members of a criminal organization who testify as witnesses if the statement “is of importance for the discovery of offences and of the members of the criminal organization”. The recognition of mitigating circumstances is possible. Those cooperating witnesses are given the status of witnesses under protection.*

***Protection of witnesses and reporting persons (articles 32, 33)***

*Croatia has put in place a comprehensive legal framework for the protection of witnesses, expert witnesses, victims treated as witnesses, as well as persons close to them, based on provisions of CPC (articles 294-299) and the Act on Witness Protection, which provides for a wide definition of persons to be protected. There are also police cooperation agreements with Austria, Bosnia and Herzegovina and France regulating the protection of witnesses.*

*Despite the existence of a nexus of provisions of labour law and civil servants legislation on the protection of reporting persons, there is still no ad hoc legislation in Croatia ensuring their protection, as set forth in article 33 of the UNCAC (non-binding provision).*

***Freezing, seizing and confiscation; bank secrecy (articles 31, 40)***

*The domestic legal framework regulates in detail the requirements and conditions for interim security measures against proceeds of crime, including their seizure. Confiscation is considered as a sui generis criminal measure of a mandatory character and can be applied to proceeds and instrumentalities of a criminal offence. A new legislation on confiscation was adopted on 15 December 2010. On 1st April 2011, the AUDIO-Agency for Management of State Property has been founded as the body responsible for the management of confiscated property.*

*Article 265 of the Criminal Procedure Act foresees the conditions for lifting bank secrecy for purposes of facilitating the investigation of criminal offences.*

***Statute of limitation; criminal record (articles 29, 41)***

*The national authorities reported that the new CC increases significantly the statute of limitations period. In relation to offences carrying a term of imprisonment of more than one year, the statute of limitations will be 10 years, and for those carrying a term of imprisonment of up to one year or a fine, it will be 6 years. No specific information was provided on whether the statute of limitations period could be extended in cases of evasion of justice by the defendant.*

*In assessing national measures to take into consideration previous convictions in foreign States for corruption offences, the reviewing experts noted the readiness to implement, upon Croatia's accession to the European Union, the Framework Decisions on mutual recognition of financial penalties and judgments imposing custodial sentences; and mutual recognition of judgments imposing custodial sentences or measures involving deprivation of liberty.*

***Jurisdiction (article 42)***

*Jurisdiction principles, including rules of territoriality and active and passive personality, are established in articles 14-16 CC and apply to all UNCAC offences. Article 14 CC establishes jurisdiction over offences committed abroad by foreign citizens against the State of Croatia and enables the application of national criminal legislation over offences committed by a person found in the national territory and not extradited to the requesting State. If the act committed abroad does not constitute a crime according to the law of the State of perpetration, domestic criminal proceedings may be instituted only upon approval of the Chief Public Prosecutor.*

***Consequences of acts of corruption; compensation of damage (articles 34, 35)***

*With regard to consequences of acts of corruption, the national authorities made reference to the Public Procurement Act and reported that public contracts concluded contrary to this Act shall be null and void.*

*Any natural or legal person who has suffered damage as a result of an act of corruption is entitled according to the domestic legislation (articles 153-162 CPC) to compensation subject to a final court decision recognizing this right.*

***Specialized authorities and inter-agency coordination (articles 36, 38, 39)***

*The Office for the Prevention of Corruption and Organized Crime (USKOK), established in 2001, is a specialized body in charge of tackling corruption and organized crime and operates within the institutional mechanism of the Public Prosecutor's Office. The USKOK performs intelligence, investigative, prosecutorial and preventive functions and*

*is also responsible for international cooperation and exchange of information in complex investigations.*

*The Croatian authorities referred to several initiatives aimed at enhancing exchange of information and strengthening cooperation between the national law enforcement agencies. The reviewers stressed the need for the best possible inter-agency coordination and cooperation among domestic authorities with an anti-corruption mandate.*

### **2.1.2. Successes and good practices**

*The reviewing experts identified the criminalization of a wide array of corruption-related conducts as a significant strength of the Croatian anti-corruption legislation. This was viewed as the result of an evolving process of legislative reform which took into account the country's accession to all major international treaties against corruption and its membership in international anti-corruption monitoring mechanisms. Consequently, not only the mandatory, but also almost all optional criminalization provisions of the UNCAC form an integral part of the domestic legal order.*

*The review team further welcomed good practices geared towards increasing the effectiveness of criminalization and law enforcement in the anti-corruption field, such as the very broad definition of "gift or other gain" and the establishment of criminal liability of legal persons.*

*The reviewers highlighted the following positive developments, which due to the transitional period until the entry into force of the new CC, cannot yet be considered as fully integrated elements of the domestic anti-corruption legislation:*

- The extension of the scope of application of the offence of passive bribery to cover instances where the undue advantage is intended for a third party;*
- The criminalization as bribery offences of acts and omissions within and without the scope of the public official's authority;*
- The extension of the scope of possible perpetrators of bribery offences in the private sector;*
- The deletion of the restrictive requirement pertaining to the commission of money-laundering offences in the context of "banking, financial or other economic operations";*
- The increase of sanctions for both active and passive bribery in the public sector, as well as for active bribery in the private sector; and*
- The prolongation of the statute of limitations period for offences carrying a term of imprisonment of more than one year and of up to one year or a fine.*

### **2.1.3. Challenges and recommendations**

*While noting Croatia's considerable and continuous efforts to achieve full compliance of the national legal system with the UNCAC provisions in the criminalization area, the reviewers identified some grounds for further improvement and made the following recommendations for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements):*

- Ensure the extension of the scope of application of the offences of active bribery and embezzlement to cover instances where the undue advantage is intended for a third party;*
- Ensure that the scope of the definition of an "official person" is expanded to ensure full compliance with the definition of an "official of a public international organization", as set forth in article 2, subparagraph (c), of the UNCAC, and, thus, cover officials of public international organizations in general and not only those of which Croatia is a member;*



- Explore the possibility of amending legislation in a way that allows for the criminalization of active and passive bribery in the private sector regardless of the damage caused, in line with article 21 of the UNCACC;
- Clarify the interpretation of the provision on trading in influence in a way that unambiguously covers instances of abuse of not only “real”, but also “supposed” influence, in line with art. 18 of the UNCAC;
- Ensure that the domestic legislation provides for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice, in line with article 29 of the UNCAC;
- Take into consideration the need for adopting specific legislation on the protection of reporting persons, in line with article 33 of the UNCAC; and
- Continue efforts to facilitate the best possible coordination among agencies with a law enforcement mandate in the fight against corruption.

## **2.2. International cooperation (Chapter IV)**

### **2.2.1. Main findings and observations**

#### ***Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)***

*Substantive and procedural conditions for extradition are regulated by the Act on Mutual Legal Assistance in Criminal Matters. The legislation aiming at domesticating the 2002 Framework Decision on the European Arrest Warrant will enter into force upon Croatia’s accession to the European Union. This will entail the abolishment of the double criminality requirement for offences punishable by a custodial sentence for a maximum of at least three years (money-laundering and some corruption offences fall into that category).*

*Croatia does not make extradition conditional on the existence of a treaty and does not act in this field exclusively on the basis of the UNCAC. In concrete cases, Croatia would extradite the requested person for criminal offences covered by the Convention to a country which is not party to the Convention on the basis of the reciprocity principle (article 17 of the Act on MLA).*

*Article 35 of the Act on MLA lists the grounds for refusal of an extradition request, including nationality, lack of double criminality, discrimination clause, territoriality, lapse of time and ne bis in idem. The Act also provides for simplified extradition proceedings (article 54).*

*The Constitution (article 9) prohibits the extradition of nationals unless in case of execution of a decision on extradition or surrender made in compliance with an international treaty or the *acquis communautaire* of the European Union.*

*No specific information was provided on the practical application of the axiom “*aut dedere aut judicare*” in lieu of extradition (see article 44, paragraph 11, of the UNCAC). The Croatian authorities explained that the measure of launching domestic proceedings where extradition is denied is rarely used in practice due to the fact that every country in which the criminal offence was committed has interest to conduct the legal proceeding against the perpetrator before its own courts.*

*The conditional surrender of nationals, as foreseen in article 44, paragraph 12, of the UNCAC, is regulated in the implementing legislation for the Framework Decision on the European Arrest Warrant and will be enforced upon Croatia’s accession to the European Union.*

*Croatia is bound by existing multilateral treaties, such as the Council of Europe Convention on Extradition and its two Additional Protocols and the UNTOC. Croatia has*

also concluded bilateral extradition treaties with Slovenia, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, which enable the extradition of nationals and the application of lower evidentiary standards in extradition proceedings.

The reviewers noted that the existing case management system used by the Ministry of Justice did not enable the monitoring of extradition cases based on statistical data. They underlined that the absence of case examples and statistical data made the assessment of the implementation of certain provisions of article 44 of the UNCAC difficult. In response, the Croatian authorities confirmed that the Ministry of Justice was planning to improve the case management system in the next two years. Data on the exact duration of the extradition detention are being recorded by the Ministry of Justice.

With regard to transfer of sentenced persons, the Croatian authorities made reference to bilateral agreements concluded with European countries and other multilateral treaties to which the country is a party (Council of Europe Convention on the Transfer of Sentenced Persons (1983) and its Additional Protocol (1997); UNTOC). The domestic legal framework enabling the enforcement of foreign criminal judgments (article 70 of the Act on MLA) was also reported.

The transfer of criminal proceedings from and to Croatia is regulated in articles 62-69 of the Act on MLA. Criminal prosecution may be surrendered to a foreign country for offences with prescribed punishment up to ten years of imprisonment.

#### **Mutual legal assistance (article 46)**

Mutual legal assistance was reported to be afforded “in the widest sense”, also with regard to cases involving legal persons, and in compliance with the provisions of the Act on MLA and the CPC.

The grounds for refusal of MLA requests are stipulated in articles 12-13 of the Act on MLA and include both optional and mandatory grounds. MLA requests shall not be refused solely on the ground that they involve fiscal offences. Bank secrecy does not seem to present an obstacle for granting assistance.

Double criminality is not required by the Law on MLA, which instead merely stipulates that assistance should be provided “in respect of criminal acts the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the requesting State” (article 1, paragraph 2).

Croatia notified the Secretary-General that the central authority responsible and authorized to deal with MLA requests is the Ministry of Justice. The Ministry of Justice transmits and receives the MLA requests through the Ministry of Foreign Affairs (where the foreign State has no international treaty in force with Croatia or where an international treaty envisages the use of special diplomatic channels). In urgent cases and subject to reciprocity, MLA requests may be transmitted through INTERPOL.

The execution of MLA requests is carried out, as a rule, in accordance with the domestic law and, upon request of the requesting State, in accordance with the formalities prescribed by its own law, if this is not contrary to the Croatian legislation.

Bilateral MLA treaties have been concluded with Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Slovenia. In addition, cooperation with Eurojust and the European Judicial Network is in place.

In response to queries about plans to ensure the monitoring and tracking of cases and the record-keeping with regard to MLA proceedings, the Croatian authorities reiterated their intention to improve the national case management system.

#### **Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)**

*Law enforcement cooperation, including exchange of information, is facilitated through domestic provisions, as well as the conclusion of bilateral agreements with, among others, Austria, Bosnia and Herzegovina, Bulgaria, France, Germany, Hungary, Israel, Malta, the Republic of Moldova, Montenegro, Serbia, Slovakia, the Russian Federation and the United States of America.*

*Cooperation with Europol and INTERPOL is in place. The deployment of police officers as “liaison officers” with Croatian Embassies and Consulates abroad is also possible.*

*Agreements on joint investigations are concluded on a case-by-case basis. No further information was provided on how joint investigation teams are formed in concrete cases, or what criteria are applied for the formulation of such teams.*

*Special investigative techniques are regulated in articles 332-333 CPC, whereas special investigative techniques employed at the international level are used on a case-by-case basis.*

### **2.2.2. Successes and good practices**

*The review team concluded that Croatia had established a comprehensive and robust framework of international cooperation. The following indications are identified as examples of particular value for Croatia’s efforts to strengthen international cooperation mechanisms and networking:*

- *Croatia’s status as party to regional instruments on different forms of international cooperation per se, as well as multilateral instruments on corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters;*
- *The readiness to implement domestically, upon accession to the European Union, innovative legal instruments on international cooperation in criminal matters;*
- *The conclusion of bilateral agreements on extradition which prescribe less severe conditions than those provided for in the domestic legislation (extradition of nationals; lower evidentiary standards in extradition proceedings);*
- *The practice of affording mutual legal assistance “in a wide sense” and in the absence of double criminality;*
- *The conclusion of agreements with Eurojust, Europol and INTERPOL aimed at facilitating interstate judicial assistance and law enforcement cooperation;*
- *The active participation in Council of Europe-GRECO, and, at the operational level, in PACO IMPACT, a regional project administered by the Council of Europe and focused on the implementation of anti-corruption plans in South Eastern Europe; and*
- *The membership and participation in the Regional Cooperation Council (formerly Stability Pact) and the Regional Anti-Corruption Initiative for South Eastern Europe (RAI).*

### **2.2.3. Challenges and recommendations**

*The following is brought to the attention of the Croatian authorities as recommended action for further enhancement of international cooperation mechanisms that may be taken or considered (depending on the mandatory or optional nature of the relevant UNCAC requirements):*

- *Continue and streamline efforts to improve the national case management system for tracking MLA requests;*
- *Enhance efforts to systematize information on extradition cases and gather relevant statistical data with a view to facilitating the monitoring of such cases*

*and assessing in a more efficient manner the effectiveness of implementation of extradition arrangements;*

- *Explore the possibility of further relaxing the strict application of the double criminality requirement in line with article 44, paragraph 2, of the UNCAC and following such a flexible approach for cases beyond the execution of European Arrest Warrants;*
- *Systematize and make best use of information on joint investigations, including information on the means employed, and the criteria used, for the formulation of joint investigation teams;*
- *Continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of different forms of international cooperation;*
- *Consider the allocation of additional resources to further strengthen the efficiency and capacity of international cooperation mechanisms.*

### **3. Technical assistance needs**

*The Croatian authorities indicated that they would benefit from receiving technical assistance on the implementation of article 20 of the UNCAC (illicit enrichment) through the means of a summary of good practices/lessons learned and model legislation. They further highlighted that they would be assisted by a summary of good practices/lessons learned on the implementation of article 44, paragraph 2, of the UNCAC (non-application of double criminality requirement in extradition proceedings). On the latter issue, they reported that technical assistance was already being provided by the European Commission.*

## **IV. Implementation of the Convention**

### **A. Legal system of Croatia**

#### **A.1. Incorporation of the UNCAC in Croatia's legal system**

Croatia signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 4 February 2005. The instrument of ratification was deposited with the Secretary-General on 24 April 2005. The implementing legislation was adopted on 4 February 2005 and entered into force on 26 February 2005.

According to article 141 of the Constitution, international agreements shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

#### **A.2. Overview of the anti-corruption legal and institutional framework of Croatia**

Croatia's legal framework against corruption includes provisions from the Constitution, the Criminal Code and the Criminal Procedure Act. It further contains specific legislation such as

the Law on Civil Servants; the Labour Code; the Witness Protection Act; the Act on the Responsibility of Legal Persons for Criminal Offences; the Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour; the Public Procurement Act; the Law on the Office for the Suppression of Corruption and Organized Crime (USKOK); the Anti-Money Laundering and Terrorist Financing Act; the Act on Mutual Legal Assistance in Criminal Matters; and the Act on Confidentiality of Data.

The specialized anti-corruption body is the Office for the Prevention of Corruption and Organized Crime (USKOK). Other anti-corruption bodies include the Anti-Money Laundering Department (AMLDD), which performs the functions of the national FIU; the State Audit Office (SAO); the Tax Administration and the Customs Department which are independent services within the Ministry of Finance; Office for Public Procurements (OPP); the Commission for Prevention of Conflict of Interest in Performing Public Duties; and the Independent Anti-Corruption Sector in the Ministry of Justice.

## **B. Implementation of articles under review**

### **Overall findings**

In relation to the implementation of *Chapter III* of the Convention, the reviewing experts identified as a cross-cutting positive development the criminalization of a wide array of corruption-related conducts as a significant strength of the Croatian anti-corruption legislation. This was viewed as the result of an evolving process of legislative reform which took into account the country's accession to all major international treaties against corruption and its membership in international anti-corruption monitoring mechanisms. Consequently, not only the mandatory, but also almost all optional criminalization provisions of the UNCAC form an integral part of the domestic legal order.

In relation to the implementation of *Chapter IV* of the Convention, Croatia has established a comprehensive and robust framework of international cooperation. The following indications are identified as examples of particular value for Croatia's efforts to strengthen international cooperation mechanisms and networking:

- Croatia's status as party to regional instruments on different forms of international cooperation per se, as well as multilateral instruments on corruption, money-laundering and organized crime, containing provisions on international cooperation in criminal matters;
- The readiness to implement domestically, upon accession to the European Union, innovative legal instruments on international cooperation in criminal matters;
- The conclusion of bilateral agreements on extradition which prescribe less severe conditions than those provided for in the domestic legislation (extradition of nationals; lower evidentiary standards in extradition proceedings);
- The practice of affording mutual legal assistance "in a wide sense" and in the absence of double criminality;
- The conclusion of agreements with Eurojust, Europol and Interpol aimed at facilitating interstate judicial assistance and law enforcement cooperation;
- The active participation in Council of Europe-GRECO, and, at the operational level, in PACO IMPACT, a regional project administered by the Council of Europe

- and focused on the implementation of anti-corruption plans in South Eastern Europe; and
- The membership and participation in the Regional Cooperation Council (formerly Stability Pact) and the Regional Anti-Corruption Initiative for South Eastern Europe (RAI).

The reviewing experts encouraged the Croatian authorities to consider the allocation of additional resources to further strengthen the efficiency and capacity of international cooperation mechanisms.

For both chapters, the reviewing experts identified some grounds for further improvement and made a series recommendations for action or consideration by the competent national authorities (depending on the mandatory or optional nature of the relevant UNCAC requirements). These recommendations, together with further analysis on the level of compliance with the UNCAC requirements, will be presented below under the relevant provisions of the Convention which are subject to review.

### **Chapter III. Criminalization and law enforcement**

#### **Article 15 Bribery of national public officials**

##### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

Initially, and in the context of completing the UNCAC self-assessment checklist, the Croatian authorities made reference to the following provision of the Criminal Code of Croatia (CC):

Article 348, Criminal Code  
*Conferring a bribe*

*(1) Whoever confers or promises to confer a gift or other gain upon an official or responsible person so that he would, within the scope of his official authority, perform an official or other act which he should not perform, or omit an official or other act which he should perform, or whoever intermediates in so bribing an official or responsible person, shall be punished by imprisonment for six months to three years.*

*(2) Whoever confers or promises to confer a gift or other gain upon an official or responsible person so that he would, within the scope of his official authority, perform an official or other act which he should perform, or omit an official or other act which he*

*should not perform, or whoever intermediates in so bribing an official or responsible person, shall be punished by a fine or imprisonment not exceeding one year.*

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

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

In the course of the review process, the Croatian authorities also provided information on the active bribery provision of the new Criminal Code (article 294), which was adopted in October 2011 and would enter into force on January 1<sup>st</sup> 2013), as follows:

*Giving bribe - Article 294, CC*

*(1) Whoever offers, gives or promises bribe to an official or responsible person, in order to persuade them to perform an official or another act which should not be done or omit to perform an official or another action which should be done, within or outside of the limits of his authority, or whoever intercedes in giving such bribe to an official or responsible person, shall be punished by imprisonment of one to eight years.*

*(2) Whoever offers, gives or promises bribe to an official or responsible person in order to persuade them to perform an official or another act which should be done or omit to perform an official or another act which should not be done, within or outside of the limits of his authority, or whoever intercedes in giving such bribe to an official or responsible person, shall be punished by imprisonment of six months to five years.*

*(3) The perpetrator of a criminal offence from paragraphs 1 and 2 of this Article, who has given bribe upon request by an official or responsible person and reported the offence before it has been discovered or before the discovery of the offence has become known, can be remitted.*

In order to identify the perpetrators of those offences, the bribery provisions use the term “official person”, as defined in article 89, paragraph 3 CC.

The concept of “undue advantage” is transposed domestically through the use of the term “gift or some other gain”. In response to a request for clarifications submitted by the reviewing experts, the Croatian authorities underlined that the concept of “gift”, although not defined in the Criminal Code, is understood to comprise money, any item regardless of its value, a right or a service provided without recompense or other quid pro quo, which creates or may create a sense of obligation on the side of the recipient towards the giver. It was further emphasized that even the smallest amount of money or other objects given can be considered as a gift and therefore would be sufficient to be considered as a constructive element of the criminal offence.

The Croatian authorities reported that an assessment conducted by the Croatian Bureau of Statistics ([http://www.dzs.hr/default\\_e.htm](http://www.dzs.hr/default_e.htm)) yielded the following results:

Number of reported persons by year: 2002.-51, 2003.-44, 2004.-64, 2005.-67, 2006.-79, 2007.-62, 2008.-107, 2009.-93.

Number of convicted (found guilty) persons by year: 2002.-36, 2003.-40, 2004.-24, 2005.-40, 2006.-30, 2007.-37.

The data on perpetrators of criminal offences and misdemeanors are the result of regular statistical surveys of administration of justice statistics. A convicted person is defined as an adult person who was found guilty and who was subjected to penal measures. Such measures include imprisonment, fines, correctional measures, and judicial admonition. Persons who were found guilty, but were released from their sentence are included in the figure. If more than one person participated in committing one offence, each perpetrator is treated separately in the statistic.

#### **(b) Observations on the implementation of the article**

In general, the reviewing experts noted that the Croatian legislation reflects the requirements of the provision under review and considered that the relevant legal framework was adequate for the prosecution of offenders.

In particular, the reviewing experts were satisfied that the term “confer or promise to confer a gift or other gain”, as used in article 348 CC, also comprises the conduct of “offering”. In any case, the new provision of article 294 CC makes explicit reference to all conducts of offering, giving or promising a bribe, in line with article 15(a) of the UNCAC.

The reviewing experts were also satisfied that:

- The concept of “undue advantage”, although not defined in the CC, is interpreted in a broad manner by the courts and is understood to comprise money, any item regardless of its value, a right or a service provided without recompense or other quid pro quo, which creates or may create a sense of obligation on the side of the recipient towards the giver; and
- The definition of “official person” and “responsible person” as perpetrators of the offence in question, contained in article 89, paragraphs 3 and 7 CC respectively, is fairly broad.

The reviewing experts further noted that neither article 348 nor article 294 CC expressly provides for the indirect commission of bribery offences, i.e. bribery committed through intermediaries – only the acts of intermediaries themselves are explicitly criminalized in the active bribery provisions. In response, the Croatian authorities confirmed that the general provisions of the Criminal Code on aiding and abetting (articles 35 and 36 CC) are applicable in cases of indirect commission of the offence.

Using as a basis for their initial review article 348 CC, the reviewing experts noted that this provision criminalized active bribery for the legal or illegal performance or omission of a public official “within the scope of his/her authority”. This concept may also cover cases where a public official in the field of his/her competences transgresses his/her rights, whereas acts and omissions which fall completely outside the official’s competences are not directly covered by the bribery provisions. Therefore, according to the reviewing experts, this concept seemed to narrow down the UNCAC requirement related to the “exercise of the public



official's official duties", thus covering acts and omissions which are made possible in relation to the public official's function, even if the act or omission is a misuse of the official position. Although it may be argued that acts and omissions falling outside the scope of the official's competences could be prosecuted under other criminal offences such as fraud (section 224 CC), abuse of office and official authority (section 337 CC) or fraud in the performance of a duty (section 344 CC), or by reference to the general rules on instigation (section 37 CC), it may be doubtful whether specific cases of bribery fall within the scope of application of articles 347 and 348 CC (e.g. cases where a person asks a public official to act outside his/her competences). The narrow notion of "within the scope of his/her authority" seems to add a restrictive extra element to the criminalization of bribery, which may make prosecution of the offence more difficult, i.e. by requiring proof that the official was expected to act within his/her competences.

In response to the abovementioned remarks, the Croatian authorities clarified that the new Criminal Code (OG 125/11), in its article 294, explicitly criminalizes acts and omissions "within or outside the limits of the authority" of the public official. The reviewing experts welcomed this development and noted that, upon the entry into force of the new Criminal Code on 1 January 2013, the UNCAC requirement related to the "exercise of the public official's official duties" will be fully met.

As regards third party beneficiaries of the bribe, neither article 348 nor article 294 CC specifies whether the advantage must be for the official him/herself or may be intended for a third party as well. According to the review team, the wording of the aforementioned provisions raises doubts as to whether bribery offences are criminalized where the beneficiary of the bribe is a third person, e.g. where the official or employee would solicit an advantage for one of his/her relatives, a political party or a company. Interesting to note, in contrast, that article 343 CC explicitly includes the concept of a third party beneficiary in the offence of trading in influence.

In response, the Croatian authorities underlined that in the context of the new Criminal Code (article 294), the scope of persons that can benefit from the offence is described in general. No further explanation was provided about the true meaning of the planned "general description" of the scope of persons who could benefit from the offence of active bribery.

The reviewing experts found that an explicit reference in the wording of article 294 would serve the purpose of ensuring full compliance with the relevant requirement set forth in article 15(a) of the UNCAC. Therefore they called the national authorities to ensure the extension of the scope of application of the offence of active bribery to cover instances where the undue advantage is intended for a third party.

Based on the initial information contained in the national response to the self-assessment checklist, the reviewing experts had noted that the sanctions for passive bribery (imprisonment of up to 8 years) were significantly more severe than for active bribery under Croatian law (imprisonment of up to 3 years), the maximum penalties available for active bribery did not appear to be proportionate and sufficiently dissuasive. Therefore they had indicated that there might be a need to consider increasing the penalties for active bribery offences in the public and private sectors. This would also lead to an extension of the limitation period which is essential for an effective fight against corruption in this area (currently, the basic limitation period for offences of active bribery in the public and private sectors is three years and the absolute limitation period, six years).

In response, the Croatian authorities specified that in the new Criminal Code (OG 125/11) the sanctions for both the passive and active bribery have been increased- one to ten years (passive) and one to eight years (active) of imprisonment respectfully. The reviewing experts welcomed this development.

**(c) Successes and good practices**

- The very broad definition of “gift or other gain” in the offences of the Criminal Code on bribery.
- The Croatian authorities provided information on one recent example of a successful case, which resulted in the imprisonment of high-level officials of the Croatian Privatization Fund and the confiscation of the proceeds of crime. The proceedings from indictment to final judgment were completed within two years (between 2008-2010).

*Operation MAESTRO*

In 2008, the Office for the Prevention of Corruption and Organized Crime (USKOK) issued an indictment against ten Croatian nationals, among whom were also three Vice-Presidents of the Croatian Privatization Fund, for perpetrating a series of criminal offences of corruption. Final judgments were rendered in 2010, resulting in imprisonment (11 years for first accused) and confiscation of the proceeds of crime.

**Article 15 Bribery of national public officials**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Initially, and in the context of completing the UNCAC self-assessment checklist, the Croatian authorities made reference to the following provision of the Criminal Code of Croatia (CC):

*Article 347, Criminal Code  
Receiving a bribe*

*(1) An official or responsible person who solicits or accepts a gift or some other benefit, or accepts the promise of a gift or some other gain for performing within the scope of his authority an official or other act which he should not perform, or for omitting an official or other act which he should perform, shall be punished by imprisonment for one year to eight years.*

*(2) An official or responsible person who solicits or accepts a gift or some other gain, or who accepts the promise of a gift or some other gain for performing within the scope of his*

*authority an official or other act which he should perform, or omitting an official or other act which he should not perform, shall be punished by imprisonment for six months to five years .*

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

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

In the course of the review process, the Croatian authorities also provided information on the passive bribery provision of the new Criminal Code (article 293), which was adopted in October 2011 and would enter into force on January 1<sup>st</sup> 2013), as follows:

***Acceptance of bribe***  
***Article 293***

*(1) An official or responsible person who demands or accepts bribe, or who accepts the offer or promise of bribe for themselves or another person, in order to perform an official or another act which should not be done, or omit to perform an official or another act which should be done, within or outside the limits of their official authorizations, shall be punished by imprisonment of one to ten years.*

*(2) An official or responsible person who demands or accepts bribe, or who accepts the offer or promise of bribe for themselves or another, in order to perform an official or another act which should be done, or omit to perform an official or another act which should not be done, within or outside the limits of their official authorisations, shall be punished by imprisonment of one to eight years.*

*(3) An official or responsible person who, upon performing or omission to perform an official or other act as specified in paragraphs 1 and 2 of this Article, demands or accepts bribe in relation to this act, shall be punished by imprisonment of up to one year.*

**(b) Observations on the implementation of the article**

Most of the observations made regarding the implementation of article 15(a) of the UNCAC on active bribery of public officials are also applicable in the context of implementing article 15(b) of the Convention on passive bribery of public officials.

It should be noted that article 347 CC did not specify whether the advantage must be for the official him/herself or may be intended for a third party as well. The Croatian authorities clarified that the New Criminal Code (OG 125/11) which will enter into force on January 1<sup>st</sup> 2013, prescribes advantage for the third party as well in the criminal offence of receiving a bribe (Art.293.) The reviewing experts welcomed this development and noted that, upon the entry into force of the new Criminal Code on 1 January 2013, the UNCAC requirement related to the third party beneficiaries “exercise of the public official’s official duties” will be fully met.

**(c) Successes and good practices**

- The very broad definition of “gift or other gain” in the offences of the Criminal Code on bribery.
- The above-cited case (Operation MAESTRO) is also referred to in the context of article 15 (b).

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

**Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 347 (passive bribery) and 348 (active bribery) of the Criminal Code (cited above), and explained that they equally apply to foreign public officials and officials of international organizations by virtue of the broad definition of “official person” contained in article 89 of the same Code.

Article 89, Criminal Code

*The meaning of the terms used in this Code*

(...)

*(3) An official person, when referred to as the perpetrator of a criminal offence, is an official elected or nominated to a representative body, a public official (public officials) or a person (civil servant) performing official duties in: bodies of the state administration, local (regional) self-government (counties), a unit of regional self-government, the judiciary, the Constitutional Court of the Republic of Croatia, the Public Prosecutor's Office, the Ombudsman's Office, the Ombudsman's Office for Children, the Ombudsman's Office for Gender Equality, Office of the President of the Republic, or a body, an office or an specific agency of the Government of the Republic of Croatia and the Croatian Sabor, a person vested with judicial authorities (judicial officials: judges, presidents of courts, state prosecutors, deputy state prosecutors), a judge of the Constitutional Court of the Republic of Croatia, the State Attorney General of the Republic of Croatia and his deputies, the*

*Ombudsman of the Republic of Croatia and his deputies and the Ombudsman for Children and his deputies, the Ombudsman for Gender Equality and his deputies and a notary public.*

*In the case of criminal offenses that the Republic of Croatia is obliged to prosecute according to international law, an official person is a foreign civil servant, a representative or an official of a foreign representative body, an official of an international organization of which the Republic of Croatia is a member, a representative or an official of an international assembly of which the Republic of Croatia is a member, and a judge or an official of an international court whose jurisdiction the Republic of Croatia has recognized, a foreign lay judge or a foreign arbitrator. (...)*

It was noted that no cases of active or passive bribery implicating foreign officials or officials of international organizations were reported to have been brought before Croatian courts.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, in view of the broad definition of “official person” contained in article 89 CC, the observations made with regard to the implementation of article 15 of the UNCAC are also relevant in the domestication of article 16 of the Convention.

However, the scope of the definition given by the art. 89(3) of the Croatian Criminal Code to the *international public officials* seems to be narrower than the definition given by art. 2 subpara. c) of UNCAC, since it is limited to the international organizations or assemblies of which Croatia is a member. Therefore, the reviewing experts recommended that the national authorities ensure the expansion of the scope of the definition of an “official person” to facilitate full compliance with the definition of an “official of a public international organization”, as set forth in article 2, subparagraph (c), of the UNCAC, and, thus, cover officials of public international organizations in general and not only those of which Croatia is a member.

#### **Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities cited articles 344-346 of the Criminal Code in connection with the provision under review.

*Article 344, Criminal Code  
Fraud in the Performance of a Duty*

*(1) An official person who, in the performance of his duty, with an aim to procure for himself or a third party unlawful pecuniary gain by submitting a false statement of account, or in some other way, by a false presentation of facts, deceives an authorized person into making an illegal disbursement, shall be punished by imprisonment for six months to five years.*

*(2) If, as result of the criminal offence referred to in paragraph 1 of this Article, a small pecuniary gain is acquired, while the perpetrator has acted with an aim to realize such gain, the perpetrator shall be punished by a fine or by imprisonment not exceeding one year.*

*(3) If, as a result of the criminal offence referred to in paragraph 1 of this Article considerable pecuniary gain is acquired, while the perpetrator has acted with an aim to realize such gain, the perpetrator shall be punished by imprisonment for one to ten years.*

*Article 345, Criminal Code  
Embezzlement*

*(1) Whoever unlawfully appropriates money, securities or other movable property which is entrusted to him in service or generally in his work, shall be punished by imprisonment for six months to five years.*

*(2) If the value of the embezzled property is small, or if a small sum of money or securities of small value is embezzled, while the perpetrator acts with an aim to appropriate such value, he shall be punished by a fine or by imprisonment not exceeding one year.*

*(3) If a large sum of money is embezzled or securities or property of large value are embezzled, while the perpetrator acts with an aim to appropriate such value, he shall be punished by imprisonment for one to ten years.*

*Article 346, Criminal Code  
Unauthorized Use*

*Whoever, without authorization, uses money, securities or other movable property entrusted to him in service or generally in his work, or which is accessible to him in connection with his service or work, or confers such property to another for use, shall be punished by a fine or by imprisonment not exceeding three years.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the criminalization of embezzlement seems to be covered through ad hoc provision (article 345 CC: perpetrator is “whoever”) only with regard to private sector, whereas in public sector reference is made to the provision on fraud which differentiates from the act of embezzlement (element of deception).

In response, the Croatian authorities indicated that the term ‘whoever’ includes perpetrators in both private and public sector. Article 345 CC precisely indicates the scope of the incriminations covered by the provision in this article where the reference is made both to the public and private sector using terms “in service” and “generally in his work”. Nevertheless

article 17 of the UNCAC requires prosecution of embezzlement, misappropriation or other diversion by public officials of items of value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. This article does not “require the prosecution of de minimis offences.

The reviewing experts also raised the question whether the limitation to “money, securities or other movable property” adequately reflects the required scope of article 17 (“any property, public or private funds or securities or any other thing of value entrusted...”), as well as the definition of property contained in article 2 (d) of the UNCAC. The Croatian authorities specified that the terms used in this article can be construed as reflecting the scope of article 17 of the UNCAC with reference to paragraph 3 of article 345 and by use of the “property of large value”.

The review team noted the lack of reference in this provision of third-party beneficiaries as persons who could potentially benefit from the commission of the offence. Therefore the review team called the national authorities to ensure the extension of the scope of application of the offence of embezzlement to cover instances where the undue advantage is intended for a third party.

## **Article 18 Trading in influence**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 343 CC in connection with the provisions under review.

*Article 343, Criminal Code  
Illegal Intercession*

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

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

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

*(4) Whoever offers, promises or gives a gift or some other gain to another, meant for that person or for another natural or legal person so that by abusing his official or social position or influence he intercedes so that an official or other act be performed that should be performed, or so that an official or other act not be performed that should not be performed shall be punished by imprisonment for six months to three years.*

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

The Croatian authorities reported on one recent case decided by the courts on the basis of article 343. The case proceedings from investigation to passing of the final judgement were concluded within one year.

#### *Floodlights (REFLEKTORI) case*

In 2010, USKOK issued an indictment against three persons for the criminal offences of abuse of office and authority, forging an official document, and illegal intercession. One of the defendants was a former Vice-President of Croatia. The final decision was rendered in the same year, sentencing the accused to suspended imprisonment.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that trading in influence is criminalized in article 343 CC, both in its active (paragraphs 4 and 5) and passive form (paragraphs 1-3). This article transposes, to a large extent, the requirements of article 18 of the UNCAC in the domestic legal system. It is not relevant whether the influence was actually exerted or if it led to the intended result. Interestingly, article 343 CC explicitly includes the concept of a third-party beneficiary. However, the review team noted that the abuse of “*supposed*” influence did not seem to be covered under article 343 CC. Therefore the review team recommended that the national



authorities clarify the interpretation of the provision on trading in influence in a way that unambiguously covers instances of abuse of not only “real”, but also “supposed” influence, in line with art. 18 of the UNCAC.

## **Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 337 and 338 CC in relation to the provision under review.

#### *Article 337, Criminal Code Abuse of Office and Official Authority*

*(1) An official or responsible person who, with an aim to procure for himself or another non-pecuniary benefit, or to cause damage to a third person, abuses his office or official authority, oversteps the limits of his official authority, or fails to perform his duty, shall be punished by a fine or by imprisonment not exceeding three years.*

*(2) If the criminal offence referred to in paragraph 1 of this Article results in considerable damage or a serious violation of the rights of a third person, the perpetrator shall be punished by imprisonment for three to five years.*

*(3) If pecuniary gain is acquired by the criminal offence referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for six months to five years.*

*(4) If considerable pecuniary gain is acquired by the criminal offence referred to in paragraph 1 of this Article, and the perpetrator acts with an aim to acquire such gain, or if extensive damage is caused, the perpetrator shall be punished by imprisonment for one to ten years.“*

#### *Article 338, Criminal Code Abuse in Performing Governmental Duties*

*An official or responsible person in a governmental bodies or units of regional or local self-government and administration, units of local self-government or bodies which perform public services, or a responsible person in legal entities whose owner or majority owner is the Republic of Croatia or a unit of local self-government and administration who, for the purpose of acquiring pecuniary gain in his private business or the private business of members of his family, abuses his office or official authority by giving preferential treatment in a competition, or by giving, obtaining or contracting jobs shall be punished by imprisonment for six months to five years.*

According to a decision of the Croatian Supreme Court, considerable damage or a serious violation (article 337 (2)) is damage amounting to more than 30.000,- Croatian Kuna (approximately EUR 4.000); extensive damage: more than 300.000,- Croatian Kuna (approximately EUR 40.000).

The Croatian authorities reported on two recent cases decided by Croatian courts on the basis of articles 337 and 338.

- (1) *Floodlights (REFLEKTORI) case (see above)*
- (2) *Case against Ambassador*

The Office for the Prevention of Corruption and Organized Crime (USKOK) issued an indictment against an ambassador for abuse of office and authority. In 2010, a final judgement was pronounced according to which the ambassador was sentenced to one year of imprisonment with a five-year ban on performing diplomatic duties.

#### **(b) Observations on the implementation of the article**

The reviewing experts found that the domestic legal framework incriminating the abuse of functions was in compliance with article 19 of the UNCAC. The term “*abuse of authority*” is interpreted as any behaviour of the official or responsible person who uses his position or authority, oversteps the limits of their authority or omits to perform their duty, thus acquiring benefit for themselves or another person or causing damage to another person.

#### **Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities indicated that the conduct of illicit enrichment has not been criminalized in Croatian law due to the specificities of Croatia’s legal system. However, a Working Group for the Drafting of a new Criminal Code considered the adoption of implementing legislation on article 20 of the Convention.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that due to specificities of the Croatian legislation pertaining to the principle of presumption of innocence, the conduct of illicit enrichment is not domestically incriminated. However, the consideration of such incrimination in the context of the proceedings of the Working Group for the Drafting of the new Criminal Code was found to be sufficient to ensure compliance with article 20 of the UNCAC.

**(c) Technical assistance needs**

The Croatian authorities indicated that Croatia would benefit from receiving technical assistance to fully implement the provision under review through the following means:

- Summary of good practices/lessons learned; and
- Model legislation.

**Article 21 Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Initially, and in the context of completing the UNCAC self-assessment checklist, the Croatian authorities made reference to the following provision of the Criminal Code of Croatia (CC):

*Article 294b, Criminal Code  
Offering a Bribe in Economic Business Operations*

*(1) Whoever confers or promises to confer a gift or other benefit upon a responsible person of a legal entity engaged in economic business operations so that, the responsible person, while concluding business or providing services, would favour another causing thereby damage to whom he represents, or whoever intermediates in so bribing a responsible person, shall be punished by imprisonment for three months to three years.*

*(2) Whoever confers or promises to confer a gift or other benefit upon a responsible person of a legal entity involved in economic business operations as a counterfavour for him concluding business or providing services, or whoever intermediates in so bribing a responsible person, shall be punished by a fine or imprisonment not exceeding one year.*

*(3) The court shall remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1 and 2 of this Article, provided that he has given a bribe at the request of a responsible person and that he reports this act prior to its discovery or prior to his knowledge that it has been discovered.*

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

The Croatian experts indicated that between 2002 and 2007, no cases were reported as having been adjudicated under the cited provision. The provision was introduced in October 2004.

In the course of the review process, the Croatian authorities also provided information on the active bribery provision of the new Criminal Code (article 253), which was adopted in October 2011 and would enter into force on January 1<sup>st</sup> 2013), as follows:

*Article 253 CC*

*Offering a Bribe in Economic Business Operations*

*(1) Whoever in economic business operations offers, promises or confers a bribe to another person so that he would favour him or another person while concluding or executing business or providing services and in doing so would cause damage to whom he represents or to whom he works for or whoever intermediates in so bribing, shall be punished by imprisonment for six months to five years.*

*(2) Whoever in economic business operations offers, promises or confers a bribe to another person as a counter favour for concluding or executing business or providing services or whoever intermediates in so bribing, shall be punished by imprisonment not exceeding three years.*

*(3) The court may remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1 and 2 of this Article, provided that he has given a bribe at the request of a responsible person and that he reports this act prior to its discovery or prior to his knowledge that it has been discovered.*

The Croatian authorities clarified that a legal entity, as referred to in the Croatian Criminal Code, is a company, a fund, an institution, a political or social organization and an association of citizens, a unit of local and regional self-government, as well as some other legal entity which, within the framework of its regular business, regularly or occasionally generates or provides resources and disposes of them. The legal persons as referred to in this Act shall also be foreign persons considered legal persons to the Croatian law.

**(b) Observations on the implementation of the article**

The reviewing experts had initially noted that, regarding the range of possible perpetrators, article 294b CC made reference to “a responsible person in a legal entity dealing with economic business transactions”. Pursuant to paragraph 7 of article 89 CC, a “responsible person” is to be understood as “a person who is entrusted with particular tasks from the field of activities of a legal entity”. However, this concept seemed to exclude entity representatives if they are neither employed nor managers of the entity. Against this background, the reviewing experts had noted that the scope of the relevant provisions of the Criminal Code seemed not to fully meet the requirements of article 21 of the UNCAC, which refers to “any person who directs or works, *in any capacity*, for a private sector entity”.

In response, the national authorities confirmed that the new CC extends the scope of possible perpetrators beyond “responsible persons in a legal entity dealing with economic business

transactions” by using the phrases “*whoever* in economic business operations offers, promises or confers a bribe *to another person...*” (for active bribery). The reviewing experts welcomed this development and noted that, upon the entry into force of the new Criminal Code on 1 January 2013, the UNCAC requirement on the scope of possible perpetrators of the bribery offence in the private sector will be fully met.

An issue raised by the review team when assessing the provisions of the domestic legal framework on bribery in the private sector was related to the – intended or real – behaviour of the bribe-taker. Whereas article 21 of the UNCAC covers all cases where bribe-takers “act or refrain from acting *in breach of their duties*”, article 294b CC requires an act of the bribe-taker which “*causes damage to whom he represents*”. The element of damage is maintained in the relevant provision of the new CC (article 253). The reviewing experts were of the view that this clause seemed to unnecessarily narrow down the requirement of the Convention and added an extra constituent element in the description of the offence. Therefore the reviewing experts recommended that the Croatian authorities explore the possibility of amending legislation in a way that allows for the criminalization of active bribery in the private sector regardless of the damage caused, in line with article 21 of the UNCAC.

## **Article 21 Bribery in the private sector**

### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Initially, and in the context of completing the UNCAC self-assessment checklist, the Croatian authorities made reference to the following provision of the Criminal Code of Croatia (CC):

#### *Article 294a, Criminal Code Accepting a Bribe in Economic Business Operations*

*(1) A responsible person within a legal entity engaged in economic business operations, which solicits or accepts a gift or some other benefit, or who accepts a promise of a gift or some other benefit, so that he, while concluding business or providing services, would favour another causing thereby damage to whom he represents, shall be punished by imprisonment for one to five years.*

*(2) A responsible person in a legal entity engaged in economic business operations who solicits or accepts a gift or some other benefit, or who accepts a promise of a gift or some other benefit as a counter favour for concluding business or providing services, shall be punished by imprisonment for six months to five years.*

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

In the course of the review process, the Croatian authorities also provided information on the passive bribery provision of the new Criminal Code (article 252), which was adopted in October 2011 and would enter into force on January 1<sup>st</sup> 2013), as follows:

*Article 252 CC*

*Accepting a Bribe in Economic Business Operations*

*(1) Whoever in economic business operations solicits or accepts a bribe or accepts an offer or promise of a bribe for himself or another person, so that he, while concluding or executing business or providing services would favour another causing thereby damage to whom he represents or to whom he works for or whoever intermediates in so bribing, shall be punished by imprisonment for one to eight years.*

*(2) Whoever in economic business operations solicits or accepts a bribe or accepts an offer or promise of a bribe for himself or another person as a counter favour for concluding or executing business or providing services or whoever intermediates in so bribing, shall be punished by imprisonment for six months to five years.*

**(b) Observations on the implementation of the article**

See the remarks under article 21(a) of the UNCAC.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 345 of the Criminal Code in relation to the provision under review (cited above). The cited provision on embezzlement is formulated in general terms and covers any person as perpetrator, thus also extending to representatives of private sector entities.

**(b) Observations on the implementation of the article**

See under article 17 of the UNCAC.

## Article 23 Laundering of proceeds of crime

### Subparagraph 1

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) Subject to the basic concepts of its legal system:*
  - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 279 of the Criminal Code in relation to the provisions under review, as well as to the Council of Europe's MONEYVAL reports on Croatia dated 2000, 2003 and 2008.

#### *Article 279, Criminal Code Money Laundering*

*(1) Whoever, in banking, financial or other economic operations, invests, takes over, exchanges or otherwise conceals the true source of money, objects or rights procured by money which he knows to be acquired by a criminal offence shall be punished by imprisonment for six months to five years.*

*(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever acquires, possesses or brings into circulation for himself or for another the money, objects or rights referred to in paragraph 1 of this Article, although at the moment of acquisition he knew the origin of such.*

*(3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 of this Article as a member of a group or a criminal organization shall be punished by imprisonment for one to ten years.*

*(4) Whoever, committing the criminal offence referred to in paragraphs 1 and 2 of this Article, acts negligently regarding the fact that the money, objects or rights are acquired by the criminal offence referred to in paragraph 1 of this Article shall be punished by imprisonment for three months to three years.*

*(5) If the money, objects or rights referred to in paragraphs 1, 2 and 4 of this Article are acquired by a criminal offence committed in a foreign state, such an offence shall be*

*evaluated pursuant to the provisions of the Croatian criminal legislation taking into consideration the provisions of Article 16, paragraphs 2 and 3 of this Code.*

*(6) The money and objects referred to in paragraphs 1, 2 and 4 of this Article shall be forfeited while the rights referred to in paragraphs 1, 2 and 4 shall be pronounced void.*

*(7) The court may remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1, 2, 3 and 4 of this Article who voluntarily contributes to the discovery of such a criminal offence.*

The Croatian authorities also provided the following anti-money laundering office statistic:

In 2009, 16 persons were under investigation (67% initiated by the AML Office, which participated in all proceedings), 15 accused (AML office initiated 47% and participated in 87%), 7 judgments, out of which 5 resulted in convictions (AML initiated 14% and participated in 71%).

	Investigations	Indictments	Convictions	Acquittals	Rejected
2008	10	19	5	7	1
2007	7	4	4	0	0
2006	28	21	4	0	0
2005	2	3	0	0	0
2004	3	5	0	0	0
2003	5	3	0	0	0

The Croatian authorities further clarified that according to international standards and article 75 of the Croatian Anti-money laundering and Counter-Terrorist Financing Act all data on persons and suspicious transactions collected and scrutinized by the AML Office acting as the Croatian Financial Intelligence Unit are classified and proceedings are secret. Therefore, the Office is not authorized to reveal information on individual cases.

The Croatian authorities also provided information on a EU Technical Assistance Project in this field:

Project CARDS 2003 "Prevention and Combating Money Laundering" Program CARDS (Community Assistance for Reconstruction, Development and Stabilisation). The purpose of this 0.8 million EUR worth project is to provide institutional support to respective institutions involved in anti-money laundering in Croatia, through, among other things, structural consultations between the involved institutes, improvement of the international cooperation and optimizing the legal framework. The project started in June last year and through its 18 month implementation, the following results were achieved:

- Strengthen of the international cooperation with financial intelligence units, supervisory bodies, law enforcement agencies in the EU and partner countries;
- Revised of existing computerized Anti Money Laundering System (AMLS);
- Improved of the mechanism in place for identification and reporting of suspicious transactions;
- Enhanced the effectiveness of law enforcement and prosecution activities in the field of countering money laundering;
  
- Completed and strengthening the supervisory regime.



Project partners in the "Prevention and Combating Money Laundering" include the Agency for European Integration and Economic Development (AEI) which operates in the context of the Federal Ministry of Finance of Austria, the Ministry of Justice and the State Attorney's Office of the Republic of Croatia. The project was launched in June 2006 and was completed in December 2007. Its main objective was to provide support to institutional strengthening with a view to preventing money laundering and combating terrorist financing, organised crime and in general, serious forms of financial crime.

During project implementation, a Protocol on Cooperation and Establishment of Inter-institutional Working Group for Preventing Money Laundering and Terrorist Financing was signed and came into force on 1 March 2007.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the money laundering offence (Article 279 CC) is basically in line with international standards and the legislation helpfully contains an explicit provision to ensure that the laundering of foreign proceeds is covered in Croatia. However, some inconsistency with the UNCAC exists and may raise uncertainties which may impede the practical implementation of the provision. One uncertainty is that the scope of the money laundering offence is unnecessarily limited to "*banking, financial or other economic operations*". Even if the term "*other economic operations*" were to be widely interpreted, the scope of this provision does not seem to cover all potential areas of laundering of proceeds.

In response, the Croatian authorities specified that the new Criminal Code (OG 125/11) omits the limited scope of the offence to banking, financial or economic operations. The reviewing experts welcomed this development and noted that upon the entry into force of the new Criminal Code on 1 January 2013, the issue of the scope of application of the money-laundering offence will be resolved, in compliance with article 23 of the UNCAC.

At the level of assessing the implementation of the money laundering provision, the reviewing experts welcomed the increase of convictions from 2005 to 2008 and stressed the need for regular updates of statistics to assess if further progress is made in this field.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 37 and 38 CC in relation to the provisions under review.

*Article 37, Criminal Code  
Instigation*

*(1) Whoever intentionally instigates another to commit a criminal offence shall be punished as if he himself committed it.*

*(2) Whoever intentionally instigates another to commit a criminal offence whose attempt is punishable shall be punished as for the attempt of such a criminal offence even if the offence itself has not been attempted.*

*(3) In the case of an inadvertent attempt of instigation, the court may remit the punishment of the instigator.*

*Article 38, Criminal Code  
Aiding and Abetting*

*(1) Whoever intentionally aids and abets another in the perpetration of a criminal offence shall be punished as if he himself committed it, but the punishment may also be mitigated.*

*(2) The following shall in particular be deemed acts of aiding and abetting: giving advice or instructions on how to commit a criminal offence, providing the perpetrator with the means for the perpetration of a criminal offence, removing obstacles for the perpetration of a criminal offence, giving an advance promise to conceal the criminal offence, the perpetrator, or the means by which the criminal offence was committed, as well as concealing the traces of a criminal offence or the objects procured by the criminal offence.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the prosecution of offenders.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (a) and (b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 279 (cited above) and 60 CC in relation to the provisions under review. They further explained that any offence contained in the Special

Part of the Criminal Code can be considered a predicate offence for money-laundering, as well as the provisions on concurrently adjudicated criminal offences are applicable to any such offence from the Special Part.

*Article 60, Criminal Code  
Concurrently Adjudicated Criminal Offences*

- (1) If the perpetrator, by one or more acts, commits several criminal offences adjudicated at the same time, the court shall, for each committed criminal offence, assess the punishment pursuant to the law, and shall then pronounce an aggregate sentence for all these offences.*
- (2) Taking into consideration the particularities of the repeater, as well as the mutual relationship of criminal offences regarding the manner and time of their perpetration, an aggregate sentence should achieve the objectives of a punishment. In determining the type and the range of an aggregate sentence, the court shall adhere to the following rules:*
  - a) If, for one of the a concurrently adjudicated criminal offence, the court assesses a long-term imprisonment and for another or other criminal offences, imprisonment or a fine, the long-term imprisonment not reaching the sum total of individual sentences shall be pronounced;*
  - b) If, for two or more concurrently adjudicated criminal offences, the court assesses long-term imprisonment, an aggregate sentence to forty court assesses long-term imprisonment, an aggregate sentence to forty years of imprisonment shall be pronounced;*
  - c) If, for two or more concurrently adjudicated criminal offences, the court assesses imprisonment, the aggregate sentence of imprisonment must be longer than any individual sentence assessed, but shall neither reach the sum total of individual nor exceed fifteen years of imprisonment;*
  - d) If, for two or more concurrently adjudicated criminal offences, the court assesses imprisonment of more than ten years, it may pronounce an aggregate sentence of long-term imprisonment, which shall not reach the sum total of individual sentences;*
  - e) If, for each concurrently adjudicated criminal offences, imprisonment of maximum three years is prescribed, the aggregate sentence shall not exceed eight years of imprisonment;*
  - f) If, for two or more concurrently adjudicated criminal offences, the court assesses fines, the aggregate fine shall not exceed the statutory maximum;*
  - g) If, for some concurrently adjudicated criminal offences, the court assesses imprisonment and fines for others, it shall impose an aggregate sentence of imprisonment and an aggregate fine pursuant to the rules provided in this Article;*

*h) If, for concurrently adjudicated criminal offences, the court assesses imprisonment and imprisonment for juveniles, it shall impose an aggregate sentence of imprisonment, pursuant to the rules from the paragraph 2 a) to 3).*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provision is adequate for the prosecution of offenders.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 14 CC in relation to the provision under review.

*Article 14, Criminal Code*

*Applicability of Criminal Legislation to Criminal Offences Committed Outside the Territory of the Republic of Croatia*

*(1) The criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory, commits:*

- any criminal offence against the Republic of Croatia provided for in Chapter (xii) of this Code;*
- the criminal offence of counterfeiting money and securities of the Republic of Croatia as defined in Articles 274 and 275 of this Code;*
- a criminal offence which the Republic of Croatia is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;*
- a criminal offence against a Croatian state official or a civil servant relating to his office.*

*(2) The criminal legislation of the Republic of Croatia shall be applied to a Croatian citizen who, outside the territory of the Republic of Croatia, commits a criminal offence other than those specified in paragraph 1 of this Article.*

*(3) The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits a criminal offence against the Republic of Croatia or its citizens which is not specified in paragraph 1 of this Article.*

(4) *The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits against a foreign state or another alien a criminal offence for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied.*

(5) *In the cases referred to in paragraphs 2 and 3 of this article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offence is found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provision is adequate for the prosecution of offenders.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities indicated that they were in compliance with the provision under review.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 60 CC (cited above) on Concurrently adjudicated criminal offences, which would apply in the instances described in the provision under review.

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied that the domestic legislation was in compliance with the provision of the UNCAC under review.

**(c) Technical assistance needs**

The national authorities indicated that Croatia was in receipt of technical assistance in the field relevant for the anti-money-laundering article under an EU Assistance Project.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 236 CC in relation to the provision under review.

*Article 236, Criminal Code  
Concealing*

*Whoever purchases, receives in pledge or otherwise acquires, conceals or resells an object which he knows was acquired by a criminal offence or what has been received for such an object as the result of a sale or exchange shall be punished by a fine or by imprisonment not exceeding three years.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provision is adequate for the prosecution of offenders.

**Article 25 Obstruction of Justice**

**Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to article 304 CC in relation to the provision under review.

*Article 304, Criminal Code  
Obstruction of Evidence*

*(1) Whoever, in proceedings before the court, International Criminal Tribunal, in administrative proceedings, proceedings before a notary public or disciplinary proceedings, uses force, threat or any other kind of coercion, or promises, offers or gives a gift or any other benefit to a witness or expert witness, with an aim to induce the giving of false testimony or to prevent or hamper the presentation of evidence, shall be punished by imprisonment for six months to five years.*

*(2) Whoever, with an aim to prevent or considerably hamper the presentation of evidence in proceedings before the court, administrative proceedings, proceedings before a notary public or disciplinary proceedings, conceals, damages or destroys the object or document of another serving as evidence, forges evidence in proceedings before the court, or whoever submits such a evidence knowing it to be a forgery, shall be punished by a fine or by imprisonment not exceeding one year.*

*(3) The punishment referred to in paragraph 2 of this Article shall be inflicted on whoever, with an aim to prevent or considerably hamper the presentation of evidence in proceedings before the court or in administrative proceedings, removes, destroys, relocates or shifts a boundary stone, geodetic mark, or in general any other mark intended to indicate ownership or some other real property right, or a water right, or whoever, with the same aim, falsely installs such a mark.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provision is adequate for the prosecution of offenders.

**Article 25 Obstruction of Justice**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the following articles of the Criminal Code in relation to the provision under review.

*Article 309, Criminal Code  
Duress against Judicial Official*

*(1) Whoever makes demands on a judge, State Attorney, notary public, by force, threat or another form of coercion to undertake actions or pass a decision, within or outside the framework of his authority, or whoever mediates in such acts or demands, if by so acting some other criminal offence for which a more severe punishment is prescribed is not committed, shall be punished by imprisonment for six months to five years.*

*(2) Whoever, during proceedings before a court, but prior to the rendering of the final judgment, expounds his opinion in the public media, at a public rally or in front of a body of persons on how the judicial official should act in a particular case or which decisions he should pronounce, shall be punished by a fine or by imprisonment not exceeding six months.*

*(3) There shall be no criminal offence referred to in paragraph 2 of this Article if its material elements are realized by the defendant or his defence counsel and if they express their opinion after an official public statement of the State Attorney or the judge regarding the respective case.*

*Article 317, Criminal Code  
Obstruction an Official in the Performance of Official Duty*

*(1) Whoever, by force or threat of immediate use of force, prevents an official from performing an official act falling within the scope of his authority or, by using the same means, coerces him to perform an official act shall be punished by imprisonment for six months to three years.*

*(2) Whoever, in the course of committing the criminal offence referred to in paragraph 1 of this Article, maltreats an official, inflicts bodily injury upon him or threatens to use a weapon, shall be punished by imprisonment for six months to five years.*

*(3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 of this Article against a person authorized to help an official in the performance of an official act shall be punished as if he had committed the offence against the official.*

*(4) The court shall remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1, 2 and 3 of this Article provided he was provoked by illegal, inconsiderate or rude treatment on the part of the official or the person authorized to help him.*

*Article 318, Criminal Code  
Attacking an Official*

*(1) Whoever, apart from the cases referred to in Article 317 of this Code, attacks or seriously threatens an immediate attack on an official or a person authorized to help an official in the performance of his duties falling within the scope of internal affairs to prevent and discover criminal offences, apprehend perpetrators of criminal offences, or*



*safeguard public order and peace, shall be punished by imprisonment for six months to three years.*

*(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever commits the criminal offence referred to in paragraph 1 of this Article against a person entrusted to guard persons who have been deprived of liberty by a legal decision or in a legal manner.*

*(3) Whoever, in the course of committing the criminal offence referred to in paragraphs 1 and 2 of this Article, maltreats, inflicts slight bodily injury on an official or person authorized to help him or threatens to use a weapon, shall be punished by imprisonment for six months to five years.*

*(4) The punishment of the perpetrator of the criminal offence referred to in paragraphs 1, 2 and 3 of this Article may be remitted provided he was provoked by illegal, inconsiderate or rude treatment on the part of the official or the person authorized to help him.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the prosecution of offenders.

**Article 26 Liability of legal persons**

**Paragraph 1**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 1-3 of the Act on the Responsibility of Legal Persons for Criminal Offences in relation to the provision under review.

*Chapter I: General Provisions*

*Article 1, Act on the Responsibility of Legal Persons for Criminal Offences*

*(1) This Act establishes the prerequisites of punishability, punitive measures and criminal proceedings for criminal offences of legal entities.*

*(2) The legal persons as referred to in this Act shall also be foreign persons considered legal persons to the Croatian law.*

*Article 2, Act on the Responsibility of Legal Persons for Criminal Offences*

*Application of criminal legislation*

*Unless otherwise prescribed by this Act, the provisions of the Criminal Code, the Criminal Procedure Act and the Law on the Office for the Prevention of Corruption and Organized Crime shall apply to legal persons.*

## *Chapter II: Prerequisites of Punishability*

### *Article 3, Act on the Responsibility of Legal Persons for Criminal Offences*

#### *Foundation of responsibility of legal persons*

*(1) The legal person shall be punished for a criminal offence of a responsible person if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or a third person.*

*(2) Under the conditions referred to in paragraph 1 of this Article the legal person shall be punished for the criminal offences prescribed by the Criminal Code and other laws prescribing the criminal offences.*

The Croatian authorities further reported on statistics provided by the State Attorney Office Statistics for criminal reports, which reflects the number of legal persons who were held to have committed a criminal offence (not limited to corruption offences) in a given year.

2009: 1406 legal persons

2008: 1066 legal persons

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that through specific legislation (Act on the Responsibility of Legal Persons for Criminal Offences), Croatia has introduced in its legal system the criminal responsibility of legal persons. In particular, “a legal entity is to be punished for a criminal offence committed by a responsible person if such an offence violates any of the duties of the legal entity or if the legal entity has obtained or should have obtained illegal gain for itself or for any other third person/s” (article 3 of the Act).

The reviewing experts concluded that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the prosecution of offenders.

#### **(c) Successes and good practices**

- The establishment of criminal liability of legal persons.

## **Article 26 Liability of legal persons**

### **Paragraphs 2 and 3**

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 4, 5 and 8 of the Act on the Responsibility of Legal Persons for Criminal Offences in relation to the provision under review.

*Article 4, Act on the Responsibility of Legal Persons for Criminal Offences  
Responsible person*

*The responsible person within the meaning of this Act is a natural person in charge of the operations of the legal person or entrusted with the tasks from the scope of operation of the legal person.*

*Article 5, Act on the Responsibility of Legal Persons for Criminal Offences  
Attributing the guilty of a responsible person to the legal person*

*(1) Responsibility of legal person is based on the guilt of the responsible person.*

*(2) The legal person shall be punished for the criminal offence of the responsible person also in cases when the existence of legal or actual obstacles for establishing of responsibility of responsible person is determined.*

*Article 8, Act on the Responsibility of Legal Persons for Criminal Offences  
Types of punitive measures*

*(1) For their criminal offences, legal persons may be imposed penalties, and pronounced suspended sentences and security measures.*

*(2) For their criminal offences, legal persons may be punished with fines or termination of the legal person.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that through specific legislation (Act on the Responsibility of Legal Persons for Criminal Offences), Croatia has introduced in its legal system the criminal responsibility of legal persons. In particular, “a legal entity is to be punished for a criminal offence committed by a responsible person if such an offence violates any of the duties of the legal entity or if the legal entity has obtained or should have obtained illegal gain for itself or for any other third person/s” (article 3 of the Act). The term “responsible person” refers to “a natural person in charge of the operations of the legal entity or entrusted with the tasks falling under the scope of the legal entity” (article 4). Corporate criminal liability is primarily founded on the liability of the leader of the legal entity and his/her guilt (article 5, paragraph 1). Exceptionally, it may be possible to recognize liability to a legal person when the responsible person cannot be charged due to legal or actual obstacles (article 5, paragraph 2).

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review and considered that the cited provisions are adequate for the prosecution of offenders.

**(c) Successes and good practices**

- The establishment of criminal liability of legal persons.

**Article 26 Liability of legal persons**

**Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 8-12 of the Act on the Responsibility of Legal Persons for Criminal Offences in relation to the provision under review.

*Chapter III: Penalties and other punitive measures*

*Article 8, Act on the Responsibility of Legal Persons for the Criminal Offences  
Types of punitive measures*

*(1) For their criminal offences, legal persons may be imposed penalties, and pronounced suspended sentences and security measures.*

*(2) For their criminal offences, legal persons may be punished with fines or termination of the legal person.*

*Article 9, Act on the Responsibility of Legal Persons for the Criminal Offences  
Fines*

*(1) The prescribed fine for criminal offences committed by legal persons shall not be less than 5.000,00 kuna nor exceed 5.000.000,00 kuna.*

*(2) In case of the legal person's failure to pay the fine within the specified period of time, the same shall be collected under coercion.*

*Article 10, Act on the Responsibility of Legal Persons for the Criminal Offences  
Amount of a fine*

*(1) If the criminal offence is punishable by imprisonment for a term of up to one year, the legal person may be punished by a fine of 5.000,00 to 2.000.000,00 kuna.*

*(2) If the criminal offence is punishable by imprisonment for a term of up to 5 years, legal person may be punished by a fine of 10.000,00 to 3.000.000,00 kuna.*

*(3) If the criminal offence is punishable by imprisonment for term of up to 10 years, legal person may be punished by a fine of 15.000,00 to 4.000.000,00 kuna.*

*(4) If the criminal offence is punishable by imprisonment for a term of up to 15 years or by long-term imprisonment, the legal person may be punished by a fine of 20.000,00 to 5.000.000,00 kuna.*

*Article 11, Act on the Responsibility of Legal Persons for the Criminal Offences  
Imposition of a fine for criminal offences committed in concurrence*

*If the court has imposed fines on a legal entity for two or more criminal offences committed in concurrence, the single fine may not exceed the sum of individual fines or the highest fine determined by the law.*

*Article 12, Act on the Responsibility of Legal Persons for the Criminal Offences  
Termination of legal person*

*(1) The penalty of termination of the legal person may be pronounced if the legal person has been established for the purpose of committing criminal offences or if the same has used its activities primarily to commit criminal offences.*

*(2) The penalty of termination of the legal person may not be pronounced on units of local and regional self-government, political parties and trade unions.*

*(3) Apart from the penalty of termination of the legal person the court may also impose a fine upon the legal person.*

*(4) After the judgment on termination of the legal person becomes final, liquidation shall be carried out.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Act on the Responsibility of Legal Persons for Criminal Offences foresees two types of sanctions where the legal person is found criminally liable: penalties consisting of fines and termination of the legal person; and security measures, including professional bans, bans on transactions with beneficiaries of the national or local budgets, bans on obtaining licenses, authorizations or concession, as well as confiscation and publication of the verdict. Suspended sentence can also be pronounced.

The reviewing experts concluded that Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the prosecution of offenders.

**Article 27 Participation and attempt**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity*

*such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 35-36 and 37-38 CC on Instigation and Aiding and Abetting (cited above under article 23 (1) b ii) in relation to the provision under review.

*Article 35, Criminal Code  
The Principal and Accomplices*

*(1) The principal is a person who commits a criminal offence by his own act or omission or through another agent.*

*(2) Accomplices in the perpetration of a criminal offence are: the co-principals, the instigator and the aider or abettor.*

*(3) Co-principals of a criminal offence are two or more persons who, on the basis of a joint decision, commit a criminal offence in such a way that each of them participates in the perpetration or, in some other way, substantially contributes to the perpetration of a criminal offence.*

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

*Article 36, Criminal Code  
Punishment of Accomplices*

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

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

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

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

*Article 37, Criminal Code*

*Instigation*

*(1) Whoever intentionally instigates another to commit a criminal offence shall be punished as if he himself committed it.*

*(2) Whoever intentionally instigates another to commit a criminal offence whose attempt is punishable shall be punished as for the attempt of such a criminal offence even if the offence itself has not been attempted.*

*(3) In the case of an inadvertent attempt of instigation, the court may remit the punishment of the instigator.*

#### *Article 38, Criminal Code*

##### *Aiding and Abetting*

*(1) Whoever intentionally aids and abets another in the perpetration of a criminal offence shall be punished as if he himself committed it, but the punishment may also be mitigated.*

*(2) The following shall in particular be deemed acts of aiding and abetting: giving advice or instructions on how to commit a criminal offence, providing the perpetrator with the means for the perpetration of a criminal offence, removing obstacles for the perpetration of a criminal offence, giving an advance promise to conceal the criminal offence, the perpetrator, or the means by which the criminal offence was committed, as well as concealing the traces of a criminal offence or the objects procured by the criminal offence.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the prosecution of offenders.

#### **Article 27 Participation and attempt**

##### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 33 CC in relation to the provision under review.

#### *Article 33, Criminal Code* *Attempt*

*(1) Whoever intentionally commences to execute a criminal offence but does not consummate it shall be punished for the attempt only of a criminal offence for which a punishment of five years of imprisonment or a more serious penalty is prescribed by law, while the attempt of another criminal offence is punishable only if the law expressly provides for the punishment for an attempt.*

*(2) The perpetrator who attempts to commit a criminal offence shall be punished as if the offence had been completed, but the punishment can also be mitigated.*

*(3) If the perpetrator attempts to commit a criminal offence by means that are inappropriate to accomplish the ends sought, or against an object upon which a criminal offence could not have been committed, the court may remit the punishment.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that, in relation to the attempt of corruption-related offences, the review team noted that article 33 CC punishes attempt only of criminal offences carrying a penalty of five years of imprisonment or more or elsewhere when the punishment of attempt is specifically prescribed. In this connection, the review team raised the query whether this means that the attempt of offences carrying a lesser punishment (for example, active bribery in article 348) is not criminalized. In response, the national authorities confirmed the punishment threshold and underlined that, since the sanctions for bribery offences had been increased in the new Criminal Code, the attempt of such offences would also be criminalized. The review team welcomed the latter explanation.

**Article 27 Participation and attempt**

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities indicated that the mere preparation for a criminal offence is not criminalized in the domestic legal order.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation does not incriminate the mere preparation for a criminal offence. They also took into account that the requirement set forth in article 27, paragraph 3, of the UNCAC is optional and is subject to the principles of the domestic legislation.



## **Article 28 Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 418, 419 and 450 of the Criminal Procedure Act in relation to the provision under review.

#### *Article 418, Criminal Procedure Act Presentation of Evidence*

*(1) Presentation of evidence extends to all facts deemed by the court to be important for a correct adjudication.*

*(2) The co-accused persons who plead guilty to all counts of the charge shall be interrogated at the beginning of evidence presentation, those who request to be interrogated before the close of all evidence shall be interrogated as soon as requested, whereas those who plead not guilty to all or individual counts of the charge shall be interrogated at the close of all evidence, unless otherwise requested.*

*(3) The accused who is to be interrogated at the close of all evidence pursuant to the provision of Article 416 paragraph 5 of this Act may participate in the examination of individual pieces of evidence at the trial before being interrogated.*

*(4) If the injured person who is present testifies as a witness, his examination shall be carried out before other witnesses give their testimonies.*

*(5) The data from the criminal register as well as other data about convictions for offences may be read only as the last evidence before interrogation of the accused at the close of all evidence, unless the panel shall make decisions on the measures for ensuring presence of the defendant and other precautionary measures.*

#### *Article 419*

*(1) The parties shall be entitled to call on witnesses and expert witnesses and present evidence. The panel may decide to present evidence which were not proposed or from which the proposing party has withdrawn.*

*(2) The evidence shall be presented at the trial in the following order:*

- 1) evidence of the prosecution,*
- 2) evidence of the defence,*
- 3) evidence of the prosecution challenging the statements of the defence,*
- 4) evidence of the defence as reply to challenging,*
- 5) evidence of the court,*
- 6) evidence on the facts being crucial for the pronouncement of penal sanction.*

*(3) The president of the panel may, for justified reasons, determine a different order of the presentation of evidence.*

*Article 450*

- (1) *The court shall found its judgement only on the facts and evidence presented at the trial.*
- (2) *The court is bound to conscientiously assess each piece of evidence individually and in relation to other evidence and on the basis of such assessment to reach a conclusion in whether or not a particular fact has been proved.*

In addition, the following articles on *mens rea* elements of a criminal offence were cited by the Croatian authorities:

***Intent***

*Article 44*

- (1) *A criminal offence may be committed with direct (dolus directus) or indirect intent (dolus eventualis).*
- (2) *The perpetrator acts with direct intent when he is aware of his conduct and desires its perpetration.*
- (3) *The perpetrator acts with indirect intent when he is aware that he might commit an offence and accedes to it.*

***Punishability for Intentional and Negligent Conduct***

*Article 43*

- (1) *Only the intentional perpetration of a criminal offence is punishable, unless a statute expressly provides punishment for negligent conduct as well.*
- (2) *A more severe punishment which the law prescribes for a more serious consequence resulting from a criminal offence shall be inflicted only when the perpetrator acted negligently with regard to such a consequence.*

The Croatian authorities explained that the issue whether the rules of evidence are broad enough to encompass inference of *mens rea* from circumstantial evidence is a matter of court practice.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the prosecution of offenders.

**Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 20 CC in relation to the provision under review.

*Article 20, Criminal Code*

*The Running and Interruption of the period prescribed by Statutes of Limitation Regarding the Institution of Criminal Proceedings*

*(1) The period prescribed by statutes of limitation to institute criminal prosecution commences on the date the criminal offence was committed.*

*(2) The period prescribed by statutes of limitation shall not run during the time criminal prosecution, pursuant to the law, cannot be undertaken or continued.*

*(3) The running of the period prescribed by statutes of limitation is interrupted by each procedural action undertaken in order to institute criminal prosecution against the perpetrator for the commission of a criminal offence.*

*(4) The running of the period prescribed by statutes of limitation is also interrupted when the perpetrator commits an equally serious or a more serious criminal offence.*

*(5) After each interruption, the period prescribed by statutes of limitation commences anew.*

*(6) The period prescribed by statutes of limitation to institute criminal prosecution expires in any case when twice as much time lapses as is prescribed by the statutes of limitation for the initiation of criminal prosecution.*

The Croatian authorities further clarified that:

Except in the cases of the criminal offences specified in Article 18, paragraph 2 of this Code, criminal prosecution for the purposes of applying the criminal legislation of the Republic of Croatia shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- twenty-five years in the case of a criminal offence for which a punishment of a long-term imprisonment is prescribed;
- fifteen years in the case of a criminal offence for which a punishment of more than ten years of imprisonment is prescribed;
- ten years in the case of a criminal offence for which a punishment of more than five years of imprisonment is prescribed;
- five years in the case of a criminal offence for which a punishment of more than three years of imprisonment is prescribed;
- three years in the case of a criminal offence for which a punishment of more than one year of imprisonment is prescribed;
- two years in the case of a criminal offence for which a punishment of up to one year of imprisonment or a fine is prescribed;

If, for single criminal offence, several punishments are prescribed the period of limitation shall be applied according to the most severe punishment prescribed for such an offence.

**(b) Observations on the implementation of the article**

Assessing the material brought to their attention, the reviewing experts noted that there might be a need to reconsider whether the statute of limitations for offences carrying a term of imprisonment of more than one year (3 years) and of up to one year or a fine (2 years) could be adequate enough to preserve the interests of the administration of justice. The national authorities reported that the new Criminal Code increases significantly the statute of limitations period. This, in relation to offences carrying a term of imprisonment of more than one year the statute of limitations would be 10 years, and for those carrying a term of imprisonment of up to one year or a fine, the statute of limitations would be 6 years. Moreover, it was confirmed that the statute of limitations be “tolled” (i.e. suspended) where a mutual legal assistance request has been made. The reviewing experts welcomed this development and noted that, upon the entry into force of the new Criminal Code on 1 January 2013, the requirement set forth in article 29 of the UNCAC will be met.

However, no specific information was provided by the Croatian authorities on whether the statute of limitations period could be extended in cases of evasion of justice by the defendant. Therefore the reviewing experts recommended the domestic legislation provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice, in line with article 29 of the UNCAC.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 56 CC in relation to the provision under review.

*Article 56, Criminal Code*

*A General Rule on the Selection of the Type and Range of Punishment*

*(1) The selection of the type and the range of punishment of the perpetrator of a criminal offence shall be determined by the court, within the limits established by law for the committed criminal offence, and based on the degree of culpability and dangerousness of the offence, as well as the purpose of punishment.*

*(2) In determining the type and range of punishment which is to be applied, the court shall take into consideration all the circumstances which result in a less or more serious punishment for the perpetrator of a criminal offence (the mitigating or aggravating circumstances), in particular the following: the degree of culpability, motives for*

*committing the criminal offence, the degree of peril or injury to the protected good, the circumstances under which the criminal offence was committed, the conditions in which the perpetrator had lived prior to committing the criminal offence and his abidance by the laws, the circumstances he lives in and his conduct after the perpetration of the criminal offence, particularly his relation towards the injured person and his efforts to compensate for the damage caused by the criminal offence, as well as the totality of social and personal grounds which contributed to the perpetration of the criminal offence.*

The Croatian authorities further indicated that as of 30 June 2011, the total number of cases pending before the courts was 774,718, down 1.3% compared to December 2010.

Since May 2011, courts began systematically reporting to the Ministry of Justice on the number of pending cases older than 10 years, with separate records on such cases now being kept. On 1 January 2011 there were a total of 15,445 cases older than 10 years at all county and municipal courts. On 31 July 2011 there were a total of 12,339 cases older than 10 years.

In the period from 31 July 2011 till 30 September 2011 numbers of cases 10-15 years old before municipal and county courts has been further reduced from 9596 cases to 9288 cases (reduction of 308 cases).

**(b) Observations on the implementation of the article**

Assessing the sanctions applicable to natural persons involved in corruption-related offences, the review team noted that the penalties for passive bribery (imprisonment of up to 8 years) were significantly more severe than for active bribery under Croatian law (imprisonment of up to 3 years) and that, further, the maximum penalties available for active bribery did not appear to be proportionate and sufficiently dissuasive. Therefore there may be a need to consider increasing the penalties for active bribery offences in the public and private sectors. This would also lead to an extension of the limitation period which is essential for an effective fight against corruption in this area (currently, the basic limitation period for offences of active bribery in the public and private sectors is three years and the absolute limitation period, six years).

In response, the national authorities indicated that the penalties for both active and passive bribery offences in the public sector, as well as for active bribery in the private sector, are increased in the new Criminal Code. Active bribery in the public sector would be punished by imprisonment of 1 to 8 years (the previous penalty was 6 months to 3 years of imprisonment) if it involves an illegal act or omission by the public official; cases involving a legal act or omission by a public official would be punished by imprisonment of 6 months to 5 years (the previous penalty was a fine or imprisonment up to 1 year). Passive bribery in the public sector would be punished by imprisonment of 1 to 10 years if illegal acts/omissions are involved and 1 to 8 years if legal acts/omissions are involved (the previous penalties were imprisonment of 1 to 8 years and 6 months to 5 years respectively). Finally, active bribery in the private sector would carry a penalty of imprisonment between 6 months and 5 years in cases of acts causing damage to the private entity (the previous penalty was imprisonment of 6 months to 3 years) and imprisonment not exceeding 3 years in other cases (the previous penalty was imprisonment not exceeding 1 year).

The reviewing experts welcomed the development above and noted that, upon the entry into force of the new Criminal Code on 1 January 2013, the requirement set forth in article 30, paragraph 1, of the UNCAC will be met.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 75 of the Constitution and article 51 of the Act on Civil Servants and Employees in relation to the provision under review.

##### *Article 75, Constitution*

*(1) Members of the Croatian Parliament shall enjoy immunity*

*(2) No representative shall be prosecuted, detained or punished for an opinion expressed or vote cast in the Croatian Parliament.*

*(3) No representative shall be detained, nor shall criminal proceedings be instituted against him, without the consent of the Croatian Parliament.*

*(4) A representative may be detained without the consent of the Croatian Parliament only if he has been caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years. In such a case, the President of the Croatian Parliament shall be notified thereof.*

*(5) If the Croatian Parliament is not in session, approval for the detention of a representative, or for the continuation of criminal proceedings against him, shall be given and his right to immunity decided by the credentials-and-immunity committee, such a decision being subject to subsequent confirmation by the Croatian Parliament.*

##### *Article 51, Act on Civil Servants and Employees*

*(1) A civil servant may be removed from office, by body head decision if criminal procedure or procedure for heavy official duty violation have been instituted against him or her, and the violation's nature is such that his or her remaining in office, while the procedure is in course, could have a negative impact on the service interests.*

*(2) A civil servant against whom investigation proceedings have been instituted and detention fixed shall also be considered as being removed from office and a verdict shall be passed in this connection*

The Croatian authorities further explained that in Croatia public officials do not enjoy immunity, except for the President of the Republic and Members of Parliament. Such immunity can, however, be lifted in accordance with the Constitution and law.

The issue of immunities, as a practical matter, has not affected corruption prosecutions, as such immunity has always been waived when requested by State Attorney Office.

Generally speaking, state attorneys do not enjoy immunity. Pursuant to Article 8 of the Law on Courts, judges do have immunity, but such protection can (and has been) waived by the State Judicial Council in corruption cases.

According to Article 75 of the Croatian Constitution, Parliament members have limited immunity for opinions and acts they undertake within Parliament and generally for criminal offences that carry less than a five year sentence. For such offences carrying less than a five year sentence, their immunity can be waived by Parliament.

All decisions adopted by the Parliamentary Committee on Mandates and Immunities now called Credentials and Privileges Commission are published on their internet site: <http://www.sabor.hr/Default.aspx?sec=2353&PageIndex=1&Year=2011> with possibility to access to all decision depending on the date the decision has been brought. The Credential and Privileges Commission:

- propose to Parliament decisions on the termination of a deputy's term of office or decisions on the suspension of a deputy's term of office when the legal conditions for this are fulfilled and submit reports to Parliament on the fulfilment of legal conditions for the commencement of the term of office of the alternate deputy,
- propose to Parliament the passage of decisions on legal immunity of deputies, and when Parliament is not in session it decides on legal immunity, provided that such decisions are subsequently confirmed by Parliament,
- propose to Parliament the passage of decisions in procedures to approve the detention or filing of criminal charges against the Chief Public Prosecutor, and when Parliament is not in session it decides on such approvals, provided that such approvals are subsequently confirmed by Parliament,
- perform other activities as stipulated by these Standing Orders

All the decisions of the State Judicial Council have been published and are accessible on the following internet site: [http://www.dsv.pravosudje.hr/index.php/dsv/odluke\\_dsv\\_a](http://www.dsv.pravosudje.hr/index.php/dsv/odluke_dsv_a).

As regards immunity of the judges of the Constitutional Court it is regulated with THE CONSTITUTIONAL ACT ON THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA, with relevant provision of the art. 4:

*Article 4*

*(1) Judges of the Constitutional Court shall enjoy the same immunity as the members of the Croatian Parliament.*

*(2) No judge of the Constitutional Court shall be responsible under the criminal law, detained or punished for an opinion expressed or vote cast in the Constitutional Court.*

*(3) No judge of the Constitutional Court shall be detained, nor shall criminal proceedings be instituted against him/her without the approval of the Constitutional Court.*

*(4) A judge of the Constitutional Court may be detained without the approval of the Constitutional Court only if he/she has been caught in the act of committing a criminal offence for which a penalty of imprisonment of more than five years is prescribed by law. In such a case the state body which has arrested the judge shall instantly notify the President of the Constitutional Court thereof.*

*(5) The Constitutional Court may decide that the judge against whom criminal proceedings have been instituted may not perform his/her duties at the Constitutional Court during the proceedings.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review.

In Croatia, public officials do not enjoy immunity, except for the President of the Republic and members of Parliament. Such immunity can, however, be lifted in accordance with the Constitution and law. According to article 75 of the Constitution, members of the Parliament have limited immunity for opinions and acts they undertake within Parliament and generally for criminal offences that carry a sentence of less than five years. For such offences carrying less than a five year sentence, their immunity can be waived by Parliament. The Parliamentary Committee on Mandates and Immunities which consists of the representatives of all political parties represented in the Parliament is authorized to prepare an opinion on lifting the immunity for the members of Parliament (the final decision is in the hands of the Parliament). The competent authority to lift immunity for members of the Government is the Government itself; the Constitutional Court decides upon lifting of the immunity of the President of the Republic; the State Judicial Council decides upon lifting the immunity of judges and members of the Council who are judges. Justices of the Constitutional Court enjoy the same immunity as Members of Parliament. It was reported that immunities as a practical matter had not affected prosecutions in corruption cases, as such immunity had always been waived when requested.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 204-206 and 212 of the Criminal Procedure Act in relation to the provision under review.



*Criminal Prosecution*  
*Article 204, Criminal Procedure Act*  
*Crime report*

*(1) All state authorities and all other legal entities shall be bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned from other sources.*

*(2) A submission of a crime report by the police shall be regulated by a special law.*

*(3) When submitting a crime report, state authorities and legal entities shall indicate evidence known to them and undertake measures to preserve traces of the offence, the objects upon which or by means of which the offence was committed as well as other evidence.*

*(4) Citizens shall be bound to report criminal offences subject to public prosecution.*

*(5) Cases in which a failure to report a criminal offence is a criminal offence shall be prescribed by law.*

*(6) The data on the identity of the person against whom a crime report has been submitted and the data that might lead to conclusions about the identity of the person shall be kept confidential.*

*Article 205*

*(1) The report shall be filed with the competent State Attorney in writing, orally or by other means.*

*(2) If the report is filed orally, the person who filed it shall be warned about the consequences of a false report. An oral report shall be entered in the record and if the report was conveyed by telephone or using other means of telecommunications, its electronic recording shall be ensured, when possible, and an official note shall be made.*

*(3) If the report was filed with the court, the police authority or a State Attorney lacking jurisdiction, they shall receive it and immediately forward it to the State Attorney having jurisdiction.*

*(4) The State Attorney shall log the crime report in the crime report register as soon as it was filed, except in the case referred to in Article 206 paragraphs 7 and 8 of this Act.*

*(5) The minister responsible for justice shall regulate the method for keeping the crime report register.*

Article 206

*(1) After inspection of the report and verification in the Information System of the State Attorney, the State Attorney shall dismiss a crime report by a ruling with a statement of reasons:*

- 1) if it follows from the report that the reported act is not a criminal offence subject to public prosecution;*
- 2) if the period of limitation for the institution of prosecution has expired and if the offence is amnestied or pardoned,*
- 3) if other circumstances exist excluding culpability or barring prosecution,*
- 4) if no reasonable suspicion exists that the suspect committed the reported offence,*
- 5) if the data in the report point to the conclusion that the report is not credible.*

*(2) The ruling of the State Attorney on the dismissal of the crime report shall not be subject to appellate review.*

*(3) Unless otherwise stipulated by this Act (Article 521 and 522), the State Attorney shall notify the injured person within eight days on the dismissal of the report and on the grounds thereof except if he decides not to institute prosecution in cases from Article 212 of this Act, with the instruction from Article 55 of this Act, and if the report was made by the police authorities or another state authority, the State Attorney shall notify the person who filed a crime report and upon his request the person against which the report was made.*

*(4) If the State Attorney is unable to establish from the crime report whether or not allegations in the report are credible, or if facts stated in the report do not suffice for a decision on whether he should order the opening of an investigation, or undertake evidence collecting actions, or if only rumours reach the State Attorney that a criminal offence has been committed, the State Attorney shall, if he cannot do this himself or through other authorities, order the police authorities to obtain necessary information by making inquiries and undertaking other measures for collecting the data necessary for a decision on the opening of the investigation. The State Attorney may in his order to the police authorities determine the content of the inquiry or measure in more detail and order immediate information from the police authorities about the inquiry or measure undertaken. If the State Attorney orders to be present during the inquiry or measure, the police authorities shall undertake the inquiry or measure in such a manner as to enable his presence. The police authorities are bound to proceed in accordance with the order of the State Attorney, and unless the State Attorney has ordered otherwise, they shall notify the State Attorney within a term of thirty days from the submission of the request of the inquiries or measures undertaken.*

*(5) Upon the request of the State Attorney, the police authorities, the ministry responsible for finance, the State Audit Office and other state authorities, organizations, bank and other legal entities shall deliver to the State Attorney required information, except the information representing a lawfully protected secret. The State Attorney may request from the aforesaid authorities to control the operations of a legal entity or physical person and, according to the appropriate regulations, to seize temporarily, until a judgement is rendered, of money, valuable securities, objects and documentation that may serve as*

evidence, to perform supervision and delivery of data that may serve as evidence on the committed criminal offence or property gained by the criminal offence, and to request information on collected, processed and stored data regarding unusual and suspicious monetary transactions. In his request, the State Attorney may in more detail specify the content of the requested measure or action and demand to be informed thereof, in order to be able to attend its execution.

(6) For failure to comply with the request, the investigating judge may, upon a motion with the statement of reasons by the State Attorney, impose a fine to the responsible person in the amount of up to HRK 50,000.00, and to legal entity in the amount of up to HRK 5,000,000.00, and if even after that such person fails to act upon the request, the person may be punished with imprisonment until the request is complied with, and not longer than one month. The court which rendered the ruling on imprisonment may abolish the ruling if, after the ruling was rendered, the responsible person acts according to the request.

(7) The State Attorney may for the purpose of collecting necessary information summon the person who filed a crime report and other persons if he considers that their statements may contribute to the assessment of the credibility of the allegations made in the report. The summons shall state the reasons for the summons. If the person who is summoned fails to answer, it shall be preceded according to Article 208 paragraph 3 of this Act.

(8) If the crime report does not contain the data on the criminal offence or if the State Attorney cannot conclude from the crime report for which criminal offence the report is filed, the person who filed a crime report shall be summoned to correct and supplement the crime report within fifteen days. If the person who filed a crime report fails to act on the summons to correct or supplement the report, the State Attorney shall make a note thereof and attach the crime report and the summons for correction or supplement thereto. Such crime report shall not be entered recorded in the crime report register; instead it shall be entered in the register of miscellaneous criminal files. The crime report and The summons shall be stored. The higher State Attorney shall be notified thereof within seven days from the expiry of the period for correction or supplement of the crime report, who may order entering of the crime report in the crime report register.

(9) The State Attorney shall make the records on the collected statement as referred to in paragraph 7 of this Article which, as well as the material referred to in Article 208 paragraph 5 of this Act, may be used during the evidence collecting actions before preferring the indictment. The records and material shall be excluded from the file pursuant to Article 86 paragraph 3 of this Act and may not be used as evidence in the proceedings.

(10) The minister responsible for justice shall regulate the method for keeping the register referred to in paragraph 8 of this Article.

## Article 212

(1) The State Attorney General of the Republic of Croatia may under the conditions and in the manner prescribed in a special law dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings if this is in proportion with the gravity of the offences committed and with the importance of that person's statement and if

*this is of importance for the discovery of offences and of the members of a criminal organization.*

*(2) The ruling of the State Attorney General referred to in paragraph 1 of this Article shall not be subject to appellate review.*

**(b) Observations on the implementation of the article**

The criminal justice system in Croatia is based on the principle of mandatory prosecution and the prosecution services are bound by the legality principle. Pursuant to article 2, paragraph 3 CPC, “unless otherwise prescribed ... the State Attorney shall be bound to institute the prosecution when there is reasonable suspicion that a certain person committed a criminal offence which is subject to public prosecution and when there are no legal obstacles to the prosecution of that person”.

However, the legislation (article 212 CPC and article 29 of the Law on the Office for the Suppression of Corruption and Organized Crime - USKOK) enables the State Attorney General to “dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings” in relation to persons who were members of a criminal organization and testify as witnesses if the statement “is of importance for the discovery of offences and of the members of the criminal organization” (see below under article 37 of the UNCAC).

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review and considered that the cited provisions are adequate for its effective implementation.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 95-98 of the Criminal Procedure Act in relation to the provision under review.

*Chapter IX*

*Measures for providing the presence of a defendant and other precautionary measures*

*1. General Provision*

*Article 95*

*(1) When deciding on the measures for the presence of a defendant and on other precautionary measures, the court and other state authorities shall by virtue of the office*

*be cautious not to apply a more severe measure if a milder measure can achieve the same purpose.*

*(2) The court and other state authorities shall by virtue of the office vacate the measures from paragraph 1 of this Article or replace them with milder measures when the legal conditions for their application have ceased to exist, or when the conditions are met for achieving the same purpose with a milder measure.*

*(3) The defendant shall have the right to request that his family or another person close to him is informed on his arrest, pre-trial detention or investigative detention (Article 7 paragraph 2 item 4).*

## *2. Summons to the defendant*

### *Article 96*

*The presence of the defendant while actions in criminal proceedings are being carried out shall be provided by serving him with a summons. The summons shall be issued pursuant to Article 175 of this Act.*

## *3. Compulsory Appearance*

### *Article 97*

*(1) A warrant for compulsory appearance shall be issued by the court if:*

- 1) a ruling on investigative detention is issued;*
- 2) a duly summoned defendant fails to appear and fails to justify his absence;*
- 3) it is not possible to duly serve the summons and the circumstances clearly indicate that the defendant is evading the receipt of the summons;*
- 4) in the case referred to in Article 129 paragraph 2 of this Act.*

*(2) The court shall decide on issuing a warrant for compulsory appearance within twelve hours from receiving a request.*

*(3) A warrant for compulsory appearance may, under the conditions referred to in Article 208 paragraph 3 of this Act, be issued by the State Attorney or the police authority.*

*(4) A warrant for compulsory appearance shall be issued in a written form and shall contain: the first and last name of the defendant who is to be brought in along with other known information, the offence he is charged with as well as the respective provisions of the Penal Code, the ground for the issuance of the warrant for compulsory appearance, the official seal of the authority and the signature of the person who issued the warrant.*

*(5) A warrant for compulsory appearance shall be executed by the police authority. The person to whom the execution of the warrant is conferred shall serve it to the defendant and shall invite the defendant to accompany him. If the defendant refuses to go calmly he shall be brought in by force.*

*(6) The police authority may bring in the defendant to official police quarters without a warrant for compulsory appearance, who shall, upon being brought in, be served with the summons in accordance with Article 169 paragraph 3 of this Act. An official record on the*

*delivery of the summons shall be made, recording the time when the defendant was brought in, when the summons was delivered or the reason for refusing to receive the summons and the time when the defendant left the official police quarters.*

*(7) The police authority may, without a warrant for compulsory appearance, bring in the defendant who is released on bail to the official police quarters for the purpose of checking domicile, residence, or for other purposes important for successfully conducting the proceedings. The defendant who is brought in such manner may be detained for no longer than six hours. An official record shall be made of his detention including time when the defendant was brought in, actions or measures undertaken and time when the defendant was released from the official police quarters. The official record shall immediately be delivered to the State Attorney, and to the court after the indictment is preferred.*

#### *4. Precautionary Measures*

##### *Article 98*

*(1) When circumstances exist as referred to in Article 123 of this Act which constitute the ground for investigative detention, or investigative detention is already determined, the court and the State Attorney shall, if the same purpose may be achieved by any of the precautionary measures, issue a ruling with a statement of reasons to carry out one or more such precautionary measures. The defendant shall be warned that in the case of failure to carry out the ordered precautionary measure it may be replaced by investigative detention.*

*(2) Precautionary measures are:*

- 1) prohibition to leave a residence;*
- 2) prohibition to visit a certain place or territory;*
- 3) obligation of the defendant to call periodically a certain person or authority;*
- 4) prohibition to approach a certain person;*
- 5) prohibition to establish or maintain contacts with a certain person;*
- 6) prohibition to engage in a certain business activity;*
- 7) temporary seizure of passport or other document which serves to cross the state border;*
- 8) temporary seizure of a license to drive a motor vehicle.*

*(3) Precautionary measures may not entail the restriction of a defendant's right to his own apartment, to unimpeded connections with members of his household, spouse or common-law spouse, parents, children, adopted child or adoptive parent, except where the proceedings are conducted on account of a criminal offence committed to the detriment of any of these persons. The prohibition of the pursuit of a business activity may also include a lawful professional activity if the proceedings have been instituted for the criminal offence committed within the activity in question.*

*(4) Precautionary measures may not restrain the right of a defendant to unimpeded communication with his defence counsel.*

*(5) Precautionary measures may be ordered before and during criminal proceedings. Prior to the commencement of criminal proceedings the precautionary measures shall be ordered and vacated by the State Attorney. During the investigation the measure shall be ordered by the investigating judge. When the indictment is preferred until the judgment*

*becomes final, the measures shall be ordered by the court before which proceedings are conducted.*

*(6) Precautionary measures may last as long as they are necessary and at the longest until the judgment becomes final. Duration of precautionary measures shall not be limited by duration terms of investigative detention. The investigating judge or the court conducting the proceedings shall examine every two months by virtue of the office whether the need for precautionary measures still exists and issue a ruling prolonging them or vacating them if they are not needed any more. The precautionary measures may be vacated before the expiry of two months if the need for them ceases to exist or if there are no longer legal conditions for their application.*

*(7) The parties may file an appeal against the ruling ordering, prolonging or vacating a precautionary measure, which does not stay the execution of the ruling.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 67 CC in relation to the provision under review.

*Article 67, Criminal Code  
Suspended Sentence*

*(1) A suspended sentence is a criminal sanction which, as a non-custodial measure, consists of the pronounced punishment and the term within which such a punishment shall not be executed under other conditions prescribed by statute.*

*(2) The court may apply a suspended sentence when it establishes that even without the execution of the punishment the realization of the purpose of punishment can be expected, particularly taking into account the relationship of the perpetrator towards the injured person and the compensation for the damage caused by the criminal offence.*

*(3) A suspended sentence may be applied to the perpetrator of a criminal offence for which the statute prescribes the imprisonment of up to five years and for criminal offences for which the imprisonment of up to ten years is prescribed, if the provisions of mitigation of the punishment have been applied.*

(4) A suspended sentence may be applied to the perpetrator of a criminal offence as specified in paragraph 3 of this Article when the court, by determining the type and the range of the punishment, pronounces imprisonment not exceeding two years or a fine, either for a single offence or for concurrently adjudicated offences.

(5) A suspended sentence shall postpone the execution of the pronounced punishment for a period of time which cannot be shorter than one or longer than five years, and such time shall be assessed in full years only.

(6) When under conditions of this Code, both imprisonment and a fine are pronounced, the court may decide to postpone only the execution of imprisonment.

In addition, the Croatian authorities referred to the following provisions on **early release and/or parole** which take into account the gravity of the offence.

#### *Conditional Release (Parole)*

##### *Article 55*

(1) A person sentenced to imprisonment may be released from the institution after having served at least one-half of the term or, exceptionally, after having served one-third of the term to which he has been sentenced, under the conditions determined in the Law on Execution of Prison Sentence.

(2) The person convicted to long-term imprisonment may be released from the institution after having served at least two-thirds of the term, or, exceptionally, after having served one-half of the term to which he has been sentenced, under the conditions determined in the Law on Execution of Prison Sentence.

(3) The court shall revoke the conditional release if the convict, while on conditional release, commits one or more criminal offences for which he is sentenced to a non-suspended sentence of imprisonment for six months.

#### *A General Rule on the Selection of the Type and Range of Punishment*

##### *Article 56*

(1) The selection of the type and the range of punishment of the perpetrator of a criminal offence shall be determined by the court, within the limits established by law for the committed criminal offence, and based on the degree of culpability and dangerousness of the offence, as well as the purpose of punishment.

(2) In determining the type and range of punishment which is to be applied, the court shall take into consideration all the circumstances which result in a less or more serious punishment for the perpetrator of a criminal offence (the mitigating or aggravating circumstances), in particular the following: the degree of culpability, motives for committing the criminal offence, the degree of peril or injury to the protected good, the circumstances under which the criminal offence was committed, the conditions in which the perpetrator had lived prior to committing the criminal offence and his abidance by the laws, the circumstances he lives in and his conduct



*after the perpetration of the criminal offence, particularly his relation towards the injured person and his efforts to compensate for the damage caused by the criminal offence, as well as the totality of social and personal grounds which contributed to the perpetration of the criminal offence.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 77 CC and articles 112-115 of the Law on Civil Servants in relation to the provision under review.

*Article 77, Criminal Code*

*Prohibition to Engage in a Profession, Activity or Duty*

*(1) The security measure of prohibition to engage in a profession, activity or duty may be ordered against a perpetrator who commits a criminal offence in carrying out his profession, activity or duty if there is a danger that such a role could induce the perpetration of another criminal offence through the abuse of the profession, activity or duty.*

*(2) The security measure of prohibition to engage in a profession, activity or duty shall be ordered for a period which may not be shorter than one or longer than five years, counting from the date the judgment becomes final, with the proviso that the time served in prison will not be included.*

*(3) The provisions of Article 54, paragraph 5 and Article 69, paragraph 5 of this Code shall be applied against the perpetrator of a criminal offence who is prohibited to engage in a profession, activity or duty while performing community service or serving a suspended sentence if he does not act in accordance with such a prohibition.*

*Article 112, Law on Civil Servants*

*(1) A civil servant may be removed from office, by body head decision if criminal procedure or procedure for heavy official duty violation have been instituted against him*

*or her, and the violation's nature is such that his or her remaining in office, while the procedure is in course, could have a negative impact on the service interests.*

*(2) A civil servant against whom an investigation proceedings have been instituted and detention fixed shall also be considered as being removed from office, and a verdict shall be passed in this connection*

#### *Article 113, Law on Civil Servants*

*(1) A civil servant may lodge a complaint against the verdict on his or her removal from office to the competent Officials Court within eight days from receipt of the verdict.*

*(2) The complaint shall not defer the verdict execution.*

*(3) The Officials Court must decide on the complaint at the latest within 15 days from the day of its receipt.*

*(4) The Officials Court's decision on the complaint shall be final and administrative lawsuit may be instituted against it.*

*(5) Removal from office shall last until the completion of the criminal procedure or procedure for serious official duty violation and in case from Article 51 paragraph 2 of this Law until expiry of detention.*

#### *Article 114, Law on Civil Servants*

*(1) During removal from office the civil servant is entitled to a salary compensation amounting to 60%, and if he or she supports a family to 80% of the salary received in the month preceding the month of his or her removal from office.*

*(2) Since the day he or she returns to office, the civil servant is entitled to receive the full pay.*

*(3) The part of the salary deducted to a civil servant as of the first day of removal shall be returned to him or her in the following cases:*

- a) if the Officials Court has accepted his or her complaint against the verdict ordering removal from office*
- b) if criminal procedure or serious official duty violation proceedings have been suspended by final decision*
- c) if he or she has been relieved from responsibility by final verdict in criminal procedure, i.e. by final decision in the serious official duty violation proceedings.*

#### *Article 115, Law on Civil Servants*

*(1) Rights from work and based on work in civil service of an official convicted to imprisonment up to 6 months, shall remain inactive throughout the period of his or her imprisonment.*

*(2) A Decision shall be passed about the civil servant rights inactivity from paragraph 1 of this Article within 15 days from the occurrence of the circumstances that represent the reason of their inactivity.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (a) and (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

- (a) Holding public office; and*
- (b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 73-74, 77 (Prohibition to Engage in a Profession, Activity or Duty, cited above) and 134 (e) CC in relation to the provisions under review.

*Article 73, Criminal Code  
Types of Security Measures*

*Security measures are: compulsory psychiatric treatment, compulsory treatment of addiction, prohibition to engage in a profession, activity or duty, prohibition to drive a motor vehicle, expulsion of aliens and forfeiture.*

*Article 74, Criminal Code  
The Purpose of Security Measures*

*The purpose of security measures is to eliminate the conditions which enable or encourage the perpetration of another criminal offence.*

*Article 137, Criminal Code  
Termination of Civil Service by Force of Law*

*(1) Civil service for a civil servant shall terminate by force of law:*

- e) when he/she is convicted for a crime as specified in Article 45 hereof - as at the date on which the conviction becomes final;*

The Croatian authorities also indicated that an assessment of the effectiveness of these measures had been conducted.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 99 of the Law on Civil Servants in relation to the provision under review.

*Article 99, Law on Civil Servants*

*The following are considered to be serious official duty violations:*

- 1. failure to perform, or unconscientious, untimely or negligent performing of official duties,*
- 2. illegal work or failure to take measures or steps which a civil servant is authorized to take in order to prevent unlawful acts,*
- 3. giving incorrect information and thereby influencing decision-making by competent authorities or causing other harmful consequences,*
- 4. misuse of office or overstepping of one's authority in office,*
- 5. refusing to carry out a task with no justified reasons,*
- 6. unauthorized utilization of the assets entrusted for the carrying out of tasks,*
- 7. disclosing of official or other secrets,*
- 8. performing of activities contrary to job tasks or without the body head's previous approval,*
- 9. preventing physical or legal persons to exercise the rights to submit requests, complaints, objections and petitions or other legal rights,*
- 10. utilization of unreliable documents in order to exercise rights from office,*
- 11. behaviour violating Code of ethics damaging the service reputation,*
- 12. absence without leave from two to four days in a month,*
- 13. behaviour due to which a penalty for light official duty violation was passed three times,*
- 14. other official duty violations defined as serious by special law.*

The Croatian authorities further clarified that “Paragraph 8 is focused on the exercising disciplinary powers when offences established in accordance with Convention are committed. Sanctions are provided for serious duty violations. Although the sanction of temporary suspension does not exist, there is a sanction of suspended sentence of removal from civil service with one year period of probation.”

In relation to the relationship and complementarity between disciplinary and criminal sanctions for corruption offences under Croatian law, the national authorities cited the following provisions of the Law on Civil Servants:

#### *Removal from office*

##### *Article 51*

*(1) A civil servant may be removed from office, by body head decision if criminal procedure or procedure for heavy official duty violation have been instituted against him or her, and the violation's nature is such that his or her remaining in office, while the procedure is in course, could have a negative impact on the service interests.*

*(2) A civil servant against whom an investigation proceedings have been instituted and detention fixed shall also be considered as being removed from office, and a verdict shall be passed in this connection*

##### *Article 52*

*(1) A civil servant may lodge a complaint against the verdict on his or her removal from office to the competent Officials Court within eight days from receipt of the verdict.*

*(2) The complaint shall not defer the verdict execution.*

*(3) The Officials Court must decide on the complaint at the latest within 15 days from the day of its receipt.*

*(4) The Officials Court's decision on the complaint shall be final and administrative lawsuit may be instituted against it.*

*(5) Removal from office shall last until the completion of the criminal procedure or procedure for serious official duty violation and in case from Article 51 paragraph 2 of this Law until expiry of detention.*

##### *Article 53*

*(1) During removal from office the civil servant is entitled to a salary compensation amounting to 60%, and if he or she supports a family to 80% of the salary received in the month preceding the month of his or her removal from office.*

*(2) Since the day he or she returns to office, the civil servant is entitled to receive the full pay.*

*(3) The part of the salary deducted to a civil servant as of the first day of removal shall be returned to him or her in the following cases:*

*a) if the Officials Court has accepted his or her complaint against the verdict ordering removal from office*

*b) if criminal procedure or serious official duty violation proceedings have been suspended by final decision*

*c) if he or she has been relieved from responsibility by final verdict in criminal procedure, i.e. by final decision in the serious official duty violation proceedings.*

##### *Article 54*

*(1) Rights from work and based on work in civil service of an official convicted to imprisonment up to 6 months, shall remain inactive throughout the period of his or her imprisonment.*

(2) A Decision shall be passed about the civil servant rights inactivity from paragraph 1 of this Article within 15 days from the occurrence of the circumstances that represent the reason of their inactivity.

The different sanctions that are imposed on the servants whether criminal or administrative sanctions are determined and adopted by different bodies that have competence to decide in the individual cases: Decisions about serious official duty violations shall be made in first instance by the Officials Court, and in appeal by a High Officials Court unless otherwise provided by special law on single government body civil servants. (art. 39. Civil Servants Act). The Officials Courts and the High Officials Court shall be organized by the Government. Officials Courts shall be organized either for a single government body or for several ones. When the criminal law sanctions have been imposed on civil servants that constitute serious official duty violations and on the top of criminal sanctions can be pronounced following sanctions (art. 49. of Civil Servant Act) :

1. fine for a period from one to six months, the fine not exceeding 20% of the total salary paid in the month in which the penalty was pronounced,

2. transfer to another workplace of lower complexity for which the same qualifications are required,

3. civil service termination

(3) The sum of penalties pronounced in one month for both light and serious violations may not exceed 30% of the total salary for that month.

(4) The penalty of transfer to another workplace of lower complexity may be pronounced only provided there are vacancies pursuant to the Rule book on internal order.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 85 CC in relation to the provision under review.

*Article 85, Criminal Code  
Rehabilitation*

*(1) After the punishment of imprisonment, long-term imprisonment or imprisonment of juveniles has been served, remitted, or purged by the statute of limitations, the convicted persons shall exercise all citizens' rights determined by the Constitution, statute or other*

*legal provisions and shall acquire all the rights other than those that are limited as a result of a security measure or a legal consequence of the conviction.*

*(2) The provision of paragraph 1 of this Article shall also apply to the perpetrator of a criminal offence against whom a non-custodial measure was ordered or whose sentence was remitted.*

*(3) The provision of paragraph 1 of this Article shall also apply to persons on parole, unless their rights are limited by special regulations on parole from serving a prison sentence.*

*(4) On the expiry of the terms referred to in paragraph 5 of this Article, the perpetrator of a criminal offence shall be deemed free of convictions and any use of data about the citizen as a perpetrator of a criminal offence shall be prohibited and, if used, shall produce no legal consequences. A rehabilitated citizen shall have the right to deny having been formerly convicted and shall not be called to account for that reason or suffer any legal consequences therefrom.*

*(5) Provided that the perpetrator of a criminal offence is not reconvicted for another criminal offence, rehabilitation shall, by operation of law, become effective after the expiry of the following terms:*

- fifteen years from the day of a served, expired, or remitted sentence, in the case of long-term imprisonment,*
- ten years from the day of a served, expired, or remitted sentence in the case of a sentence to ten years of imprisonment, or a more serious sentence;*
- five years from the day of a served, expired, or remitted sentence, in the case of a sentence to five years of imprisonment or a more serious sentence.*
- three years from the day of a served, expired or a remitted sentence, in the case of a sentence to five years of imprisonment, imprisonment of juveniles or a fine, from the expiry of probation in the case of a suspended sentence and from the finality of the decision on admonition or remission of sentence.*

*(6) The rehabilitation cannot become effective during the execution of security measures.*

The Croatian authorities further clarified that the reference to “a more serious sentence” in subparagraph 2 of article 85(5) CC related to sentences exceeding ten years, but falling short of long-term imprisonment.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Subparagraph 1 (a) and (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 82 CC in relation to the provisions under review.

*Article 82, Criminal Code*

*Confiscation of Pecuniary Gain Acquired by a Criminal Offence*

*(1) No one shall keep any pecuniary gain acquired as a result of a criminal offence. That gain will be confiscated by court decision.*

*(2) If the criminal offence within the jurisdiction of USKOK is committed it is assumed that all property of the perpetrator is gained as proceeds of crime except perpetrator make probable his legal origin.*

*(3) Proceeds of crime from paragraph 2 of this article will be seized whereupon it appears probable it is in possession on the whenever legal basis of perpetrator's spouse or extramarital partner, relatives by blood, until third degree collateral relatives, until second degree relatives by alliance and adopter and adoptee.*

*(4) Proceeds of crime from paragraph 2 will be seized when are in possession of third legal or natural person by virtue of whatever other legal ground and acquired male fidae.*

*(5) When seizure of proceeds of crime is not possible, court will order to person from which proceeds of crime are to be confiscated payment of the corresponding counter-value in money.*

*(6) Damaged person that at latest in three months from final decision on court confiscation of proceeds of crime instigate civil law proceedings can make reparation from confiscated property within three months after decision on their rights is rendered.*

It was further specified that the terms used in article 82 also encompassed equipment used or destined for use in criminal offences.

Croatian experts further indicated that in the period from 1 January 2010 to 15 July 2010, on the basis of article 82 of the Criminal Code:

- in cases of organized crime a total amount of 2.236.910,00 Croatian Kuna (approximately EUR 310 000) and EUR 47.710 were confiscated.
- in cases of corruption a total amount of 3.695.108,00 Croatian Kuna (approximately EUR 513 000) and EUR 9.340 were confiscated.



Furthermore, Croatian experts highlighted the recent adoption of the Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour on 15 December 2010.

The new Act, which came into force on 1 January 2011, introduces:

- a) the procedure for establishing pecuniary gain achieved by means of a criminal offence,
- b) security procedures in the confiscation of such a pecuniary gain,
- c) the procedure for the enforcement of the decision to confiscate the pecuniary gain,
- d) the procedure for handling confiscated property and of the property subject to seizure,
- e) realization of the rights of the parties injured by the criminal offence, and protection of third person rights.

#### **(b) Observations on the implementation of the article**

The domestic legal framework regulates in detail the requirements and conditions for interim security measures against proceeds of crime, including their seizure. The general confiscation system is established in article 82 CC. Confiscation is considered as a sui generis criminal measure of a mandatory character and can be applied to proceeds and instrumentalities of a criminal offence. A new Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour was adopted on 15 December 2010. The new Act, which came into force on 1 January 2011, introduced: the procedure for establishing pecuniary gain achieved by means of a criminal offence; security procedures in the confiscation of such a pecuniary gain; the procedure for the enforcement of the decision to confiscate the pecuniary gain; the procedure for handling confiscated property and of the property subject to seizure; and the realization of the rights of the parties injured by the criminal offence, and protection of third person rights.

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 82 CC (Confiscation of Pecuniary Gain Acquired by a Criminal Offence, cited above) and articles 38 and 271 of the Criminal Procedure Act in relation to the provision under review.

*Article 38, Criminal Procedure Act*

*(1) The basic powers and main function of the State Attorney shall be the prosecution of perpetrators of criminal offences subject to public prosecution.*

*(2) Regarding the criminal offences subject to public prosecution, the State Attorney shall have the right and duty to:*

*(...)*

*5) make a motion for temporary security measures of seizing assets;*

#### *Article 271, Criminal Procedure Act*

*(1) The State Attorney may, pursuant to the provisions on the distraint procedure, propose temporary safety measures for the confiscation of pecuniary benefit.*

*(2) The investigating judge shall decide on temporary safety measures pending investigation, the panel examining the indictment upon preferring the indictment, and the trial court after that. The panel shall decide on the appeal against the decision of the investigating judge. The appeal against the decision by the panel examining the indictment and by the trial court shall not be allowed.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the newly adopted Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour in relation to the provision under review and indicated that the Act designates the Central State Administrative Office for State Property Management as the body responsible for the management of confiscated property.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 82 (1) (Confiscation of Pecuniary Gain Acquired by a Criminal Offence, cited above) and 279 CC (Money laundering, cited above) in relation to the provision under review.

Indirect proceeds are covered by the provision of article 82, paragraph 5 CC, which states that when seizure of proceeds of crime is not possible, court will order the person from whom proceeds of crime are to be confiscated payment of the corresponding counter-value in money that can cover case when property has been intermingled or been transformed.

Additional reference was also made to the statistics provided above on the amounts confiscated during the first half of 2010.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

See above.

**(b) Observations on the implementation of the article**

See above.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

**(a) Summary of information relevant to reviewing the implementation of the article**

See above.

**(b) Observations on the implementation of the article**

See above.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 206 (5) of the Criminal Procedure Act (cited above, reproduced below for ease of reference) in relation to the provision under review.

#### *Article 206, Criminal Procedure Act*

*(5) Upon the request of the State Attorney, the police authorities, the ministry responsible for finance, the State Audit Office and other state authorities, organizations, bank and other legal entities shall deliver to the State Attorney required information, except the information representing a lawfully protected secret. The State Attorney may request from the aforesaid authorities to control the operations of a legal entity or physical person and, according to the appropriate regulations, to seize temporarily, until a judgment is rendered, of money, valuable securities, objects and documentation that may serve as evidence, to perform supervision and delivery of data that may serve as evidence on the committed criminal offence or property gained by the criminal offence, and to request information on collected, processed and stored data regarding unusual and suspicious monetary transactions. In his request, the State Attorney may in more detail specify the content of the requested measure or action and demand to be informed thereof, in order to be able to attend its execution.*

The Croatian authorities further specified that the term “lawfully protected secrets” denotes information considered confidential in accordance with laws, regulations or enactments related to data security. Institutions are therefore not obliged to hand over such information or “secrets” to the State Attorney.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 82 (2) CC (Confiscation of Pecuniary Gain Acquired by a Criminal Offence, cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 82, Criminal Code*

*(2) If the criminal offence within the jurisdiction of USKOK is committed it is assumed that all property of the perpetrator is gained as proceeds of crime unless perpetrator makes probable its legal origin.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 82 (1) (3) (4) CC (Confiscation of Pecuniary Gain Acquired by a Criminal Offence, cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 82, Criminal Code*

*Confiscation of Pecuniary Gain Acquired by a Criminal Offence*

*(1) No one shall keep any pecuniary gain acquired as a result of a criminal offence. That gain will be confiscated by court decision*

*(3) Also, property in paragraph 2 of this article shall be confiscated when it is made probable that property was gained on any legal ground at perpetrator's spouse or common law partner, a lineal relative, collateral relative up to the third degree inclusive and an in-law relative up to the second degree of affinity inclusive, an adoptive parent and an adoptee.*

*(4) Property from paragraph 2 shall also be confiscated when they are in the possession of a third party on any legal ground, and they were not acquired in good faith.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 3, 15 and 44 of the Witness Protection Act and article 294 of the Criminal Procedure Act in relation to the provision under review.

*Article 3, Witness Protection Act*

*Application of this Act is possible when there exists a possibility that a witness, due to a possible threat, would not freely testify in a criminal proceeding for grievous crimes; against the Republic of Croatia; against values protected by international law; crimes with elements of violence; organized crime and other grievous criminal offences when there were information about large scale dangers for life, health, corporal inviolability or property of the witness, while the witnessing is connected with disproportional difficulties without witnessing of endangered witness*

*Article 15, Witness Protection Act*

*Protection measures for endangered persons are as follows:*

- 1. physical protection;*
- 2. relocation;*
- 3. measures of disguising identity and ownership;*
- 4. change of identity.*

*It is possible to apply one or more measures from paragraph 1 of this Article in procedures of providing protection to endangered persons. Protection measures from paragraph 1 of this Article are carried out and organized by the Protection unit, while in case of persons deprived of liberty in cooperation with the Prison system administration of the ministry in charge of justice affairs.*

*Article 44, Witness Protection Act*

*All data related to the Committee deciding on the Protection programme, data from registries, as well as other data pertaining to this Law implementation represent official secret and are classified with degree "Very confidential".*

*Article 294, Criminal Procedure Act*

*(1) If it is likely that by giving a testimony or by answering any individual question, a witness might expose himself or any other person close to himself to a serious danger to life, health, physical integrity, freedom or property of considerable volume (witness in danger), the witness is entitled to refuse to disclose information referred to in Article 288, paragraph 2 of this Act, to refuse to answer to individual questions or to refuse to testify at all until witness protection measures have been provided.*

*(2) Witness protection referred to in paragraph 1 of this Article includes a special manner of questioning a witness and his participation in the proceedings (protected witness) and measures for protecting the witness and other persons close to him not participating in the proceedings. The authority participating in the proceedings is bound to proceed with special care regarding witness protection.*

*(3) Special manners of questioning a witness and of his participation in the proceedings are stipulated in this Act and may be implemented even before the commencement of the proceedings.*

*(4) Protection of a witness and other persons close to him not participating in the proceedings is prescribed in a special act.*

In addition, the Croatian authorities reported on the following provision of the Criminal Code regarding the protection of experts:

***Criminal Code***

***Obstruction of Evidence***

***Article 304***

*(1) Whoever, in proceedings before the court, International Criminal Tribunal, in administrative proceedings, proceedings before a notary public or disciplinary proceedings, uses force, threat or any other kind of coercion, or promises, offers or gives a gift or any other benefit to a witness or expert witness, with an aim to induce the giving of false testimony or to prevent or hamper the presentation of evidence, the assumed witness, shall be punished by imprisonment for six months to five years*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the effective implementation of the provision.

Croatia has put in place a comprehensive legal framework for the protection of witnesses, expert witnesses, victims treated as witnesses, as well as persons close to them, based on provisions of CPC (articles 294-299), as well as the provisions of a specific Act on Witness Protection. This Act, in particular, provides for a wide definition of persons to be protected.

Further to the information above, the reviewing experts were briefed that the concept of “endangered person” is used in article 2 of the Act to extend the protection scheme to persons “whose inclusion into the Protection scheme is justified due to possibility of life, health, corporal inviolability, freedom or property endangering of large scale to herself or to persons related to him, because of importance of information known to him for the criminal proceeding”.

## **Article 32 Protection of witnesses, experts and victims**

### **Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 15 and 44 of the Witness Protection Act (cited above) and article 294 of the Criminal Procedure Act (cited above) in relation to the provision under review.

#### **(b) Observations on the implementation of the article**

See above.

## **Article 32 Protection of witnesses, experts and victims**

### **Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 44 of the Witness Protection Act (cited above) and article 294 (cited above) and articles 295-299 of the Criminal Procedure Act in relation to the provision under review.

*Article 295, Criminal Procedure Act*

*(1) As soon as he becomes aware of the probability of existence of circumstances referred to in Article 294 paragraph 1 of this Act, the State Attorney shall suggest to the investigating judge the implementation of a special manner of participation and*



*examination of the witness. The State Attorney shall submit the suggestion to the investigating judge in a sealed cover with the note "Witness in Danger - Confidential", whereof the witness shall be informed first. It shall be submitted personally or through an investigator.*

*(2) The State Attorney shall specify in his suggestion a special manner of participation in the proceedings (summoning of the witness, appearing at the hearing, etc.) and a special manner of examination of the witness suggested as well as the reasons for suggesting them.*

*(3) The State Attorney may submit the suggestion referred to in paragraph 1 of this Article to the investigating judge before and during the examination. Should the defendant suggest the examination of a protected witness, the State Attorney may submit a relevant suggestion to the investigating judge and should he disagree with the suggestion, he shall ask for a decision by the investigating judge.*

*(4) The investigating judge shall reach a decision on the State Attorney's suggestion within twelve hours from the receipt of the suggestion. The State Attorney may file an appeal against the decision of the investigating judge denying the suggestion referred to in paragraph 1 of this Article. The panel shall decide on the appeal within twenty-four hours.*

*(5) If the investigating judge accepts the suggestion of the State Attorney, he shall determine by a ruling:*

- 1) a pseudonym for the protected witness;*
- 2) a special manner of participation in the proceedings (summoning, appearing before the court, etc.);*
- 3) a special manner of examination.*

*(6) An appeal against the ruling of the investigating judge shall not be allowed.*

*(7) Data on the protected witness to be examined and to participate in the proceedings in a special manner shall be put in a special and sealed cover by the investigating judge and submitted for safeguarding to the State Attorney. This shall be entered in the file under the pseudonym of the witness. Persons who in whatever circumstances find out the data on the protected witness shall be bound to keep the data confidential. The authority conducting the proceedings shall be responsible for the protection of data confidentiality.*

*(8) The sealed cover containing data on the protected witness may exceptionally be requested from the State Attorney and opened by the investigating judge, the council president for the purpose of verification of identity and by a second instance court when making a decision on an appeal against a verdict. The note shall be written on the cover stating that it has been opened and the names of persons familiar with its content shall be listed on it. After that the cover shall be resealed and returned to the State Attorney.*

*(9) After the ruling on the special manner of participating in the proceedings and special manner of examination, the investigating judge shall schedule a hearing and shall question the protected witness. During summoning, appearing of the protected witness, staying at and leaving the hearing the investigating judge and the State Attorney may order the police authorities to undertake measures of protecting the witness.*

#### *Article 296*

*(1) If the special manner of examination of a witness refers only to non-disclosure of information, the examination shall be carried out under a pseudonym without listing of other information referred to in Article 288 paragraph 2 of this Act. As regards its other parts, the examination of the protected witness shall be carried out pursuant to the general provisions of this Act related to the examination of witnesses.*

*(2) After the completion of the examination the protected witness shall sign the record by using a pseudonym.*

#### *Article 297, Criminal Procedure Act*

*(1) If the special manner of examination of a witness refers not only to non-disclosure of information referred to in Article 288 paragraph 2 of this Act but also to non-disclosure of physical appearance of the witness, the examination shall be carried out by using technical devices for audio and video recording. The technical devices shall be operated by an expert person. The appearance and the voice of the witness shall be changed during the examination. In the course of examination, the witness shall be situated in a room that is separated from the room in which the investigating judge and other persons attending the examination are situated. The examination shall be conducted pursuant to Article 92 paragraph 3 of this Act.*

*(2) The investigating judge may decide that the examination of the protected witness be recorded by an audio and video recording device or an audio recording device. The investigating judge shall bring a decision on recording and the manner in which the recording shall be performed taking special care of the protection of the witness. In that case the investigating judge shall not keep any records. The recording shall be transcribed within three days.*

*(3) Before the examination, the protected witness must be instructed according to Article 87 paragraph 3 of this Act, in addition to the warning and instructions referred to in Article 288 paragraph 3 and Article 289 paragraphs 1 and 2 of this Act.*

*(4) In case the examination of the protected witness is recorded, the investigating judge shall note in the record the ruling referred to in Article 295 paragraph 4 of this Act, and shall then proceed pursuant to Article 87 paragraph 5 of this Act taking special care of the protection of the witness.*

*(5) When the examination of the protected is being recorded, two copies of examination shall be made, one of which shall immediately be sealed and handed over to the investigating judge for safekeeping. This recording shall be signed by the investigating judge, the witness in danger by pseudonym and the expert person who made the recording. The other recording shall be handed over to the State Attorney. The State Attorney shall make a copy of the recording within fifteen days and enclose it with the file.*

#### *Article 298, Criminal Procedure Act*

The verdict and the establishment of the unlawfulness of the evidence may not be based only on the testimony of the witness acquired pursuant to Articles 296 and 297 of this Act.

*Article 299, Criminal Procedure Act*

*(1) Should during the examination the protected witness state that he no longer wishes a special manner of examination and participation that have been determined, the investigating judge shall note the statement of the witness in the record, order by a ruling recalling of the ruling referred to in Article 295 paragraph 4 of this Act and deliver the statement and the ruling on recall to the State Attorney. A prior statement of this witness shall remain in the file and may be used as evidence. An appeal against the ruling of the investigating judge referred to in paragraph 1 of this Article shall not be allowed.*

*(2) The witness referred to in paragraph 1 of this Article shall be examined by the authority conducting the proceedings pursuant to general rules on witness examination.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the effective implementation of the provision.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities provided three examples of agreements on Police Cooperation concluded to effect the adequate implementation of the provision under review. Such agreements regularly contain a relevant clause on measures for the protection of witnesses. The examples provided were the Police Cooperation agreements between Croatia and Austria, Bosnia and Herzegovina, and France, respectively.

**(b) Observations on the implementation of the article**

Croatia has put in place a comprehensive legal framework for the protection of witnesses, expert witnesses, victims treated as witnesses, which also includes police cooperation agreements with Austria, Bosnia and Herzegovina and France regulating issues pertaining to protection of witnesses. The reviewing experts were satisfied that the domestic legislation and practice were in compliance with the provision of the UNCAC under review.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 2 and 44 (cited above) of the Witness Protection Act and articles 16, 43-44, 46, 294 (cited above) and 414 (2) of the Criminal Procedure Act in relation to the provision under review.

*Article 2, Witness Protection Act*

*Certain expressions used in this Act have the following meanings:*

*1. Endangered person: a person whose inclusion into the Protection scheme is justified due to possibility of life, health, corporal inviolability, freedom or property endangering of large scale to herself or to persons related to him, because of importance of information known to him for the criminal proceeding.*

*(...)*

*Article 16, Criminal Procedure Act*

*(1) The victim and the injured person shall have the rights in criminal proceedings pursuant to this Act.*

*(2) The police, the investigator, the State Attorney and the court shall act with special regard towards a victim of a criminal offence. These authorities shall instruct the victim pursuant to paragraph 3 of this Article and Article 43 to 46 of this Act and take care of the interests of the victim when making decisions on undertaking criminal proceedings against the defendant, or when taking actions in criminal proceedings in which the victim has to participate in person.*

*(3) A victim who suffers from severe psychophysical injury or severe consequences of a criminal offence shall have the right to use expert help of a free adviser for the purpose of giving testimony in criminal proceedings.*

*(4) A victim of a severe criminal offence of violence shall have the right to damages from the state budget funds. The funds shall be collected from fines and confiscated pecuniary gains acquired by criminal offences in a special fund.*

*(5) A person may participate in criminal proceedings as an injured person under the conditions stipulated by this Act.*

*(6) The State Attorney and the court are bound in every stage of proceedings to examine if there is a possibility for a settlement between the defendant and the injured person regarding the damage caused by the criminal offence and, with the explicit consent of the injured person, to this end refer them to a psychosocial counselling centre of the authorized natural person or legal entity. The counselling centre must submit a report to the competent state authority within six months.*

*Article 43, Criminal Procedure Act*

*(1) A victim of a criminal offence shall be entitled to:*

- 1) efficient psychological and other expert help and support of the authority, organization or institution for aiding victims of criminal offences in accordance with the law;
- 2) participate in criminal proceedings as the injured person;
- 3) other rights prescribed by law.

(2) In accordance with special regulations, a victim of a criminal offence for which punishment of imprisonment for a term of five years or longer is prescribed shall have a right to:

- 1) counsel at the expense of the budget funds before testifying in criminal proceeding, and in submitting claims for indemnification, if he suffers from more severe psycho-physical damage or more severe consequences from the criminal offence;
- 2) compensation for material and immaterial damages from the state fund under the conditions and in a manner determined by a special law. When the victim acquired the claim for indemnification prior to this, the amount of the claim shall be taken into consideration, and the court shall act in the same manner when the victim had previously realized damage claim from the state fund.

(3) When undertaking first action in which the victim is involved, the court, the State Attorney, the investigator or the police authority shall notify the victim of:

- 1) the rights referred to in paragraphs 1 and 2 of this Article and Article 44 of this Act;
- 2) the rights which the victim is entitled to as an injured person.

#### *Article 44, Criminal Procedure Act*

(1) Other than the rights to which the victim is entitled as referred to in Article 43 and other provisions of this Act, a child or a minor under the age of 16 who is a victim of a criminal offence shall be entitled to:

- 1) a legal guardian at the expense of the budget funds;
- 2) confidentiality of personal data;
- 3) exclusion of the public.

(2) The court, the State Attorney, the investigator and the police authority shall treat the child or the minor under the age of 16 who is a victim of a criminal offence with consideration for his age, personality and other circumstances, in order to avoid possible harmful consequences to the future education and development of the child or the minor under the age of 16.

#### *Article 46, Criminal Procedure Act*

(1) The victim who was not informed of his right to participate in the proceedings as the injured person may declare himself an injured person before preferring the indictment to the police authority or the State Attorney, and before the end of the trial to the court.

(2) The court shall dismiss a declaration referred to in paragraph 1 of this Article if it establishes that it is obviously unfounded or made after the end of the trial.

*Article 414, Criminal Procedure Act*

*(2) The president of the panel shall take necessary measures to protect the victim from being influenced by other persons (spatial separation before the examination, etc.).*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provision is adequate for the effective implementation of the provision.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 43-54 (43-44 and 46 cited above), 294 (cited above), and 296-297 of the Criminal Procedure Act in relation to the provision under review.

*Article 45, Criminal Procedure Act*

*(1) Other than the rights referred to in Articles 43 and 44 of this Act, a victim of a sex crime is also entitled to:*

- 1) when involved in the proceeding as the injured person, talk to a counsel or a legal guardian at the expense of the budget funds before the interrogation;*
- 2) be interrogated by a person of the same sex from the police authority and State Attorney's Office;*
- 3) refuse to answer the questions related to the strictly private life of the victim;*
- 4) request to be interrogated via an audio-video device pursuant to Article 292 paragraph 4 of this Act;*
- 5) confidentiality of personal data;*
- 6) request the exclusion of the public at the hearing.*

*(2) Prior to the first interrogation, the court, the State Attorney, the investigator and the police authority shall inform the victim of the criminal offence referred to in paragraph 1 of this Article of his rights as referred to in this Article.*

*Article 47, Criminal Procedure Act*

*In criminal proceedings, the injured person shall be entitled to:*

- 1) communicate in his native language and be assisted by a translator;*

- 2) file a claim for indemnification and a request for temporary insurance measures for such claim;
- 3) have a legal guardian;
- 4) point out the facts and suggest evidence;
- 5) be present at the evidentiary hearing;
- 6) be present at the hearing, participate in evidentiary proceedings and make a closing statement;
- 7) inspect documents and files;
- 8) file an appeal under the conditions stipulated by this Act;
- 9) file a motion for prosecution and a private charge pursuant to the provisions of this Act;
- 10) be informed if criminal charges are dismissed or the State Attorney decides not to proceed with the criminal prosecution;
- 11) take over the criminal prosecution from the State Attorney;
- 12) request the case to be reinstated to the prior state of affairs;
- 13) be informed on the outcome of the criminal proceedings.

#### *Article 48, Criminal Procedure Act*

- (1) As regards criminal offences prosecuted upon a motion, the motion must be submitted within a term of three months from the day when the authorized physical or legal person learns of the offence and perpetrator.
- (2) The motion for prosecution shall be submitted to the State Attorney's Office.
- (3) If the injured person himself reports the offence or makes a motion for indemnification in criminal proceedings, he shall be deemed to have submitted the motion for prosecution.
- (4) A private charge submitted in due time shall be deemed to be a timely motion of the injured person if it transpires in the course of proceedings that an offence prosecuted upon motion is involved.
- (5) A minor of sixteen years of age or more may submit a motion for prosecution by himself.

#### *Article 49, Criminal Procedure Act*

*If an injured person dies within the term for submitting a motion for prosecution, or pending proceedings, his spouse, common-law spouse, children, parents, siblings, adopted child or adoptive parent may within three months after his death submit a motion for prosecution or a charge or declare that they will continue the proceedings.*

#### *Article 50, Criminal Procedure Act*

*If several persons are injured by the same criminal offence, the prosecution shall be instituted or continued upon the motion from each injured person.*

*Article 51, Criminal Procedure Act*

*The injured person may in his statement given to the authority conducting the proceedings withdraw the motion for prosecution or the private charge until the conclusion of the trial. In such a case he shall forfeit his right to submit the motion or the private charge anew.*

*Article 52, Criminal Procedure Act*

*(1) The injured person shall be entitled to call attention to all facts and to present evidence important for the determination of the offence, for discovering the perpetrator and for adjudicating their claims for indemnification.*

*(2) At the trial, the injured person shall be entitled to present evidence, to examine the defendant, witnesses and expert witnesses and to comment and clarify their statements as well as give other statements and make other motions.*

*(3) The injured person shall be entitled to inspect files and objects which are evidence in accordance with Article 184 paragraph 2 item 2 of this Act.*

*(4) The State Attorney and the court shall inform the injured person of the rights referred to in paragraphs 1 to 3 of this Article.*

*Article 53, Criminal Procedure Act*

*(1) Where the injured person is a minor or a person declared incapable of performing legal acts, his legal guardian shall be authorized to give all statements and perform all actions to which, according to this Act, the injured person is entitled.*

*(2) An injured person of sixteen years of age or more may himself give statements and undertake procedural actions.*

*Article 54, Criminal Procedure Act*

*(1) Only a member of the Bar may be a legal guardian of the injured person, and he may be replaced by an attorney apprentice who passed the Bar examination in proceedings before the municipal court. The injured person, his legal representative and legal guardian shall be bound to inform the court of any change of address or residence.*

*Article 296, Criminal Procedure Act*



(1) *If the special manner of examination of a witness refers only to non-disclosure of information, the examination shall be carried out under a pseudonym without listing of other information referred to in Article 288 paragraph 2 of this Act. As regards its other parts, the examination of the protected witness shall be carried out pursuant to the general provisions of this Act related to the examination of witnesses.*

(2) *After the completion of the examination the protected witness shall sign the record by using a pseudonym.*

*Article 297, Criminal Procedure Act*

(1) *If the special manner of examination of a witness refers not only to non-disclosure of information referred to in Article 288 paragraph 2 of this Act but also to non-disclosure of physical appearance of the witness, the examination shall be carried out by using technical devices for audio and video recording. The technical devices shall be operated by an expert person. The appearance and the voice of the witness shall be changed during the examination. In the course of examination, the witness shall be situated in a room that is separated from the room in which the investigating judge and other persons attending the examination are situated. The examination shall be conducted pursuant to Article 92 paragraph 3 of this Act.*

(2) *The investigating judge may decide that the examination of the protected witness be recorded by an audio and video recording device or an audio recording device. The investigating judge shall bring a decision on recording and the manner in which the recording shall be performed taking special care of the protection of the witness. In that case the investigating judge shall not keep any records. The recording shall be transcribed within three days.*

(3) *Before the examination, the protected witness must be instructed according to Article 87 paragraph 3 of this Act, in addition to the warning and instructions referred to in Article 288 paragraph 3 and Article 289 paragraphs 1 and 2 of this Act.*

(4) *In case the examination of the protected witness is recorded, the investigating judge shall note in the record the ruling referred to in Article 295 paragraph 4 of this Act, and shall then proceed pursuant to Article 87 paragraph 5 of this Act taking special care of the protection of the witness.*

(5) *When the examination of the protected is being recorded, two copies of examination shall be made, one of which shall immediately be sealed and handed over to the investigating judge for safekeeping. This recording shall be signed by the investigating judge, the witness in danger by pseudonym and the expert person who made the recording. The other recording shall be handed over to the State Attorney. The State Attorney shall make a copy of the recording within fifteen days and enclose it with the file.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the effective implementation of the provision.

### **Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 109 and 131 of the Labour Code and article 14a of the Law on Civil Servants in relation to the provision under review.

##### *Article 109, Labour Code*

##### *Reasons not constituting just cause for dismissal*

*(1) Temporary absence from work caused by an illness or personal injury is not considered to be just cause for dismissal.*

*(2) Filing an appeal or complaint, or taking part in the proceedings against the employer on the ground of a violation of a law, another regulation, collective agreement or employment rules, as well as the employee's turning to the competent executive bodies, are not considered to be just cause for cancelling an employment contract.*

*(3) The employee's turning to responsible persons or competent state administration bodies or filing a bona fide application with these persons or bodies, regarding a reasonable suspicion about corruption, is not considered to be just cause for dismissal.*

##### *Article 131, Labour Code*

##### *Burden of proof in labour disputes*

*(1) In case of a labour dispute, the burden of proof lies with a person who considers that one of his or her rights arising from the employment relationship has been violated or who takes legal action, unless this Act or another law stipulates otherwise.*

*(2) In case of a dispute relating to discriminating against an employee as a result of an action taken on account of a founded suspicion of corruption or a report on such suspicion addressed by such employee to responsible persons or competent authorities, which led to a violation of any of the rights of employees arising from the employment relationship, if such employee establishes facts from which it may be presumed that he or she has been treated less favourably or that his or her rights arising from the employment relationship have been violated, the burden of*

*proof shall be shifted to the employer who must prove that the employee has not been put at a disadvantaged position compared to other employees or that no right arising from the employment relationship has been violated with regard to such employee.*

*(3) Where an employer terminates an employment contract, in case of a dispute on account of such termination the burden of proof with regard to the existence of a justified reason for termination lies with the employer; the burden of proof lies with an employee only if an employee gives an extraordinary termination notice.*

*(4) In case of a dispute related to the working time if an employer does not keep records referred to in Article 4, paragraph 1 of this Act as prescribed, the burden of proof shall lie with the employer*

#### *Article 14a, Law on Civil Servants*

##### *Right on protection of civil servant in case of reporting of corruption*

*(1) Civil servant who report corruption on the ground of reasonable suspicion or file report thereof to responsible persons or state institution does not represent valid reason for civil service termination.*

*(2) Civil servant who report corruption on the ground of reasonable suspicion has right to protection of anonymity i the case of high corruption, protection from reduction and deprivation of right guaranteed by Labour Law and any other form of maltreatment.*

*(3) Body head is bound to instigate procedure for serious duty violation against other responsible person who does not proceed in line with paragraph 2 of this article.*

#### **(b) Observations on the implementation of the article**

Despite the existence of a nexus of provisions of labour law and civil servants legislation on the protection of reporting persons, there is still no ad hoc legislation in Croatia ensuring their protection, as set forth in article 33 of the UNCAC (non-binding provision). In this connection, the national authorities argued that the terms “reporting persons” and “witnesses” complement each other and are thus deemed compatible as such without the need for separate legislation for their protection. They further referred to anti-corruption awareness-raising campaigns aimed at ensuring wider publicity regarding the duty of the general public to report corruption incidents.

The reviewing experts recommended that the national authorities should take into consideration the need for adopting specific legislation on the protection of reporting persons, in line with article 33 of the UNCAC.

#### **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 5c of the Public Procurement Act in relation to the provision under review.

*Article 5c, Public Procurement Act*

*(1) Contracting authorities shall not award public contracts to economic operators if the head of the body or a member of the management or supervisory board of the contracting authority concerned simultaneously:*

- performs management duties in the economic operator concerned, or*
- owns business shares, stock or other rights by virtue of which he/she is involved in the management or the capital funds of the economic operator concerned in a share exceeding 20%.*

*(2) Public contracts concluded contrary to the provision of paragraph 1 of this Article shall be null and void.*

*(3) Contracting authorities shall publish a list of economic operators to which public contracts must not be awarded within the meaning of paragraph 1 of this Article on their websites.*

*(4) The provisions of this Article shall not apply to public contracts to which this Act does not apply.*

Further, according to article 46 of Public Procurement Act:

*The public contracting authority shall exclude from participation in a public procurement procedure any economic operator:*

- 1. if the economic operator or the person authorised to represent the economic operator has been the subject of a conviction by final judgment for one or more of the following criminal acts: associating for the purpose of perpetrating criminal offences, accepting a bribe in business activities, offering a bribe in business activities, abuse of position and official powers, abuse in performing governmental duty, illegal intercession, accepting a bribe, offering a bribe, fraud, computer fraud, fraud in business activities or concealing unlawfully obtained money, or the corresponding criminal acts in accordance with the legal provisions of the country in which he is established, and/or*
  - 2. if the economic operator failed to fulfil the obligation to pay all outstanding tax liabilities and contributions for pension and health insurance."*
- According to art. 48. the contracting authority shall determine the selection criteria for legal and business capacity and the criteria relating to the non-existence of a criminal record, while the criteria for the financial standing of the economic*

An appeal against all public procurement procedures can be submitted to appealing body – State Commission for Supervision of Public Procurement.

The cited article (Article 5(c) of the Public Procurement Act) contains an exemption of certain public contracts from the scope of application (see paragraph 4). The following categories of public contracts fall within this exception:

- *Exemptions are regulated by art. 5. of the Public procurement Act: Act shall not apply to contracting authorities referred to in Article 3 of this Act in:*
- *1. public contracts with international organisations pursuant to international agreements or contracts, or which are implemented pursuant to the particular procedure of an international organisation,*
- *2. public contracts governed by different procedural rules and awarded pursuant to an international agreement, concluded in conformity with the Treaty, establishing the European Community, between the Republic of Croatia and one or more countries intended for the joint implementation or exploitation of a project by the contracting parties. As of the date of accession of the Republic of Croatia to the European Union, contracting authorities shall notify the European Commission of the conclusion of any such agreement through the body responsible for the public procurement system,*
- *3. public contracts governed by different procedural rules and awarded pursuant to an international agreement relating to the stationing of troops of the Republic of Croatia, of a Member State or a third country,*
- *4. public service contracts from a contracting authority referred to in Article 3, paragraph 1 of this Act which is providing the service on the basis of a special or exclusive right which it enjoys pursuant to a special law or subordinate regulation. As of the date of accession of the Republic of Croatia to the European Union, the special law or subordinate regulation shall be in line with Treaty establishing the European Community,*
- *5. contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon. This Act shall apply to financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form,*
- *6. contracts for the acquisition, development, production and co-production of programme material intended for broadcasting by radio and television broadcasters and contracts for radio and television broadcasting time,*
- *7. contracts for arbitration and conciliation services,*
- *8. contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by the contracting authorities to raise money or capital, and the services of the Croatian National Bank,*
- *9. employment contracts,*
- *10. research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority,*
- *11. works, supplies and/or services procured by a contracting authority from or through the central public purchasing body, provided that in the public procurement of such works, supplies or services the central public purchasing body complied with the provisions of this Act,*
- *12. public contracts for the principal purpose of permitting the contracting authorities to provide or exploit public electronic communications networks or to provide to the public one or more electronic communications services,*

- 13. *by the date of accession of the Republic of Croatia to the European Union, in public contracts for purposes of resale or lease or rental, provided that the contracting entity enjoys no special or exclusive right to sell, lease or rent the subject of such contracts and other entities are free to perform them under the same conditions as the contracting entity,*
- 14. *public service concessions, wherein the provisions of this Act relating to legal protection shall apply.*
- (2) *This Act shall not apply to contracting entities referred to in Article 4 of this Act in the events referred to in paragraph 1, items 1 through 12 of this Article, and in the following cases:*
  - 1. *public contracts for purposes of resale, lease or rental to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or lease (rent) the subject of such contracts, and other entities are free to sell or lease (rent) it under the same conditions as the contracting entity. The contracting entity shall notify the European Commission at its request of all the categories of products or activities which it regards as excluded,*
  - 2. *public contracts for purposes other than the pursuit of their activities in the water, energy, transport and postal services sectors or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the Republic of Croatia. The contracting entity shall notify the European Commission at its request of any activities which it regards as excluded,*
  - 3. *purchase of water which the contracting entity is procuring for the performance of one or both of the activities referred to in Article 106, paragraph 1 of this Act,*
  - 4. *supply of energy or fuels for the production of energy which the contracting entity is procuring for the performance of one or more of the activities referred to in Article 107, paragraph 1 or paragraph 3 or in Article 108 of this Act,*
  - 5. *public service and public works concessions if the concessions are granted for the performance of one or more activities within the meaning of Articles 106 through 111 of this Act, wherein the provisions of this Act relating to legal protection shall apply.”*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 153-162 of the Criminal Procedure Act in relation to the provision under review.

*Chapter XI, Criminal Procedure Act  
Claims for Indemnification*

*Article 153, Criminal Procedure Act*

*(1) A claim for indemnification arising out of the commission of a criminal offence shall be considered in criminal proceedings upon the motion of authorized persons, provided that this does not considerably delay proceedings.*

*(2) The claim for indemnification may consist of an issue which may be litigated in a civil action.*

*Article 154, Criminal Procedure Act*

*(1) A motion to assert a claim for indemnification can be made by a person who is entitled to litigate an issue in a civil action.*

*(2) When the motion referred to in paragraph 1 of this Article is submitted by the victim of the criminal offence, he shall quote in the motion if he acquired any compensation or submitted a request pursuant to Article 43 paragraph 2 of this Act.*

*Article 155, Criminal Procedure Act*

*(1) A motion to assert the claim for indemnification in criminal proceedings shall be submitted to the authority charged with receiving crime reports or to the court conducting the proceedings.*

*(2) The motion referred to in paragraph 1 of this Article may be submitted before the conclusion of evidentiary proceedings before the court at first instance.*

*(3) The person entitled to submit a motion must specify his claim and offer supporting evidence.*

*(4) If the authorized person fails to submit a motion for indemnification in criminal proceedings until the indictment is preferred, he shall be informed of his right to make the motion until the conclusion of evidentiary proceedings.*

*Article 156, Criminal Procedure Act*

*(1) A person entitled to assert a claim for indemnification (Article 154) may, until the completion of the evidentiary proceedings, withdraw his motion for indemnification in criminal proceedings and submit it as a civil action. In the event that the motion has been withdrawn it cannot be submitted again.*

*(2) It after the motion for indemnification has been submitted and prior to the conclusion of evidentiary proceedings, the claim is transferred to another person under the provisions of civil law, this person shall be invited to declare whether he is willing to continue pursuit of the claim. If a duly served person fails to appear it shall be deemed that he has withdrawn the motion.*

*Article 157, Criminal Procedure Act*

*The authority conducting the proceedings shall examine the defendant with respect to the facts set out in the motion and explore the circumstances which are of importance for the decision on the claim for indemnification.*

*Article 158, Criminal Procedure Act*

*(1) The court shall have jurisdiction to decide on claims for indemnification.*

*(2) The court may in a judgment of conviction satisfy the claim of the injured person fully, or it may satisfy it partially while directing the injured person to assert the rest of the claim in a civil action. If the data established in criminal proceedings furnish no reliable basis for either full or partial adjudication, the court shall direct the injured person to assert his claim in a civil action.*

*(3) When rendering a judgment of acquittal, a judgment rejecting the charge, or a ruling discontinuing criminal proceedings, the court shall direct the injured person to assert his claim for indemnification in a civil action. When the court declares itself incompetent, it shall instruct the injured person that he may assert his claim for indemnification in criminal proceedings which shall be instituted or continued by a court having jurisdiction.*

*Article 159, Criminal Procedure Act*

*(1) In criminal proceedings the court may alter a final judgment which decides on a claim for indemnification only upon extraordinary judicial remedies.*

*(2) Except for the case referred to in paragraph 1 of this Article, a final judgment which decides on a claim for indemnification may be revised only in civil proceedings on the request of the convicted person or his heirs, provided that grounds exist for reopening the proceedings under rules on civil procedure.*

*Article 160, Criminal Procedure Act*

*(1) Provisional measures securing a claim for indemnification arising out of the perpetration of an offence may be ordered in the criminal proceedings upon the motion of an authorized person and according to the rules on enforcement proceedings.*

*(2) In the course of the investigation, the ruling from paragraph 1 of this Article shall be rendered by the investigating judge. After the indictment is preferred, the ruling shall be rendered by the indictment panel and at the trial by the court conducting the trial. An appeal against the ruling on provisional measures shall not stay its execution.*

*Article 161, Criminal Procedure Act*



*(1) The objects that undoubtedly belong to the injured person and do not serve to determine facts in the criminal proceedings shall be handed over to the injured person even prior to the termination of proceedings.*

*(2) If several injured persons claim ownership of an object, they shall be instructed to institute a civil action and the criminal court shall only order sequestration of the object as a provisional measure securing the claim.*

*(3) The objects of evidentiary value shall be seized temporarily from the owner and returned to him after the termination of proceedings. If such an object is indispensable to the owner it may be returned to him even before the termination of proceedings but he shall be obliged to bring it upon request.*

#### *Article 162, Criminal Procedure Act*

*(1) If the injured person has a claim against a third party because he is in possession of objects acquired by the commission of an offence or because a third party acquired pecuniary benefit in consequence of the commission of an offence, the court may in criminal proceedings on the motion of an authorized person order a provisional measure securing the claim against that third party as well, according to the rules on enforcement proceedings. The provisions referred to in Article 160 paragraph 2 of this Act shall also apply in this case.*

*(2) In a judgment of conviction the court shall either vacate the measures referred to in paragraph 1 of this Article if these have not already been vacated or instruct the injured person to institute civil proceedings, with the proviso that these measures shall be vacated if the civil proceedings are not instituted within a term set by the court.*

The Croatian authorities further clarified that any concrete natural or legal person who has suffered damage as a result of an act of corruption will be entitled to damage compensation when those rights are established by the final court decision.

According to the Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour, the Republic of Croatia can become owner of the property and rights resulting from criminal offences and their monetary equivalent, where the defendant is found guilty according to article 5 of that Act:

#### *Article 5, Act on the Confiscation Procedure for Pecuniary Gain Acquired by Criminal Offences and Acts of Misdemeanour*

*(1) In addition to contents prescribed by law, in the ruling by means of which the defendant is proclaimed guilty of a criminal offence, the court:*

*a) shall establish which property or rights represents pecuniary benefit resulting from criminal offences and their monetary equivalent,*

*b) shall establish that the property or rights have passed into the ownership or have become property of the Republic of Croatia (...).*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the effective implementation of the provision of the UNCAC under review.

**Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the Law on the Office for the Suppression of Corruption and Organized Crime (USKOK), relevant articles of the State Attorneys Act and the Constitution in relation to the provision under review. The latter two serve to ensure the independent functioning of the Office.

*Chapter I: Basic Provisions*

*Article 1, Law on USKOK*

*This Act regulates:*

- 1. the organization, jurisdiction and authorities of the Office for the Suppression of Corruption and Organized Crime (hereinafter: the Office);*
- 2. the scope and jurisdiction of courts and proceedings in cases concerning the criminal offences specified herein;*
- 3. the appointment of the Head of the Office (hereinafter: Head) and deputy head, the deployment of state attorneys and their deputies, and the conditions for the employment of officers and employees and the securing of funds for the operation of the Office;*
- 4. securing the seizure of instruments, income or assets which are the proceeds of crime;*
- 5. the cooperation of government bodies and other bodies and persons with the Office;*
- 6. international cooperation in the criminal prosecution and investigation of criminal offences within the jurisdiction of the Office.*

**(b) Observations on the implementation of the article**

The reviewing experts took into account what the Croatian authorities reported on the competences and functions of the Office for the Prevention of Corruption and Organized Crime (USKOK), established by the Law ON USKOK in 2001. The Office is a specialized body in charge of tackling corruption and organized crime and operates within the institutional mechanism of the Public Prosecutor's Office. The Constitution and the State Attorneys Act ensure the independent functioning of the Office. The USKOK performs intelligence, investigative, prosecutorial and preventive functions and is also responsible for international cooperation and exchange of information in complex investigations.

The reviewing experts concluded that the Croatian legislation and practice adequately reflect the requirements of the provision under review.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 212, paragraph 1 of the Criminal Procedure Act (cited above, reproduced below for ease of reference) and articles 29-31 of the Law on the Office for the Suppression of Corruption and Organized Crime (USKOK) in relation to the provision under review.

##### *Article 212, Criminal Procedure Act*

##### *Dismissal of Crime Report and Desistance from Prosecution pursuant to a Special Law*

*(1) The State Attorney General of the Republic of Croatia may under the conditions and in the manner prescribed in a special law dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings if this is in proportion with the gravity of the offences committed and with the importance of that person's statement and if this is of importance for the discovery of offences and of the members of a criminal organization. The ruling of the State Attorney General referred to in paragraph 1 of this Article shall not be subject to appellate review.*

##### *Article 29, Law on USKOK*

*(1) State Attorney General may request from the court from Article 24, paragraph 1 hereof, to issue a decision to examine as witness the person who became a member of criminal organization and:*

*1) who has been reported or against whom criminal proceedings from Article 21 hereof have been initiated for an offence committed within a criminal organization, and if circumstances are provided on the basis of which, according to the Criminal Code, the member of criminal organization may be exempted from sentence, or extenuating circumstances are provided on the basis of which the sentence may be lenient.*

*2) if the statement of such person is proportional to the severity of the criminal offence committed and the relevance of the statement of such person to disclosure and proof of the criminal offences committed within a criminal organization, or their perpetrators, or for disclosure and prevention of criminal offences of the criminal organization.*

*(2) The State Attorney may file the request from paragraph 1 at the substantiated proposal of the Head until the setting of the date for the hearing in the criminal proceeding against the members of a criminal organization from paragraph 1 above.*

*Article 30, Law on USKOK*

*(1) Prior to filing a request, the Head shall warn the person from Article 29 above pursuant to the provision of Article 238, paragraph 2 of the Criminal Procedure Act.*

*(2) After the person from Article 29, paragraph 1 hereof has stated that, with regard to the criminal offences from Article 29, paragraph 1 hereof, he or she shall answer as a witness to the questions although it is probable that he or she may expose himself or herself or a close person to a great shame, substantial property loss or criminal prosecution, the Head shall obtain a written statement by which such person shall undertake to:*

- 1. speak the truth, as a witness in criminal proceedings, and not to withhold any information known to him or her about the criminal offence or its perpetrator from Article 29, paragraph hereof,*
- 2. speak the truth, as a witness in criminal proceedings, and not to withhold any information known to him or her about other criminal offence and its perpetrator from Article 29 paragraph 1 hereof*
- 3. speak the truth, as a witness in criminal proceedings, and not to withhold any information known to him or her about the property or any other benefit or proceeds, objects, acquired real estate or other circumstances related to criminal offences from Article 29, paragraph 1 hereof.*
- 4. to state that he or she is not familiar with any other circumstances from subparagraph 1 through 3, paragraph 2 of this Article, apart from those he or she is to state as witness.*

*(3) The warning and statement from paragraphs 1 and 2 of this Article shall be entered into the Minutes attached to the proposition of the Head from Article 29, paragraph 2 hereof.*

*Article 31, Law on USKOK*

*The offender to whom circumstances from Article 29, paragraph 1 hereof apply, may not be examined as witness if such offender:*

- 1. has committed one or more murders from Article 90 of the Criminal Code, aggravated murder from Article 91 of the Criminal Code, an act of international terrorism from Article 169, paragraph 2 of the Criminal Code, endangering the safety of internationally protected persons from Article 170, paragraph 2 of the Criminal Code, taking hostages from Article 171, paragraph 2 of the Criminal Code, hijacking an aircraft or a ship from Article 179, paragraph 2 of the Criminal Code, piracy at sea and in the air from Article 180, paragraph 2 of the Criminal Code, rape from Article 188, paragraphs 2, 3 and 4 of the Criminal Code, sexual intercourse with a helpless person from Article 189, paragraphs 2, 3 and 4 of the Criminal Code and sexual intercourse with a child from Article 192 of the Criminal Code.*
- 2. is organizer of criminal organization instigated commission of a crime from Article 21 hereof with the purpose of having the criminal procedures instigated against that person for that offence committed.*

**(b) Observations on the implementation of the article**

The reviewing experts took into account the legislation (article 212 CPC and article 29 of the Law on the Office for the Suppression of Corruption and Organized Crime - USKOK) enables the State Attorney General to “dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings” in relation to persons who were members of a criminal organization and testify as witnesses if the statement “is of importance for the discovery of offences and of the members of the criminal organization”. The recognition of mitigating circumstances is also possible. Those cooperating witnesses are given the status of witnesses under protection

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review and considered that the cited provisions are adequate for the effective implementation of the provision.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 57 CC in relation to the provision under review.

#### *Article 57, Criminal Code Mitigation of Punishment*

*(1) The punishment prescribed by law for a criminal offence may be mitigated when the statute expressly prescribes so, or when the court holds that, in view of the existence of particularly obvious mitigating circumstances, the purpose of punishment may also be attained by a more lenient punishment.*

*(2) The limits of mitigation are the following:*

- a) if, for a criminal offence, imprisonment for a maximum of three years or less is prescribed, regardless of the minimum duration, a fine may be imposed instead of imprisonment;*
- b) if, for a criminal offence a minimum duration of imprisonment for one year or less, and a maximum of three years or more, is prescribed, the sentence may be reduced to the legal minimum of imprisonment;*
- c) if, for a criminal offence, imprisonment for at least two years is prescribed, the sentence may be reduced to six months of imprisonment;*
- d) if, for a criminal offence, imprisonment of at least three years or more is prescribed, the sentence may be reduced to one year of imprisonment.*

An accused person who delivers valuable information to authorities on matters important for the concrete case, or cooperates with them in another way during the proceedings, can have its punishment reduced (see the provision of the Criminal Code above, in conjunction with article 29 of the Law on USKOK).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 212, paragraphs 1 and 2, and article 294 of the Criminal Procedure Act, and article 44 of the Witness protection Act (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 212, Criminal Procedure Code*

*Dismissal of Crime Report and Desistance from Prosecution pursuant to a Special Law*

*(1) The State Attorney General of the Republic of Croatia may under the conditions and in the manner prescribed in a special law dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings if this is in proportion with the gravity of the offences committed and with the importance of that person's statement and if this is of importance for the discovery of offences and of the members of a criminal organization.*

*(2) The ruling of the State Attorney General referred to in paragraph 1 of this Article shall not be subject to appellate review.*

*Article 294, Criminal Procedure Act*

*(1) If it is likely that by giving a testimony or by answering any individual question, a witness might expose himself or any other person close to himself to a serious danger to life, health, physical integrity, freedom or property of considerable volume (witness in danger), the witness is entitled to refuse to disclose information referred to in Article 288, paragraph 2 of this Act, to refuse to answer to individual questions or to refuse to testify at all until witness protection measures have been provided.*

*(2) Witness protection referred to in paragraph 1 of this Article includes a special manner of questioning a witness and his participation in the proceedings (protected witness) and measures for protecting the witness and other persons close to him not participating in the proceedings. The authority participating in the proceedings is bound to proceed with special care regarding witness protection.*

*(3) Special manners of questioning a witness and of his participation in the proceedings are stipulated in this Act and may be implemented even before the commencement of the proceedings.*

*(4) Protection of a witness and other persons close to him not participating in the proceedings is prescribed in a special act.*

#### *Article 44, Witness Protection Act*

*All data related to the Committee deciding on the Protection programme, data from registries, as well as other data pertaining to this Law implementation represent official secret and are classified with degree "Very confidential".*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 37 Cooperation with law enforcement authorities**

#### **Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to their response under article 32 of the Convention. They cited articles 2-3, 15 and 44 of the Witness Protection Act, articles 16, 43-54, 294-299 and 414, paragraph 2, of the Criminal Procedure Act, as well as three Police Cooperation Agreements concluded between Croatia and other (European) countries (all cited above) in relation to the provision under review.

#### *Criminal Procedure Act*

#### *3. Dismissal of Crime Report and Desistance from Prosecution pursuant to a Special Law*

#### *Article 212*

*(1) The State Attorney General of the Republic of Croatia may under the conditions and in the manner prescribed in a special law dismiss a crime report by a ruling or desist from the prosecution in the course of criminal proceedings if this is in proportion with the gravity of the offences committed and with the importance of that person's statement and if this is of importance for the discovery of offences and of the members of a criminal organization.*

*(2) The ruling of the State Attorney General referred to in paragraph 1 of this Article shall not be subject to appellate review.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the legal framework for the protection of witnesses, expert witnesses, victims treated as witnesses, which also includes police cooperation agreements with Austria, Bosnia and Herzegovina and France regulating issues pertaining to protection of witnesses (see also under article 32, paragraph 3, of the UNCAC).

#### **(b) Observations on the implementation of the article**

The reviewing experts were satisfied that the domestic legislation and practice were in compliance with the provision of the UNCAC under review.

## **Article 38 Cooperation between national authorities**

### **Subparagraph (a)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to article 204 of the Criminal Procedure Act (cited above, reproduced below for ease of reference) and articles 23 and 27 of the Law on the Office for the Suppression of Corruption and Organized Crime (USKOK) in relation to the provisions under review.

In addition, Croatian experts explained that several documents on interagency cooperation have been concluded with a view to achieving and strengthening cooperation by and between law enforcement agencies in the Republic of Croatia. In this context, reference was made to:



*1. The Protocol on Co-operation between the State Attorney's Office and the Police Directorate in the pre-investigation and criminal procedure*

The Protocol was signed on 29 November 2006, and it entered into force on 1 January 2007. It regulates mutual co-operation by and between the General January 2007. It regulates mutual co-operation by and between the General Police Directorate and the State Attorney's Office during investigations of criminal offences, and during the criminal procedure, with a view to ensuring the more effective identification and criminal prosecution of perpetrators, the protection of victims of criminal offences, and reporting to the public.

*2. The Protocol on access to data included in criminal records, misdemeanour records, records of identification numbers and records of permanent residence and temporary residence, concluded between the Ministry of the Interior and the Ministry of Justice.*

The Protocol was signed and entered into force in June 2007. It regulates issues of access to and exchange of data in the databases maintained by the two ministries.

*3. The Protocol on Co-operation and Exchange of Information by and between the Ministry of the Interior and the Ministry of Finance (Customs Administration, Tax Administration, Financial police, Foreign Currency Inspectorate and the Office for the Prevention of Money Laundering)*

The Protocol was signed in October 2007, and it regulates mutual co-operation and the exchange of information and data collected within the remit of the bodies concerned, with a view to preventing and detecting criminal offences, creating preconditions for the establishment of a National Intelligence Model, implementing the Agreement on Operative and Strategic Co-operation between the Republic of Croatia and the European Police Office, and enabling access to Interpol's global communication system I 24/7.

*4. Agreement on Data Exchange between the Police Directorate and USKOK in the Pre-investigation Procedure*

This Agreement was signed on 25 August 2009. The Agreement defines USKOK's access to the crime-information system database and the IT system of the Ministry of the Interior of RC. USKOK will use particular databases of the Police Directorate in cases where there is reasonable suspicion that the criminal offences of corruption and organized crime are being prepared or have been committed.

*5. Standard operating procedure concerning the method of exchange of criminal intelligence between the Ministry of Justice, the Prison System Directorate, and the Ministry of the Interior, General Police Directorate*

This document was signed in December 2009 and entered into force on 1 January 2010. It is the result of a joint project of the General Police Directorate and the Prison System Directorate, which was supported by the Government of Great Britain, entitled "Prisons as Sources of Information". The goal of the standard operating procedure is to improve the mechanisms of co-operation and co-ordination in the field of exchange of criminal intelligence between the Prison System Directorate of the Ministry of Justice and the General Police Directorate. Its implementation will encourage new methods of work of the police and the prison system in line with EU standards, which will contribute to the prevention of crime and will lead to an improved quality of the state of security.

*Criminal Prosecution*

*Article 204, Criminal Procedure Act  
Crime report*

*(1) All state authorities and all other legal entities shall be bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned from other sources.*

*(2) A submission of a crime report by the police shall be regulated by a special law.*

*(3) When submitting a crime report, state authorities and legal entities shall indicate evidence known to them and undertake measures to preserve traces of the offence, the objects upon which or by means of which the offence was committed as well as other evidence.*

*(4) Citizens shall be bound to report criminal offences subject to public prosecution.*

*(5) Cases in which a failure to report a criminal offence is a criminal offence shall be prescribed by law.*

*(6) The data on the identity of the person against whom a crime report has been submitted and the data that might lead to conclusions about the identity of the person shall be kept confidential.*

*Article 23, Law on USKOK*

*All state authority bodies and all legal entities which within their remit or in performing their activities become aware of circumstances and data indicating a criminal offence referred to in Article 21 herein, especially those that indicate, by the way the criminal offence is planned and prepared, the manner in which it is committed, the handling of the proceeds, participation in a business transaction, the conspiratorial conduct of the perpetrators, connection with other states, corruption or attempts of corruption and other similar conduct (indications of organised crime), the activities of an association of a minimum of three persons who have associated for the purpose of committing criminal offences, shall have the duty to report these circumstances or to inform the Office thereof.*

*Article 27, Law on USKOK*

*(1) If there is suspicion of money laundering, the Anti Money Laundering Department shall:*

- 1. inform the Office about the instruments, income or assets of which they have in any way become aware, if it is likely they have been acquired through a criminal offence referred to in Article 21 herein;*
- 2. request from the subjects obliged to implement the anti money laundering measures all data about the transactions and parties held by the subjects bound by this obligation, and to supply these data to the Office within three days.*

*(2) On the request of the Office, the Anti Money Laundering Department shall provide all available data on the transactions of the persons suspected of money laundering, and*

*execute the necessary checks for the purpose of establishing the existence of such transactions.*

(3) *The state inspectors authorized for the temporary seizure of suspicious objects, instruments or assets shall deliver to the Office, together with the notification, a report on the undertaken action and the transcript of the decision on the forfeiture or seizure.*

**(b) Observations on the implementation of the article**

The reviewing experts took into account the information provided by the Croatian authorities on several instruments, protocols of cooperation and standard operating actions aimed at enhancing exchange of information and strengthening cooperation between the national law enforcement agencies. They stressed the need for the best possible inter-agency coordination and cooperation among the domestic authorities with a - fully or partially – anti-corruption mandate. Therefore they recommended that the national authorities continue efforts to facilitate the best possible coordination among agencies with a law enforcement mandate in the fight against corruption.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 204 of the Criminal Procedure Act (cited above) and article 4 of the Anti-Money Laundering and Terrorist Financing in relation to the provisions under review.

The Croatian authorities further clarified that the reference to “citizens” in article 204 of the Criminal Procedure Act is not limited to Croatian nationals. The Croatian Government has launched an anti-corruption campaign in year 2009 and a follow-up campaign within the framework of the IPA 2007 project Strengthening Anti-Corruption Inter-Agency Co-operation (Awareness-raising campaign) to ensure sufficient publicity regarding the duty of the general public to come forward in reporting corruption offences.

*Article 4, Anti Money Laundering and Terrorist Financing Act*

*(1) Measures, actions and procedures for the prevention and detection of money laundering and terrorist financing laid down in this Act shall be carried out before and/or during each transaction, and upon entering into legal arrangements aimed at obtaining or using property and in other forms of disposing of monies, rights and other property in other forms which may serve for money laundering and terrorist financing purposes.*

*(2) Reporting entities obliged to carry out measures and actions referred to in paragraph 1 of this Article shall be:*

- 1. banks, branches of foreign banks and banks from Member States authorised for the direct provision of banking services in the Republic of Croatia;*
- 2. savings banks;*
- 3. housing savings banks;*
- 4. credit unions;*
- 5. companies performing certain payment operations services, including money transfers;*
- 6. Croatian Post (Hrvatska Pošta d.d.);*
- 7. investment fund management companies, business units of third country management companies, management companies from Member States which have a business unit in the Republic of Croatia, i.e. which are authorised to directly perform fund management business in the territory of the Republic of Croatia and third parties which are allowed, in keeping with the law regulating fund operations, to be entrusted with certain matters by the respective management company;*
- 8. pension companies;*
- 9. companies authorised to do business with financial instruments and branches of foreign companies dealing with financial instruments in the Republic of Croatia;*
- 10. insurance companies authorised for the performance of life insurance matters, branches of insurance companies from third countries authorised to perform life insurance matters and insurance companies from Member States which perform life insurance matters directly or via a branch in the Republic of Croatia;*
- 11. companies for the issuance of electronic money, branches of companies for the issuance of electronic money from Member States, branches of companies for the issuance of electronic money from third countries and companies for the issuance of electronic money from Member States authorised to directly render services of issuing electronic money in the Republic of Croatia;*
- 12. authorised exchange offices;*
- 13. organisers of games of chance:*
  - a) lottery games,*
  - b) casino games,*
  - c) betting games,*
  - d) slot-machine gaming,*
  - e) games of chance on the Internet and via other telecommunications means, i.e. electronic communications;*
- 14. pawnshops;*
- 15. legal and natural persons performing business in relation to the following 7 activities:*
  - a) giving credits or loans, also including: consumer loans, mortgage loans, factoring and commercial financing, including forfeiting,*
  - b) leasing,*
  - c) payment instruments issuance and management (e.g., credit cards and traveller's cheques),*

- d) issuance of guarantees and security instruments,*
  - e) investment management on behalf of third parties and providing advisory services thereof,*
  - f) rental of safe deposit boxes,*
  - g) credit intermediation,*
  - h) insurance agents for entering into life insurance agreements,*
  - i) insurance intermediation for entering into life insurance agreements,*
  - j) trusts or company service providers,*
  - k) trading precious metals and gems and products made thereof,*
  - l) trading artistic points and antiques,*
  - m) organising or carrying out auctions, n) real-estate intermediation;*
- 16. legal and natural persons performing matters within the framework of the following professional activities:*
- a) lawyers, law firms and notaries public,*
  - b) auditing firms and independent auditors,*
  - c) natural and legal persons performing accountancy and tax advisory services.*

*(3) Reporting entities referred to in paragraph 2, point 16 of this Article shall carry out measures for the prevention and detection of money laundering and terrorist financing as provided for in this Act, in keeping with the provisions governing the tasks and duties of other reporting entities, unless otherwise prescribed in Title III of this Act.*

*(4) The Minister of Finance may adopt an ordinance to set the terms and conditions under which the reporting entities referred to in paragraph 2 of this Article who perform financial activities only occasionally or within a limited scope and with which there is a negligible money laundering or terrorist financing risk may be excluded from the group of reporting entities obliged to implement measures as per this Act.*

*(5) Branches of foreign credit and financial institutions and other reporting entities established in the Republic of Croatia as per a law regulating their operations, in addition to branches of credit and financial institutions referred to in paragraph 2, points 1, 7, 9, 10, 11 of this Article, shall be reporting entities obliged to implement measures and actions referred to in paragraph 1 of this Article.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to article 265 of the Criminal Procedure Act in relation to the provision under review.

*Article 265, Criminal Procedure Act*

*(1) If access to data considered to be a bank secret is denied, the court may issue a ruling on disclosure of data representing a bank secret upon the motion with a statement of reasons of the State Attorney. The court shall stipulate the term within which the bank must disclose data in the ruling.*

*(2) When it is probable that a certain person receives, holds or disposes in any other way of income arising from a criminal offence on his bank account and this income is important for the investigation of that criminal offence or it underlies forceful seizure, the State Attorney shall, by a request with a statement of reasons, propose to the court to order the bank to hand over data on that account and income to the State Attorney. The request shall include data on legal entity or physical person who holds these means or this income or disposes of them. A description of income must include the currency designation, but not its exact amount if it is not known. The court shall stipulate a term within which the bank must proceed as ordered.*

*(3) Before the commencement and during the investigation a decision on the request of the State Attorney referred to in paragraph 1 and 2 of this Article shall be brought by the investigating judge, on indictment by the panel examining the indictment, and after it becomes final by the court before which the hearing is to be conducted.*

*(4) The investigating judge shall decide on the State Attorney's request referred to in paragraphs 1 and 2 of this Article immediately or within twelve hours at the latest from the receipt of the request. Should the investigating judge deny the request, the State Attorney may file an appeal within twelve hours. The panel shall decide on the appeal within twenty-four hours. An appeal against the ruling of the court brought on indictment shall not be allowed.*

*(5) If circumstances referred to paragraphs 2 and 3 of this Article exist, the investigating judge may upon the motion with a statement of reasons of the State Attorney order the bank or any other legal entity to follow up on money transfer and transactions on the account of a certain person and to regularly inform the State Attorney thereof during the term stipulated in the ruling.*

*(6) Measures of the follow-up on money transfer may be applied for a year at longest. As soon as the reasons for the follow-up have ceased to exist, the State Attorney shall inform the investigating judge who shall cancel the follow-up by a ruling. Should the State Attorney desist from the criminal prosecution or the evidence collected are not required for the criminal proceedings, data on the follow-up shall be destroyed under supervision of the investigating judge who shall compile a special record thereon. The State Attorney shall deliver the ruling on the follow-up to the person against whom it was issued, together with the indictment or the decision on desisting from the criminal prosecution.*

*(7) The bank or any other legal entity shall refrain from disclosure of information or data on the proceedings pursuant to paragraphs 1 to 5 of this Article. Upon the motion with a statement of reasons of the State Attorney, the investigating judge shall by a ruling impose a fine amounting to HRK 1,000,000.00 upon the bank and a fine amounting to HRK*

200,000.00 upon the responsible person in the bank or any other legal person for proceedings contrary to paragraphs 1 to 5 of this Article. In case the order is not complied with even after such a fine, the responsible person may be punished by imprisonment until the order is executed, but not longer than one month. The appeal against the ruling on a fine and imprisonment shall not stay the execution of the ruling.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 56 CC (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 56, Criminal Code*

*A General Rule on the Selection of the Type and Range of Punishment*

*(1) The selection of the type and the range of punishment of the perpetrator of a criminal offence shall be determined by the court, within the limits established by law for the committed criminal offence, and based on the degree of culpability and dangerousness of the offence, as well as the purpose of punishment.*

*(2) In determining the type and range of punishment which is to be applied, the court shall take into consideration all the circumstances which result in a less or more serious punishment for the perpetrator of a criminal offence (the mitigating or aggravating circumstances), in particular the following: the degree of culpability, motives for committing the criminal offence, the degree of peril or injury to the protected good, the circumstances under which the criminal offence was committed, the conditions in which the perpetrator had lived prior to committing the criminal offence and his abidance by the laws, the circumstances he lives in and his conduct after the perpetration of the criminal offence, particularly his relation towards the injured person and his efforts to compensate for the damage caused by the criminal offence, as well as the totality of social and personal grounds which contributed to the perpetration of the criminal offence.*

Croatia has ratified the European Convention on transfer of sentenced persons signed on 1983 and Additional Protocol to the European Convention on transfer of sentenced persons signed on 1997, and concluded bilateral agreements with neighbourhood countries (Bosnia and Herzegovina, Republic of Slovenia, Montenegro, Former Yugoslav Republic of Macedonia, Republic of Austria) regulating the mutual execution of foreign criminal judgments. The mentioned Conventions and bilateral agreements represent sufficient legal basis for the

application of this type of mutual legal assistance in every day practice. Furthermore, it is necessary to stress that Republic of Croatia as candidate country for EU membership has implemented all relevant framework decisions regulating the application of principle of mutual recognition on financial penalties and judgments imposing custodial sentences (Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union). These framework decisions have been implemented in national law by the Act on judicial cooperation in criminal matters with Member States of European Union (Official gazette no. 91/10) which will enter into the force by the day of the accession of the Republic of Croatia to EU.

**(b) Observations on the implementation of the article**

The reviewing experts took into account the information on the domestic legal framework which is of relevance for the implementation of the provision of the UNCAC under review. In addition, in assessing national measures to take into consideration previous convictions in foreign States for corruption offences, the reviewing experts took note of the readiness of the Croatian authorities to implement, upon accession of the country to the European Union, the Framework Decisions on the mutual recognition of financial penalties and judgments imposing custodial sentences; and the mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 42 Jurisdiction**

**Subparagraph 1**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 13 of the Criminal Procedure Act in relation to the provision under review.

*Article 13, Criminal Code*

*Applicability of Criminal Legislation to Criminal Offences Committed within the Territory of the Republic of Croatia, or Aboard its Vessel or Aircraft*

*(1) The criminal legislation of the Republic of Croatia shall apply to anyone who commits a criminal offence within its territory.*



*(2) The criminal legislation of the Republic of Croatia shall also apply to anyone who commits a criminal offence aboard a domestic vessel, regardless of the location of such vessel at the time the criminal offence is committed.*

*(3) The criminal legislation of the Republic of Croatia shall also apply to anyone who commits a criminal offence aboard a domestic civil aircraft while in flight, or a domestic military aircraft, regardless of the location of such an aircraft at the time the criminal offence is committed.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review.

**Article 42 Jurisdiction**

**Subparagraph 2**

**(a) Summary of information relevant to reviewing the implementation of the article**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

The Croatian authorities made reference to article 14, paragraphs 1, 3 and 5 CC in relation to the provision under review.

*Article 14, Criminal Code*

*(1) The criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory, commits:*

*(...)*

*- a criminal offence against a Croatian state official or a civil servant relating to his office.*

*(...)*

*(3) The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits a criminal offence against the Republic of Croatia or its citizens which is not specified in paragraph 1 of this Article.*

*(...)*

*(5) In the cases referred to in paragraphs 2 and 3 of this article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offence is*

*found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.*

**Subparagraph 2 (b)**

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

The Croatian authorities made reference to article 14, paragraphs 2 and 5 CC in relation to the provision under review.

The Croatian authorities further clarified that jurisdiction over stateless persons residing on Croatian territory is asserted by reference to the broad terms of article 13 CC (cited above), which refers to “anyone who commits a criminal offence within its territory”.

*Article 14, Criminal Code*

*(...)*

*(2) The criminal legislation of the Republic of Croatia shall be applied to a Croatian citizen who, outside the territory of the Republic of Croatia, commits a criminal offence other than those specified in paragraph 1 of this Article.*

*(...)*

*(5) In the cases referred to in paragraphs 2 and 3 of this article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offence is found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.*

**Subparagraph 2 (c)**

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

The Croatian authorities made reference to article 14 CC and article 75 of the Anti-Money Laundering and Terrorist Financing Law in relation to the provision under review.

*Article 14, Criminal Code*

*(1) The criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory, commits:*

- any criminal offence against the Republic of Croatia provided for in Chapter (xii) of this Code;*
- the criminal offence of counterfeiting money and securities of the Republic of Croatia as defined in Articles 274 and 275 of this Code;*

- a criminal offence which the Republic of Croatia is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;
- a criminal offence against a Croatian state official or a civil servant relating to his office.

(2) *The criminal legislation of the Republic of Croatia shall be applied to a Croatian citizen who, outside the territory of the Republic of Croatia, commits a criminal offence other than those specified in paragraph 1 of this Article.*

(3) *The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits a criminal offence against the Republic of Croatia or its citizens which is not specified in paragraph 1 of this Article.*

(4) *The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits against a foreign state or another alien a criminal offence for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied.*

(5) *In the cases referred to in paragraphs 2 and 3 of this article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offence is found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.*

#### **Subparagraph 2 (d)**

*(d) The offence is committed against the State Party.*

The Croatian authorities made reference to article 14, paragraph 1 CC in relation to the provision under review.

#### *Article 14, Criminal Code*

*(1) The criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory, commits:*

- any criminal offence against the Republic of Croatia provided for in Chapter (xii) of this Code;
- the criminal offence of counterfeiting money and securities of the Republic of Croatia as defined in Articles 274 and 275 of this Code;
- a criminal offence which the Republic of Croatia is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;
- a criminal offence against a Croatian state official or a civil servant relating to his office.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

## Article 42 Jurisdiction

### Paragraph 3

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

The Croatian authorities made reference to articles 14-16 CC in relation to the provision under review.

#### *Article 14, Criminal Code*

*(1) The criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory, commits:*

- any criminal offence against the Republic of Croatia provided for in Chapter (xii) of this Code;*
- the criminal offence of counterfeiting money and securities of the Republic of Croatia as defined in Articles 274 and 275 of this Code;*
- a criminal offence which the Republic of Croatia is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;*
- a criminal offence against a Croatian state official or a civil servant relating to his office.*

*(2) The criminal legislation of the Republic of Croatia shall be applied to a Croatian citizen who, outside the territory of the Republic of Croatia, commits a criminal offence other than those specified in paragraph 1 of this Article.*

*(3) The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits a criminal offence against the Republic of Croatia or its citizens which is not specified in paragraph 1 of this Article.*

*(4) The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits against a foreign state or another alien a criminal offence for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied.*

*(5) In the cases referred to in paragraphs 2 and 3 of this article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offence is found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.*

#### *Article 15, Criminal Code*

*(1) When, in the case of the applicability of the criminal legislation of the Republic of Croatia pursuant to Article 13 of this Code, criminal proceedings have commenced or are*

*terminated in a foreign state, criminal proceedings in the Republic of Croatia shall be instituted only upon approval of the State Attorney of the Republic of Croatia.*

*(2) Exceptionally, when a final judgment of a state party to the Convention implementing the Schengen Agreement, according to which an imprisonment was served or is being served, or the serving is not possible according to the Act on Serving Prison Sentence, is related to a crime partially committed in the territory of that state, criminal proceedings in the Republic of Croatia may not be instituted even upon approval of the State Attorney of the Republic of Croatia.”*

*(3) When, in the case of the applicability of the criminal legislation of the Republic of Croatia pursuant to Article 13 of this Code, the perpetrator of a criminal offence is an alien, criminal proceedings may, under conditions of reciprocity, be ceded to the foreign state.*

*(4) The decision on ceding criminal proceedings in the case referred to in paragraph 2 of this Article shall be passed by the State Attorney of the Republic of Croatia.*

#### *Article 16, Criminal Code*

##### *Particularities Regarding the Institution of Criminal proceedings for Criminal Offences Committed outside the Territory of the Republic of Croatia*

*(1) In the cases specified in article 14, paragraphs 2, 3 and 4 of this Code, criminal proceedings for the purpose of applying the criminal legislation of the Republic of Croatia shall not be instituted:*

- if the perpetrator has served in full the sentence imposed on him in a foreign state;*
- if the perpetrator has been acquitted by a final judgment in a foreign state, or if he has been pardoned, or if the statutory time limitation has expired under the law in force in the country of the perpetration;*
- if, under the law in force in the country of the perpetration, criminal proceedings may be instituted only upon a motion, a consent or a private charge of the person against whom the criminal offence had been committed, and such a motion was not made or a private charge was not brought, or the consent was not given.*

*(2) If, in the cases specified in Article 14, paragraphs 2, 3 and 4 of this Code, such an act does not constitute a criminal offence under the law in force in the country of the perpetration, criminal proceedings may be constituted only upon the approval of the State Attorney of the Republic of Croatia.*

*(3) In the case referred to in Article 14, paragraph 4 of this Code, when the committed act is not punishable under the law in force in the country in which it was committed but is deemed to be a criminal offence according to the general principles of law of the international community, the State Attorney of the Republic of Croatia may authorize the institution of criminal proceedings in the Republic of Croatia and the application of the criminal legislation of the Republic of Croatia.*

#### **Paragraph 4**

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

The Croatian authorities made reference to article 14, paragraphs 4 and 5 CC in relation to the provision under review.

*Article 14, Criminal Code*

(...)

(4) *The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits against a foreign state or another alien a criminal offence for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied.*

(5) *In the cases referred to in paragraphs 2 and 3 of this article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offence is found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.*

**Paragraph 5**

5. *If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

The Croatian authorities made reference to articles 15 and 16 CC (cited above) in relation to the provision under review.

The Croatian authorities further indicated that the issue of consultations and coordination with other countries on jurisdiction matters is regulated in the Act on Mutual Legal Assistance in Criminal Matters (see below under the respective sections). A relevant provision of this Act is cited below:

*Particularities in the manner of executing the request*  
*Article 10*

(1) *When affording mutual legal assistance, domestic judicial authority shall comply with the formalities and procedures expressly indicated in the request as necessary pursuant to the law of the requesting state, unless provided otherwise by an international treaty and provided that such formalities and procedures are not contrary to the principles of the domestic legal order.*

(2) *Domestic judicial authority executes the request of a foreign judicial authority without delay, taking into account procedural deadlines, as well as other specially determined deadlines explained in the request.*

(3) *If a domestic judicial authority may foresee that it shall not be able to observe a specially determined deadline for execution of the request, while the explanation referred to in paragraph 2 of this Article expressly indicates that each postponement will lead to significant disruption of procedure before a foreign judicial authority,*

*the domestic judicial authority shall indicate without delay the required time to execute the request. Domestic and foreign judicial authorities may thereafter agree on further acts required to be undertaken in connection with the request.*

*(4) If the request of a foreign judicial authority may not be executed, or may not be executed fully in compliance with the required conditions, the domestic judicial authority shall without delay inform the foreign judicial authority to this effect, indicating the conditions under which such request may be executed*

## **Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

The Croatian authorities made reference to articles 14 CC (cited above) in relation to the provision under review, outlining additional grounds of criminal jurisdiction under Croatian law which remain applicable and are not prejudiced by the jurisdictional provisions of the Convention.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

## **Chapter IV. International cooperation**

### **Article 44 Extradition**

#### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### **Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 34 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 34, MLA Act*

*(1) A foreigner who has been prosecuted or convicted based on a decision of a foreign judicial authority of the requesting state, for criminal offences punishable pursuant to the law of that state, shall be extradited to that state, for the purpose of carrying out the criminal proceedings, i.e. enforcement of sanctions which include deprivation of liberty, provided that the domestic law incorporates corresponding essential features of the relevant offences.*

*(2) Extradition for the purpose of carrying out criminal proceedings may only be granted for offences that are punishable pursuant to the domestic law by prison or security measure implying deprivation of liberty for the longest period of at least one year or by application of a more severe penalty.*

*(3) Extradition for the purpose of enforcement of sanctions including deprivation of liberty may be granted when, in cases of offences referred to in paragraph 1 of this Article, a final verdict has been issued for the prison sentence or security measure implying detention, determined for a period of at least four months.*

*(4) As an exception, if the request for extradition covers several separate criminal offences out of which some fail to satisfy the conditions referred to in paragraphs 1 and 2 of this Article in respect of the duration of the penalty that may be determined or if the offences concern only pecuniary fine, the extradition may also be granted for these offences.*

*(5) Extradition shall be allowed if the requesting state guarantees that it would grant the request of the Republic of Croatia of the same kind.*

The Croatian authorities further indicated that during the year 2010, 36 persons were extradited from other States to the Republic of Croatia and 53 persons were extradited from the Republic of Croatia to other States. Only one person was extradited from the Republic of Croatia for the criminal offence of money laundering, and one person was extradited to the Republic of Croatia for the criminal offence of embezzlement.

In relation to paragraph 2 of the article under review, the Croatian authorities made further reference to the draft law on judicial cooperation in criminal matters with the member States of the European Union. The relevant Act will enter into force upon Croatia's accession to the European Union, and will remove the requirement of verifying dual criminality for a series of offences, as listed below:

“Participation in a criminal organization; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropic substances; illicit trade in weapons, ammunitions and explosives; corruption; fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests; laundering of the proceeds of crime; counterfeiting currency, including the euro; computer-related crime; environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; facilitating unauthorized entry



and residence; murder, grievous bodily injury; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; organized or armed robbery; illicit trafficking in cultural goods, including antiques and works of art; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery of administrative documents and trafficking thereof; forgery of means of payment; illicit trafficking in hormonal substances and other growth promoters; illicit trafficking in nuclear and radioactive materials; trafficking in stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; sabotage.”

#### **(b) Observations on the implementation of the article**

The reviewing experts took into account that the substantive and procedural conditions for extradition are regulated by the Act on Mutual Legal Assistance in Criminal Matters. The legislation aiming at domesticating the 2002 Framework Decision on the European Arrest Warrant will enter into force upon Croatia’s accession to the European Union. This will entail the abolishment of the double criminality requirement for offences punishable by a custodial sentence for a maximum of at least three years (money laundering and some corruption offences fall into that category).

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

However, they recommended that the national authorities explore the possibility of further relaxing the strict application of the double criminality requirement in line with article 44, paragraph 2, of the UNCAC and following such a flexible approach for cases beyond the execution of European Arrest Warrants.

#### **(c) Technical assistance needs**

The Croatian authorities indicated that they would benefit from the following types of technical assistance in relation to the article under review:

- Summary of good practices/lessons learned – on article 44 (2); at the same time, it was indicated that technical assistance is already being provided by TAIEX (supported by the European Union) in this regard.

### **Article 44 Extradition**

#### **Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 34, paragraph 4 of Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

(...)

*(4) As an exception, if the request for extradition covers several separate criminal offences out of which some fail to satisfy the conditions referred to in paragraphs 1 and 2 of this Article in respect of the duration of the penalty that may be determined or if the offences concern only pecuniary fine, the extradition may also be granted for these offences.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provisions under review.

However, at the operational level, the reviewing experts noted that the absence of case examples and statistical data made an assessment of the implementation of the provision into practice difficult.

In response, the Croatian authorities indicated that the case management system used by the competent service within the Ministry of Justice does not allow to distinguish statistical data based on the necessary specifics to monitor cases on the basis of criteria such as the legal description of a criminal offence, the content of the final decision brought in concrete cases, the legal basis for granting extradition, the requested country, the requesting country and, more specifically, cases in which Croatian courts granted the extradition of persons sought for several separate criminal offences at least one of which was extraditable under article 44 of the Convention, or others which are for criminal offences which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with the Convention.

However, data on the exact duration of the extradition detention are being recorded by the Directorate for Penitentiary System at the Ministry of Justice (see below, under article 44, paragraph 9, of the UNCAC). Moreover, the Croatian authorities provided concrete statistics for the year 2010, according to which 36 persons were extradited from other States to Croatia and 53 persons were extradited from the Croatia to other States. Only one person was extradited from Croatia for the criminal offence of money laundering, and one person was extradited to Croatia for the criminal offence of embezzlement.

Considering the existing case management system used in the Ministry of Justice, the reviewing experts called the national authorities to enhance efforts to systematize information on extradition cases and gather relevant statistical data with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of extradition arrangements.

**Article 44 Extradition**

**Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties*

*undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 34 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) and indicated, in relation to the provision under review, that they have, in 2010, concluded extradition treaties with Montenegro and Serbia which include the offences established in accordance with the Convention.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the domestic legal framework appears to satisfy the requirements of the provisions under review.

## **Article 44 Extradition**

### **Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 141 of the Croatian Constitution and article 17 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 141, Constitution*

*International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.*

In a concrete extradition case, the applicable bilateral or multilateral agreement is used. In the absence of international agreement, the extradition court shall apply the Act on mutual legal assistance in criminal matters under the condition of reciprocity (article 17).

*Article 17, Act on MLA  
Reciprocity*

*(1) Domestic judicial authorities shall afford assistance in respect of the request for mutual legal assistance to a judicial authority of the state that has no international treaty on legal assistance in force with the Republic of Croatia, only if it may be expected based on the assurances provided by the requesting state that this state would execute corresponding request of the domestic judicial authority.*

*(2) Assurances referred to in paragraph 1 of this Article shall not be sought for the purpose of service of judicial verdicts, deposition of parties and other documents.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

## **Article 44 Extradition**

### **Subparagraph 6**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 17 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

The experts further explained that Croatia does not make extradition conditional on the existence of a treaty and that does not act in this field exclusively on the basis of the Convention. In concrete cases, however, Croatia would extradite the requested person for criminal offences covered by the Convention to the country which is not party to the Convention, if this country will give an assurance that it would execute corresponding request of the domestic judicial authority. In this case the extradition procedure is being conducted in accordance with the Act on mutual legal assistance in criminal matters and Croatian criminal procedure act. The requested person will be extradited to requesting state only if the conditions specified in the Article 34 and Article 35 of the Act on mutual legal assistance in criminal matters are fulfilled.

Statistical data on extradition based solely on reciprocity are not available due to the above-explained limitations of the case management system in tracking particular characteristics of cases.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

They further reiterated their advice that the national authorities should enhance efforts to systematize information on extradition cases and gather relevant statistical data with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of extradition arrangements.

## **Article 44 Extradition**

### **Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 17 and 34 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that Croatia does not make extradition conditional on the existence of a treaty and does not act in this field exclusively on the basis of the UNCAC. In concrete cases, Croatia would extradite the requested person for criminal offences covered by the Convention to a country which is not party to the Convention on the basis of the reciprocity principle (article 17 of the Act on MLA).

The reviewing experts were of the view that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 44 Extradition**

### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 141 of the Croatian Constitution (cited above) and articles 12, 34 (cited above) and 35 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 12, Act on MLA  
Refusal of the request*

*(1) Domestic competent authority may refuse the request for mutual legal assistance:*

1. if the request concerns an offence which is considered to be a political offence, an offence connected with a political offence,
2. if the request concerns a fiscal offence,
3. if the execution of the request would prejudice the sovereignty, security, legal order or other essential interests of the Republic of Croatia,
4. if it may reasonably be assumed that a person whose extradition is claimed would be in case of extradition criminally prosecuted or punished on account of his race, religious beliefs, nationality, affiliation with a particular social group or on account of his political beliefs, i.e. that that person's position may be prejudiced for any of these reasons,
5. if it concerns an insignificant criminal offence.

(2) Criminal offences or attempts to commit criminal offences against the values protected by international law, and participation in execution of such criminal offences, may not serve as basis for refusal of the request for mutual legal assistance in the context of paragraph 1 point 1 of this Article.

(3) Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.

Article 35, Act on MLA

Refusal to extradite

(1) Extradition shall not be allowed:

1. if the person whose extradition is claimed is a national of the Republic of Croatia,
2. if an offence for which the extradition is claimed was committed either on the territory of the Republic of Croatia, or against Croatia or its national,
3. if the offence for which extradition is claimed is not a criminal offence in both domestic law and the law of the state in which it was committed,
4. if, pursuant to domestic law, a statute of limitation for criminal prosecution or statute of limitation for execution of the punishment has occurred prior to putting the foreigner in detention or prior to his interrogation as a prosecuted person,
5. if a foreigner whose extradition is claimed had already been convicted for the same offence by the domestic court, or if he was finally acquitted in respect of that same offence by the domestic court, unless conditions are met for re-trial as envisaged by the Criminal Procedure Act, or if the criminal proceedings have been initiated in the Republic of Croatia against the foreigner for the same offence committed against the Republic of Croatia. In case of proceedings initiated due to an offence committed towards the national of the Republic of Croatia - if no security has been deposited for realization of material claim of the injured person,
6. if identity of a person whose extradition is claimed has not been determined,
7. if there are no sufficient evidence for reasonable doubt that the foreigner whose extradition is claimed has committed a particular criminal offence and that there exists a final verdict.

(2) Extradition may be refused if the Republic of Croatia may take over the prosecution of an offence or enforcement of the criminal verdict, and this seems to be appropriate considering the social rehabilitation of the prosecuted person.

Statistical data on the refusal of extraditions for non-fulfillment of the legal requirements are not available due to the above-explained limitations of the case management system in tracking particular characteristics of cases.

**(b) Observations on the implementation of the article**

The reviewing experts noted that article 35 of the Act on MLA lists the grounds for refusal of an extradition request, including nationality, lack of double criminality, discrimination clause, territoriality, lapse of time and *ne bis in idem*.

The reviewing experts were of the view that the Croatian legislation adequately reflects the requirements of the provision under review.

They further reiterated their advice that the national authorities should enhance efforts to systematize information on extradition cases and gather relevant statistical data with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of extradition arrangements.

**Article 44 Extradition**

**Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 54 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review and further clarified that in the case of an existing international treaty, the provisions which regulate the delivery of relevant documentation shall be applied, and the delivery of evidence from which reasonable suspicion arises that an offence was committed in a concrete case, shall not be required.

*Mutual Legal Assistance in Criminal Proceedings Pending in the Republic of Croatia or a Foreign State*

*Article 54, Act on MLA  
Simplified extradition procedure*

*(1) Extradited person may give consent to be surrendered to the requesting state pursuant to the simplified extradition procedure, as well as waive the right referred to in Article 40 paragraph 2 of this Act, after which the competent court shall approve his extradition, unless there are reasons to the contrary.*

*(2) Consent and waiver referred to in paragraph 1 of this Article shall be entered into the minutes before a competent court pursuant to the Criminal Procedure Act, in a way which*

*proves that the extradited person acted voluntarily in this and was fully aware of the consequences.*

*(3) Consent and waiver referred to in paragraph 1 of this Article are irrevocable.*

*(4) The competent court shall notify the Ministry of Justice on the consent referred to in paragraph 1 of this Article without delay. The Ministry of Justice will, at latest within 10 days as of the extradited person's detention, notify the requesting state, which is not obliged to deliver the request for extradition in that case.*

*(5) If the extradited person gave his consent referred to in paragraph 1 of this Article, the court shall, after the expiry of the deadline referred to in paragraph 4 of this Article, carry out a simplified extradition procedure if the request for extradition has not been received yet.*

*(6) If the extradited person gave his consent referred to in paragraph 1 after the expiry of the deadline referred to in paragraph 4 of this Article, and the request for extradition was received in the meantime, the competent court may carry out a simplified extradition procedure.*

*(7) Simplified extradition procedure has equal effects of extradition and is subject to the same conditions. The requesting state shall be warned about this.*

With regard to statistics, the Croatian authorities reported that the Ministry of Justice is planning to improve the case management system in the next two years in a manner that the upgraded case management system will allow us to track the MLA requests regarding the type of the mutual legal assistance, the requesting/requested country, the type of offences, but not regarding the exact duration of extradition proceedings. It was also noted that data regarding the exact duration of the extradition detention are already being recorded by the Directorate for Penitentiary System at the Ministry of Justice.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Act on Mutual Legal Assistance in Criminal Matters also foresees the option of simplified extradition proceedings (article 54), which considerably shortens the period needed for the surrender of a fugitive. It is expected that the domestication of the abovementioned Framework Decision would further contribute to a standardized simplified surrender process to Member States of the European Union.

The reviewing experts were of the view that the Croatian legislation adequately reflects the requirements of the provision under review.

They further reiterated their advice that the national authorities should enhance efforts to systematize information on extradition cases and gather relevant statistical data with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of extradition arrangements.

## **Article 44 Extradition**

### **Paragraph 10**



10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 44, 46-49 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 44, Act on MLA*

*Request for temporary arrest for extradition*

*In addition to the contents provided for in Article 8 paragraph 3 of this Act, the request for temporary arrest for extradition shall contain the following:*

- 1. data to determine identity of a person whose arrest is claimed for extradition,*
- 2. factual and legal description of the criminal offence,*
- 3. statement of the judicial authority concerning existence of a final convicting verdict or a detention order,*
- 4. statement that extradition shall be requested for the person whose arrest for extradition is claimed.*

*Article 46, Act on MLA*

*A person whose extradition is sought may be arrested for extradition based on a written request of a foreign judicial authority or, subject to condition of reciprocity, based on an international APB.*

*Article 47, Act on MLA*

*Detention order for extradition*

*(1) The competent court issues a detention order for extradition, unless there is likelihood that the extradition shall not be granted, and the foreigner's stay in freedom does not endanger the extradition procedure.*

*(2) If a foreigner is not capable of being in detention or if justified by other reasons, the competent court may order other measures to guarantee his presence, instead of detention.*

*Article 48, Act on MLA*

*Revocation of detention*

*(1) Investigative judge shall release the foreigner from detention when the reasons for detention cease to exist or if the request for extradition is not submitted within a term determined by him, having regard of all the circumstances contained in the request for extradition, and which may not be longer than 40 days as of the day of placement into detention. Detention determined pursuant to Article 44 of this Act may be revoked if the request for extradition is not submitted within 18 days as of the foreigner's detention.*

(2) *The Ministry of Justice shall notify without delay the requesting state about the deadlines referred to in paragraph 1 of this Article. Upon request of the requesting state, the competent judicial authority may prolong detention for maximum of additional 30 days.*

(3) *If the extradited person is already in detention on certain other grounds, the deadline referred to in paragraph 1 of this Article will start as of the date of the detention order for extradition.*

#### *Article 49, Act on MLA*

##### *Prolongation and renewal of the detention*

(1) *After the receipt of the request for extradition, the detention measure shall stay in force during the whole extradition procedure until expiry of the deadline for enforcement of a resolution on the extradition referred to in Article 59 of this Act.*

(2) *Should the extradited person be released from detention due to expiry of deadlines provided for in Article 48 paragraphs 1 and 2 of this Act, it is allowed to renew the detention for extradition if the requesting state re-submits the request for temporary arrest for extradition or a request for extradition.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 44 Extradition**

#### **Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the articles 13-15 CC on jurisdiction (cited above) in relation to the provision under review.

The Croatian authorities can not provide example of the specific case because mentioned measure is rarely used in practice due to the fact that every country on which territory the criminal offence was committed has interest to conduct the legal proceeding against the perpetrator before its own court. Subsequently, countries rarely submit request for taking over the criminal proceeding accompanied by material evidence which are needed to initiate the criminal proceeding before the court of the country of perpetrator's citizenship.

As previously mentioned the Ministry of Justice of the Republic of Croatia does not yet dispose with the case management system which will enable us to track the MLA cases by the specific criteria like cases in which the principle “*aut dedere aut judicare*” was applied. Therefore it is not possible to provide statistical data on cases in which the mentioned principle was applied.

**(b) Observations on the implementation of the article**

The reviewing experts recalled the grounds for refusal of an extradition request, as prescribed in the domestic legal framework, and, first of all, noted that the Croatian Constitution (article 9) prohibits the extradition of nationals unless in case of execution of a decision on extradition or surrender made in compliance with an international treaty or the *acquis communautaire* of the European Union (see the Framework Decision mentioned above).

They also noted that the necessary legal context for the initiation of domestic prosecutorial action in lieu of extradition when the latter is denied on the grounds of nationality, is in place (articles 13-15 CC on jurisdiction). However, no specific information was provided on the practical application of the axiom “*aut dedere aut judicare*” in lieu of extradition (see article 44, paragraph 11, of the UNCAC). The Croatian authorities explained that no examples of specific cases could be reported in this regard because the measure of launching domestic proceedings where extradition is denied is rarely used in practice due to the fact that every country in which the criminal offence was committed has interest to conduct the legal proceeding against the perpetrator before its own courts.

**Article 44 Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 9 of the Croatian Constitution and clause 8 of the extradition treaty concluded with Serbia in relation to the provision under review.

*Article 9, Constitution*

*Croatian citizenship, and its acquisition and revocation, shall be regulated by law. A citizen of the Republic of Croatia may not be forcibly exiled from the Republic of Croatia nor deprived of citizenship, nor extradited to another state, except in case of execution of a decision on extradition or surrender made in compliance with international treaty or the *acquis communautaire* of the European Union.*

The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) has been implemented in our domestic law by the Act on judicial cooperation in criminal matters with Member States of European Union (Official gazette no. 91/10). Article 5 paragraph 3 of mentioned Framework Decision is implemented through Article 22 Paragraph 2 of the Act. This article provides as follows:

*"If the European arrest warrant has been issued for the purposes of the prosecution and the requested person is a national or a resident of the Republic of Croatia, the competent court may impose as a condition for the execution of that warrant that the requested person, after being heard, is returned to the Republic of Croatia in order to serve there the custodial sentence or detention order passed against him or her in the issuing State, in accordance with the provisions of Title VII of this Act. "*

**(b) Observations on the implementation of the article**

The reviewing experts noted that conditional surrender of nationals, as foreseen in article 44, paragraph 12, of the UNCAC, is regulated in the implementing legislation for the Framework Decision on the European Arrest Warrant and will be enforced upon Croatia's accession to the European Union.

The reviewing experts were of the view that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 44 Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 70 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 70, Act on MLA*

*Taking over enforcement by the Republic of Croatia*

*(1) A domestic court shall act upon the request of the requesting state for enforcement of the criminal verdict of a foreign court and it shall enforce a final verdict in respect of the sanction determined by a foreign court, in a way that it shall determine a sanction in the verdict pursuant to the criminal law of the Republic of Croatia.*

*(2) When evaluating punishability and possibility of criminal prosecution, the domestic court is bound by the facts determined in the foreign court's verdict, unless it concerns the facts that are contrary to the public morals and legal order of the Republic of Croatia.*

The Croatian authorities further provided an example of the recognition of foreign verdicts pursuant to an agreement on the mutual enforcement of foreign criminal sentences concluded

between Croatia and Bosnia and Herzegovina in 1996 (revised in 2002 and 2010), which provides for the enforcement of a foreign sentence or sanction against Croatian nationals rendered by Bosnian courts.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provisions under review.

**Article 44 Extradition**

**Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 29 of the Croatian Constitution in relation to the provision under review.

*Article 29, Constitution*

*Everyone shall have the right to the independent and fair trial provided by law which shall, within a reasonable term, decide upon his rights and obligations, or upon the suspicion or the charge of a penal offence.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 44 Extradition**

**Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 12, paragraph 1, subparagraph 4 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 12, Act on MLA*

### *Refusal of the request*

(1) *Domestic competent authority may refuse the request for mutual legal assistance:*

(...)

*4. if it may reasonably be assumed that a person whose extradition is claimed would be in case of extradition criminally prosecuted or punished on account of his race, religious beliefs, nationality, affiliation with a particular social group or on account of his political beliefs, i.e. that that person's position may be prejudiced for any of these reasons,*

(...)

The Croatian authorities further clarified that there has never been a case where Croatia had refused extradition based on the grounds elaborated in the provision under review.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 44 Extradition**

#### **Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 12, paragraph 3 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 12, Act on MLA  
Refusal of the request*

(...)

*(3) Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.*

(...)

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

### **Article 44 Extradition**

## **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 14 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 14, Act on MLA*

*The decision refusing the request to afford mutual legal assistance must give reasons for such a decision, unless provided otherwise by an international treaty.*

The Croatian authorities further clarified that, in practice, the Croatian courts would request supplementary information from the judicial authorities of the requesting state before rendering a ruling on the refusal of an extradition request.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review and considered that the cited provision is adequate for the effective implementation of the provision.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to relevant extradition agreements concluded with Bosnia and Herzegovina, Montenegro and Serbia, as well as the Council of Europe Convention on Extradition with Additional Protocols (1957) in relation to the provision under review.

The Croatian authorities further clarified that the bilateral and multilateral agreements referred to prescribe less severe conditions for extradition as those prescribed by the Act on MLA. For example, the mentioned bilateral agreements foresee the possibility of extraditing Croatian citizens. Furthermore, multilateral and bilateral agreements enable the extradition of requested persons without verification of the existence of a reasonable doubt that in the concrete case the requested person has committed a particular criminal offence.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that Croatia is bound by existing multilateral treaties, such as the Council of Europe Convention on Extradition and its two Additional Protocols and the UNTOC. Croatia has also concluded bilateral extradition treaties with Slovenia, Montenegro, Serbia and the Former Yugoslav Republic of Macedonia, which enable the extradition of nationals and the application of lower evidentiary standards in extradition proceedings.

The reviewing experts were of the view that the Croatian legal framework and practice of concluding bilateral and multilateral agreements on extradition in particular, or on international cooperation in criminal matters in general, adequately reflect the requirements of the provision under review.

They further recommended that the national authorities continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition.

#### **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to several bilateral agreements on transfer of sentenced persons concluded with European countries, as well as to the Council of Europe Convention on the Transfer of Sentenced Persons (1983) and Additional Protocol (1997) and the United Nations Convention against Transnational Organized Crime in relation to the provision under review.

##### **(b) Observations on the implementation of the article**

The reviewing experts noted that the international instruments by which Croatia is bound ensure compliance with the requirements of the provision under review.

#### **Article 46 Mutual legal assistance**

##### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 4 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 4, Act on MLA*



*Mutual legal assistance is afforded in the widest sense, in compliance with the principles of domestic legal order, principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.*

The Croatian authorities further indicated that in 2010, the Ministry of Justice of the Republic of Croatia has received and transmitted 82.768 requests for mutual legal assistance seeking conduction of procedural measures in criminal proceedings as well as in civil proceedings.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 1, paragraph 4 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 1, Act on MLA*

*(...)*

*(4) Mutual legal assistance is also afforded in criminal proceedings referred to in paragraph 2 of this Article, and misdemeanour proceedings referred to in paragraph 3 of this Article, which are brought against legal persons.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 3 (a)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(a) Taking evidence or statements from persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 3, paragraph 1 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 3, Act on MLA*

*(1) In particular, this Act shall regulate the following:*

*1. mutual legal assistance in criminal proceedings pending in the Republic of Croatia or a foreign country (procuring and transmitting articles to be produced in evidence, service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other acts necessary to carry out the court proceedings),*

**Subparagraph 3 (b)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(b) Effecting service of judicial documents;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 7 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 7, Act on MLA*  
*Service of documents by post*

*(1) Domestic judicial authorities may, subject to condition of reciprocity or if so envisaged by an international treaty, address procedural documents and judicial verdicts to the persons who find themselves abroad directly by mail.*

*(2) Procedural documents and judicial verdicts referred to in paragraph 1 of this Article shall be accompanied by a report stating that the addressee may obtain information regarding his or her rights and obligations concerning the service of documents.*

*(3) Procedural documents and judicial verdicts shall be transmitted to the persons who find themselves abroad in the Croatian language.*

*(4) If a domestic judicial authority knows or has reasons to believe that the addressee understands only some other language, the documents shall be accompanied by a translation into that other language.*

*(5) Domestic regulations shall apply to the validity of service.*

**Subparagraph 3 (c)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(c) Executing searches and seizures, and freezing;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 28-29 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Treatment of the temporarily seized articles*

*Article 28, Act on MLA*

*(1) Articles, documents or monetary gain which have been temporarily seized to be presented as evidence, as well as records and decisions, shall be made available to a foreign judicial authority upon its request, after the completion of the mutual legal assistance proceedings in the Republic of Croatia.*

*(...)*

*Article 29, Act on MLA*

*(1) Articles or monetary gain which have been temporarily seized for security purposes may be delivered to a foreign judicial authority, upon its request, upon completion of the mutual legal assistance proceedings, for the purpose of seizure or return to an authorized person.*

*(2) Articles and monetary gain referred to in paragraph 1 of this Article encompass:*

- 1. articles used to commit the criminal offence,*
- 2. products of the criminal offence or their counter-value,*
- 3. gain resulting from the criminal offence or their counter-value,*
- 4. presents and other gifts as an incentive and reward to commit a criminal offence or their counter-value.*

*(3) Delivery may follow in any stage of foreign criminal proceedings, and it may only be executed based on a final and enforceable decision of a foreign judicial authority.*

*(4) Articles or monetary gain may be permanently detained in the Republic of Croatia if:*

- 1. the injured person is domiciled in the Republic of Croatia, and the objects have to be returned to that person,*
- 2. state authority claims the right of the Republic of Croatia in such objects,*
- 3. person not participating in the offence, whose claims have not been guaranteed through the requesting state, proves that he/she has acquired in good faith the right in such articles or monetary gain either in the Republic of Croatia or abroad, and the person is domiciled in the Republic of Croatia,*
- 4. if the articles or monetary gain are necessary to carry out the criminal proceedings pending in the Republic of Croatia or to apply the seizure measure in the Republic of Croatia.*

*(5) If an authorized person claims rights in the articles or monetary gain referred to in paragraph 4 of this Article, their delivery to the requesting state shall*

*be postponed until resolution of the legal issues. Disputed articles or monetary gain may be delivered to an authorized person:*

- 1. if the requesting state consents,*
- 2. if the state authority consents, in cases referred to in paragraph 4 point 2 of this Article,*
- 3. if the domestic court has acknowledged authority to claim.*

### **Subparagraph 3 (d)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (d) Examining objects and sites;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 252-256 of the Criminal Procedure Act in relation to the provision under review.

#### *Article 252, Criminal Procedure Act*

*(1) During a search of a dwelling, one or more spatially connected rooms which the person uses as his dwelling, as well as premises that are spatially connected with the dwelling and have the same purpose shall be searched.*

*(2) A search of other premises shall regard the premises different from a dwelling which are stipulated in the search warrant and in which no search without a search warrant may be carried out (Article 246 paragraph 2 items 1 and 2).*

*(3) A search of a dwelling and other premises shall also include the search of movable property and all persons found at the dwelling and other premises, if this is stipulated in the search warrant or if the preconditions for a search without a warrant with regard to found persons exist.*

#### *Article 253, Criminal Procedure Act*

*(1) Prior to the commencement of the search the person to whom the search warrant refers shall be instructed that he is entitled to notify a defence counsel who may be present during the search.*

*(2) The authority carrying out the search shall allow this person to call a defence counsel of his own choice and shall therefore halt the search until arrival of the defence counsel, up to three hour at the latest from the moment when the person stated he would like to call a defence counsel. If it proves that the chosen defence counsel cannot appear within that deadline, the authority carrying out the search shall allow this person to retain a defence counsel from the list of attorneys on duty, which is compiled by the Croatian Bar Association for the territory of the county and delivered to the competent police administrations along with the report made for the investigating judge. The stopping time of the search of a dwelling shall not be included in the legal term of handing over referred to in Article 109 paragraph 2 of this Act. The authority carrying out the search shall note*

*the stopping time in the record of search.*

*(3) Should this person decide not to call a defence counsel or should the summoned defence counsel fail to appear within the term provided, the authority may resume the search of a dwelling.*

*Article 254, Criminal Procedure Act*

*(1) A person who owns the premises or resides there or the person authorized by such persons for attending the search may be present during the search of a dwelling or other premises.*

*(2) At least two citizens of age shall be present as witnesses during the search of a dwelling or other premises.*

*(3) Before the commencement of the search, the witnesses shall be instructed to observe how the search is carried out and that they are entitled to place their objection prior to signing the record of the search, if they are of the opinion that the search has not been carried out in accordance with the provisions of this Act or that the contents of the record are incorrect.*

*(4) When conducting a search of premises of state authorities, a representative of such authorities shall be invited who may be present at the search.*

*(5) When a search is carried out in the premises of other legal entities, their representative shall be invited who may be present at the search.*

*Article 255, Criminal Procedure Act*

*If a search is to be carried out in military premises, the search warrant shall be delivered to the military authorities who shall designate a military person to be present at the search. The search in military premises shall be in general carried out by the military police or it shall take part in it.*

*Article 256, Criminal Procedure Act*

*A special law may regulate special conditions of carrying out of the search in certain premises.*

**Subparagraph 3 (e)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(e) Providing information, evidentiary items and expert evaluations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 3, paragraph 1 and article 28 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

### **Subparagraph 3 (f)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 3, paragraph 1 and article 28 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

### **Subparagraph 3 (g)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 3, paragraph 1 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) and article 206 of the Criminal Procedure Act, as well as more generally to the Law on USKOK in relation to the provision under review.

#### *Article 206, Criminal Procedure Act*

*(1) After inspection of the report and verification in the Information System of the State Attorney, the State Attorney shall dismiss a crime report by a ruling with a statement of reasons:*

- 1) if it follows from the report that the reported act is not a criminal offence subject to public prosecution;*
- 2) if the period of limitation for the institution of prosecution has expired and if the offence is amnestied or pardoned,*
- 3) if other circumstances exist excluding culpability or barring prosecution,*
- 4) if no reasonable suspicion exists that the suspect committed the reported offence,*
- 5) if the data in the report point to the conclusion that the report is not credible.*

*(1) The ruling of the State Attorney on the dismissal of the crime report shall not be subject to appellate review. The State Attorney shall notify the injured person within eight days on the dismissal of the report and on the grounds thereof except if he decides not to institute prosecution in cases from Article 212, 521 and 522 of this Act, with the instruction from Article 55 of this Act, and if the report was made by the police authorities or another state authority, the State Attorney shall notify the person who filed a crime report and upon his request the person against which the report was made.*

*(1) If the State Attorney is unable to establish from the crime report whether or not allegations in the report are credible, or if facts stated in the report do not suffice for a decision on whether he should order the opening of an investigation, or if only rumours reach the State Attorney that a criminal offence has been committed, the State Attorney shall, if he cannot do this himself or through other authorities, order the police authorities to obtain necessary information by making inquiries and undertaking other measures for collecting the data necessary for a decision on the opening of the investigation. The State Attorney may in his order to the police authorities determine the content of the inquiry or measure in more detail and order immediate information from the police authorities about the inquiry or measure undertaken. If the State Attorney orders to be present during the inquiry or measure, the police authorities shall undertake the inquiry or measure in such a manner as to enable his presence. The police authorities are bound to proceed in accordance with the order of the State Attorney, and unless the State Attorney has ordered otherwise, they shall notify the State Attorney within a term of thirty days from the submission of the request of the inquiries or measures undertaken.*

*(2) Upon the request of the State Attorney, the police authorities, the ministry responsible for finance, the State Audit Office and other state authorities, organizations, bank and other legal entities shall deliver to the State Attorney required information, except the information representing a lawfully protected secret. The State Attorney may request from the aforesaid authorities to control the operations of a legal entity or physical person and, according to the appropriate regulations, to seize temporarily, until a judgement is rendered, of money, valuable securities, objects and documentation that may serve as evidence, to perform supervision and delivery of data that may serve as evidence on the committed criminal offence or property gained by the criminal offence, and to request information on collected, processed and stored data regarding unusual and suspicious monetary transactions. In his request, the State Attorney may in more detail specify the content of the requested measure or action and demand to be informed thereof, in order to be able to attend its execution.*

*(3) For failure to comply with the request, the investigating judge may, upon a motion with the statement of reasons by the State Attorney, impose a fine to the responsible person in the amount of up to HRK 50,000.00, and to legal entity in the amount of up to HRK 5,000,000.00, and if even after that such person fails to act upon the request, the person may be punished with imprisonment until the request is complied with, and not longer than one month. The court which rendered the ruling on imprisonment may abolish the ruling if, after the ruling was rendered, the responsible person acts according to the request. The State Attorney may for the purpose of collecting necessary information summon the person who filed a crime report and other persons if he considers that their statements may contribute to the assessment of the credibility of the allegations made in the report. The summons shall state the reasons for the summons. If the person who is summoned fails to answer, it shall be preceded according to Article 208 paragraph 3 of this Act.*

### **Subparagraph 3 (h)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(h) Facilitating the voluntary appearance of persons in the requesting State Party;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 25 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 25, Act on MLA  
Hearing of a person domiciled abroad*

*(1) A person domiciled abroad, appearing in the Republic of Croatia on a summons by the domestic judicial authority, to testify as a witness or expert witness in the criminal proceedings, shall not be criminally prosecuted, or subject to any other restriction of his personal liberty due to reasons anterior to his arrival.*

*(2) The immunity provided for in paragraph 1 of this Article shall cease when the person upon leaving the state territory of the Republic of Croatia either returns or does not leave the state territory of the Republic of Croatia upon expiry of eight days as of the testimony.*

**Subparagraph 3 (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 10, paragraph 1 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 10, Act on MLA  
Particularities in the manner of executing the request*

*(1) When affording mutual legal assistance, domestic judicial authority shall comply with the formalities and procedures expressly indicated in the request as necessary pursuant to the law of the requesting state, unless provided otherwise by an international treaty and provided that such formalities and procedures are not contrary to the principles of the domestic legal order.*

**Subparagraph 3 (j)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 3, paragraph 1 of the Act on Mutual Legal Assistance in Criminal Matters and article 206 of the Criminal Procedure Act (cited above), as well as more generally to the Law on USKOK in relation to the provision under review.

**Subparagraph 3 (k)**



3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 29 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 4**

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 18 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 18, Law on MLA  
Spontaneous exchange of information*

*(1) Without prejudice in any way to their own investigations or proceedings and subject to condition of reciprocity, domestic judicial authorities may, without prior request, forward to the competent foreign judicial authorities information obtained within the framework of their own investigations, which relate to criminal offences or breach of the rule of law referred to in Article 1 paragraph 3 of this Act, when they consider that the disclosure of such information might assist the receiving state in initiating or carrying out investigations or court proceedings or might lead to a request for mutual assistance by that state.*

*(2) Domestic judicial authority shall request from the foreign judicial authority to which it transmitted the information referred to in paragraph 1 of this Article, the communications on any action undertaken upon such information, as well as transmission of issued decisions, and it may also impose other conditions for the use of such information at the receiving state.*

*(3) Information referred to in paragraph 1 of this Article shall be forwarded through the Ministry of Justice.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to articles 18 (cited above) and 21 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 21, Act on MLA  
Confidentiality*

*(1) Upon a request of a foreign judicial authority, the Ministry of Justice and the domestic judicial authority shall keep confidential the request for mutual assistance and its substance, except to the extent necessary to execute the request.*

*(2) If the confidentiality condition referred to in paragraph 1 may not be upheld, the Ministry of Justice, i.e. domestic judicial authority shall notify the foreign judicial authority on this fact, without delay.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 6**

*6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 141 of the Croatian Constitution (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 141, Constitution*

*International agreements concluded and ratified in accordance with the Constitution and made public shall be part of the Republic's internal legal order and shall in terms of legal effect be above law. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rule of international law.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 7**

*7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 141 of the Croatian Constitution (cited above) in relation to the provision under review and clarified that in the absence of a bilateral treaty on mutual legal assistance, the Act on Mutual Legal Assistance in Criminal Matters would apply.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to article 265 of the Criminal Procedure Act (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 265, Criminal Procedure Act*

*(1) If access to data considered to be a bank secret is denied, the court may issue a ruling on disclosure of data representing a bank secret upon the motion with a statement of reasons of the State Attorney. The court shall stipulate the term within which the bank must disclose data in the ruling.*

*(2) When it is probable that a certain person receives, holds or disposes in any other way of income arising from a criminal offence on his bank account and this income is important for the investigation of that criminal offence or it underlies forceful seizure, the State Attorney shall, by a request with a statement of reasons, propose to the court to order the bank to hand over data on that account and income to the State Attorney. The request shall include data on legal entity or physical person who holds these means or this income or disposes of them. A description of income must include the currency designation, but not its exact amount if it is not known. The court shall stipulate a term within which the bank must proceed as ordered.*

*(3) Before the commencement and during the investigation a decision on the request of the State Attorney referred to in paragraph 1 and 2 of this Article shall be brought by the investigating judge, on indictment by the panel examining the indictment, and after it becomes final by the court before which the hearing is to be conducted.*

*(4) The investigating judge shall decide on the State Attorney's request referred to in paragraphs 1 and 2 of this Article immediately or within twelve hours at the latest from the receipt of the request. Should the investigating judge deny the request, the State Attorney may file an appeal within twelve hours. The panel shall decide on the appeal within twenty-four hours. An appeal against the ruling of the court brought on indictment shall not be allowed.*

*(5) If circumstances referred to paragraphs 2 and 3 of this Article exist, the investigating judge may upon the motion with a statement of reasons of the State Attorney order the bank or any other legal entity to follow up on money transfer and transactions on the account of a certain person and to regularly inform the State Attorney thereof during the term stipulated in the ruling.*

*(6) Measures of the follow-up on money transfer may be applied for a year at longest. As soon as the reasons for the follow-up have ceased to exist, the State Attorney shall inform the investigating judge who shall cancel the follow-up by a ruling. Should the State Attorney desist from the criminal prosecution or the evidence collected are not required for the criminal proceedings, data on the follow-up shall be destroyed under supervision of the investigating judge who shall compile a special record thereon. The State Attorney shall deliver the ruling on the follow-up to the person against whom it was issued, together with the indictment or the decision on desisting from the criminal prosecution.*

*(7) The bank or any other legal entity shall refrain from disclosure of information or data on the proceedings pursuant to paragraphs 1 to 5 of this Article. Upon the motion with a statement of reasons of the State Attorney, the investigating judge shall by a ruling impose a fine amounting to HRK 1,000,000.00 upon the bank and a fine amounting to HRK*

200,000.00 upon the responsible person in the bank or any other legal person for proceedings contrary to paragraphs 1 to 5 of this Article. In case the order is not complied with even after such a fine, the responsible person may be punished by imprisonment until the order is executed, but not longer than one month. The appeal against the ruling on a fine and imprisonment shall not stay the execution of the ruling.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (a)**

9. (a) *A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

(b) *States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

(c) *Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to article 4 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provisions under review. They further clarified in connection to subparagraph (c) that assistance would be provided within the confines of bilateral and multilateral agreements concluded with reference to article 141 of the Constitution.

*Article 4, Act on MLA*

*Mutual legal assistance is afforded in the widest sense, in compliance with the principles of domestic legal order, principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that double criminality is not required by the Law on MLA, which instead in article 1, paragraph 2, merely provides that assistance should be provided “in respect of criminal acts the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the requesting state.” In addition, the reasons for refusal of such assistance do not include the lack of double criminality. As a practical matter, Croatia also has a tradition of providing mutual legal assistance even in the absence of double criminality. Taken together, it would therefore appear that Croatia would not require dual criminality in

order to provide mutual legal assistance pursuant to article 46 of the UNCAC. This was identified as a **good practice** (see also above, under the “overall findings” of the review).

## **Article 46 Mutual legal assistance**

### **Subparagraph 10**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 26 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provisions under review.

*Article 26, Act on MLA  
Temporary transfer for testimony*

*(1) Upon a request of a foreign judicial authority, a person who has been deprived of liberty in the Republic of Croatia, including Croatian nationals, may be temporarily transferred to a foreign judicial authority for the purpose of testimony as witness or for confrontation purposes, provided that the person is returned to the Republic of Croatia within a deadline determined by the domestic judicial authority, and provided that:*

- 1. the person consents to temporary transfer,*
- 2. the presence of a person is necessary at the criminal proceedings pending in the foreign state,*
- 3. the temporary transfer is not liable to prolong his or her deprivation of liberty,*
- 4. there are no other overriding grounds against temporary transfer.*

*(2) Person referred to in paragraph 1 of this Article who was temporarily transferred to a foreign judicial authority, shall remain in custody during the whole stay abroad, unless the domestic judicial authority applies for his or her release.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 11 (a)-(c)**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 26 (cited above) and 27 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provisions under review.

*Article 27*

*When a person placed in custody based on a decision of a foreign judicial authority has been transferred to a domestic judicial authority, for the purpose of hearing in the criminal proceedings, the decision of the foreign judicial authority on placing in custody abroad shall also apply in the Republic of Croatia.*

The Croatian authorities further clarified that in cases where the requesting State is a party to the Convention, article 11 (c) of the Convention would be applied directly. In other cases, the relevant international agreement in effect would be applied.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

**Subparagraph 11 (d)**

*11. For the purposes of paragraph 10 of this article:*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 17 of the Criminal Code in relation to the provisions under review.

*Article 17, Criminal Code*

*Inclusion of the Time Spent in Pre-Trial Detention or Imprisonment in a Foreign State*

*In the cases of the application of the criminal legislation of the Republic of Croatia, when the perpetrator has been deprived of his liberty in a foreign state due to a criminal offence, the time spent in pre-trial detention or imprisonment, or any other deprivation of liberty, shall be included in the sentence pronounced by the domestic court for the same criminal offence, and if the sentences are not of the same type, the inclusion shall be made in accordance with an equitable assessment of the court.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 25 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provisions under review.

*Article 25*

*Hearing of a person domiciled abroad*

*(1) A person domiciled abroad, appearing in the Republic of Croatia on a summons by the domestic judicial authority, to testify as a witness or expert witness in the criminal proceedings, shall not be criminally prosecuted, or subject to any other restriction of his personal liberty due to reasons anterior to his arrival.*

*(2) The immunity provided for in paragraph 1 of this Article shall cease when the person upon leaving the state territory of the Republic of Croatia either returns or does not leave the state territory of the Republic of Croatia upon expiry of eight days as of the testimony.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 13**



13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 6 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provisions under review.

*Article 6, Act on MLA*

*Authorities competent to afford mutual legal assistance and the channels of communication*

*(1) Domestic judicial authorities transmit the requests for mutual assistance and information referred to in Article 18 paragraph 1 of this Act to foreign competent authorities through the Ministry of Justice.*

*(2) The Ministry of Justice has jurisdiction to receive requests for mutual assistance of foreign competent authorities, and transmit them without delay to domestic judicial authorities, unless evident that the request should be refused.*

*(3) The Ministry of Justice may return the request to the foreign competent authority for corrections or supplements and determine an appropriate deadline for delivery of so corrected, i.e. supplemented request. After the expiry of the deadline, the request shall be executed according to the status in the judicial record.*

*(4) As an exception to paragraph 1 of this Article, domestic judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when so explicitly provided by the provisions of this Act and subject to condition of reciprocity, or when such a communication is envisaged by an international treaty (direct communication).*

*(5) In cases of direct communication referred to in paragraphs 4 and 7 of this Article, a domestic judicial authority shall communicate a copy of the request for mutual legal assistance to the Ministry of Justice.*

*(6) In urgent cases and subject to reciprocity, the Ministry of Justice may transmit and receive requests for mutual legal assistance through the Interpol.*

*(7) In cases of direct communication referred to in paragraph 4 of this Article, domestic judicial authorities may, provided they fulfil the obligation referred to in paragraph 5 of this Article, transmit and receive requests for mutual legal assistance through the Interpol.*

*(8) The Ministry of Justice shall transmit and receive through the Ministry of Foreign Affairs the requests for mutual legal assistance to/from a foreign state that has no international treaty in force with the Republic of Croatia, as well as in cases when an international treaty envisages use of special diplomatic channels.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that, in its filing ratifying the UNCAC, Croatia notified the Secretary-General that the “central authority responsible and authorized to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution, pursuant to article 46, paragraph 13, of the Convention, shall be the Ministry of Justice”. The Ministry of Justice transmits and receives the MLA requests through the Ministry of Foreign Affairs in cases where the foreign State has no international treaty in force with Croatia or where an international treaty envisages the use of special diplomatic channels. In urgent cases and subject to reciprocity, the Ministry of Justice may transmit and receive MLA requests through the Interpol. Domestic judicial authorities transmit MLA requests for mutual assistance and supporting information to foreign competent authorities through the Ministry of Justice. Exceptionally, domestic judicial authorities may directly address the MLA request to a foreign judicial authority, when the domestic legislation permits so and subject to condition of reciprocity, or when such direct communication is envisaged by an international treaty.

The reviewing experts were of the view that the Croatian legislation and practice adequately reflect the requirements of the provision under review and considered that the cited provision is adequate for the effective implementation of the provision.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 8 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provisions under review.

*Article 8, Act on MLA  
Form and mandatory contents of the request*

*(1) Domestic judicial authority shall act upon the request for mutual legal assistance of a foreign judicial authority if the request was transmitted in writing. The request, as well as attached documents, have to be accompanied by the translation into Croatian, and if this is not possible, into English. The translations have to be officially certified.*

*(2) A domestic judicial authority shall act upon a request for mutual legal assistance of a foreign judicial authority even if the request was transmitted via electronic or some other telecommunications means which provide written record, if it may establish its authenticity and if the foreign competent authority is willing, upon request, to deliver a written evidence on the manner of transmission and the original request.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 15**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities referred generally to domestic legislation and practice followed in MLA proceedings to demonstrate compliance with this provision of the UNCAC.

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied with the general explanations provided. No issues of non-compliance were highlighted.

**Article 46 Mutual legal assistance**

**Paragraph 16**

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 6 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provisions under review.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 10 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provisions under review.

*Article 10, Act on MLA  
Particularities in the manner of executing the request*

*(1) When affording mutual legal assistance, domestic judicial authority shall comply with the formalities and procedures expressly indicated in the request as necessary pursuant to the law of the requesting state, unless provided otherwise by an international treaty and provided that such formalities and procedures are not contrary to the principles of the domestic legal order.*

*(...)*

It was further specified that the rule is execution of the MLA request in accordance with the domestic law of the **requested State** ( in accordance with the principle locus regit actum). But, if in concrete case the requesting state **insists** on the execution of the MLA request in accordance with the formalities proscribed by its own law, RoC will execute the request accordingly to the procedures of the **requesting State** if it is not contrary to domestic law.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision.

## Article 46 Mutual legal assistance

### Paragraph 18

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Croatian authorities made reference to article 194, paragraph 2 of the Criminal Procedure Act in relation to the provision under review.

*Article 194, Criminal Procedure Act*

*(...)*

*(2) The authority conducting the proceedings may also comply with a special request of an international body regarding the form and the contents of the audio-video conference or with another special request of an international body according to the regulations of a special law or an international contract.*

#### (b) Observations on the implementation of the article

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review.

## Article 46 Mutual legal assistance

### Paragraph 19

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Croatian authorities made reference to article 26 of the Act on the Confidentiality of Data in general in relation to the provision under review and further clarified that Croatia would give a guarantee to the requested State regarding the non-disclosure of information received from the requested State, if the requested State so requests.

#### (b) Observations on the implementation of the article

The reviewing experts noted that the Croatian legislation and practice adequately reflect the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 21 (cited above, reproduced below for ease of reference) and 22 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provisions under review.

##### *Article 21, Act on MLA Confidentiality*

*(1) Upon a request of a foreign judicial authority, the Ministry of Justice and the domestic judicial authority shall keep confidential the request for mutual assistance and its substance, except to the extent necessary to execute the request.*

*(2) If the confidentiality condition referred to in paragraph 1 may not be upheld, the Ministry of Justice, i.e. domestic judicial authority shall notify the foreign judicial authority on this fact, without delay.*

##### *Article 22, Act on MLA*

*Third persons who prove having legal interest may be present in the proceedings of mutual legal assistance and they are entitled to inspect the file, except:*

- 1. if this is in the interest of criminal proceedings pending abroad,*
- 2. for protection of essential interests of a foreign state, upon its request,*
- 3. due to the nature or urgency of the measure undertaken,*
- 4. due to the protection of justified interests of the parties to the proceedings,*
- 5. if in the interest of criminal proceedings pending in the Republic of Croatia.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 21**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 12 (cited above, reproduced below for ease of reference) and 13 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provisions under review.

*Article 12, Act on MLA  
Refusal of the request*

*(1) Domestic competent authority may refuse the request for mutual legal assistance:*

- 1. if the request concerns an offence which is considered to be a political offence, an offence connected with a political offence,*
- 2. if the request concerns a fiscal offence,*
- 3. if the execution of the request would prejudice the sovereignty, security, legal order or other essential interests of the Republic of Croatia,*
- 4. if it may reasonably be assumed that a person whose extradition is claimed would be in case of extradition criminally prosecuted or punished on account of his race, religious beliefs, nationality, affiliation with a particular social group or on account of his political beliefs, i.e. that that person's position may be prejudiced for any of these reasons,*
- 5. if it concerns an insignificant criminal offence.*

*(2) Criminal offences or attempts to commit criminal offences against the values protected by international law, and participation in execution of such criminal offences, may not serve as basis for refusal of the request for mutual legal assistance in the context of paragraph 1 point 1 of this Article*

*Article 13, Act on MLA*

*(1) A domestic judicial authority shall refuse the request for mutual legal assistance:*

- 1. if the prosecuted person has been acquitted in the Republic of Croatia for the same criminal offence based on the substantive-legal grounds or if a procedure against him has been discontinued, or if he was acquitted of the punishment, or if a sanction was executed or may not be executed pursuant to the law of the country in which the verdict has been passed,*
- 2. if criminal proceedings are pending against the prosecuted person in the Republic of Croatia for the same criminal offence, unless the execution of the request might lead to a decision releasing the prosecuted person from custody,*
- 3. if the criminal prosecution, execution of a sanction or of a security measure or protective measure pursuant to the domestic law would be barred due to the absolute statute of limitation.*

It is important to stress that the provision of Article 12 of the Act on Mutual Legal Assistance in Criminal Matters regulates facultative grounds for the refusal of the execution of MLA requests (the nature of the offences for which assistance is sought as political ones; the violation of sovereignty, security, legal order or other essential interests of Croatia through the execution of the request; discrimination clause; *de minimis* nature of the offence) while the provision of the Article 13 regulates obligatory grounds for the refusal of the execution of MLA requests (*ne bis in idem*; pending criminal proceedings in Croatia unless the execution of the request may lead to a decision releasing the prosecuted person from custody; and lapse of time).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provisions under review.

**Article 46 Mutual legal assistance**

**Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 12, paragraph 1, point 2 and paragraph 3 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

*Article 12, Act on MLA  
Refusal of the request*

*(.....)*

*(3) Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*



**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 14 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 14, Act on MLA*

*The decision refusing the request to afford mutual legal assistance must give reasons for such a decision, unless provided otherwise by an international treaty.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 10 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

The Croatian authorities also reported on the national plans to improve the case management system. This upgraded case management system will allow to establish the length of the MLA proceedings only indirectly (establishing the time pass between the date of receiving the request for MLA and the date of receiving the answer of the competent judicial authority, but this date will not always be accurate, because in some cases requests should be sent to different judicial authorities, while in other cases requests are only fulfilled partially). It is very hard to establish the usual length of MLA proceedings due to the different circumstances (complexity of the request, the number of competent authorities involved in the execution of the MLA request).

**(b) Observations on the implementation of the article**

The reviewing experts took into account the national plans to upgrade and improve the case management system to ensure, the monitoring and tracking of cases and the record-keeping with regard to, among others, the duration of MLA proceedings. They also took note of the argument of the Croatian authorities that it was very difficult to estimate the usual length of

MLA proceedings due to the different factors (complexity of the request, number of competent authorities involved in the execution of the MLA request).

The reviewing experts invited the national authorities to continue and streamline efforts to improve the national case management system for tracking MLA requests.

## **Article 46 Mutual legal assistance**

### **Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 15 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 15, Act on MLA  
Postponed execution of the request*

*Domestic judicial authority may postpone execution of the request for mutual legal assistance if such action would prejudice the course of the investigation, prosecution or proceedings pending before a domestic judicial authority, which are connected to the request. The domestic judicial authority shall inform the foreign judicial authority that transmitted the request.*

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 14 of the Act on Mutual Legal Assistance in Criminal Matters (cited above) in relation to the provision under review.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 25 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 25, Act on MLA  
Hearing of a person domiciled abroad*

*(1) A person domiciled abroad, appearing in the Republic of Croatia on a summons by the domestic judicial authority, to testify as a witness or expert witness in the criminal proceedings, shall not be criminally prosecuted, or subject to any other restriction of his personal liberty due to reasons anterior to his arrival.*

*(2) The immunity provided for in paragraph 1 of this Article shall cease when the person upon leaving the state territory of the Republic of Croatia either returns or does not leave the state territory of the Republic of Croatia upon expiry of eight days as of the testimony.*

The Croatian authorities further clarified that, in accordance with the principle of superiority over national law of international agreements concluded in accordance with article 141 of the Croatian Constitution, the longer timeline of 15 days, as foreseen in the Convention, would apply in cases where the requested State party is also a party to the Convention.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 28**

28. *The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to article 19 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 19, Act on MLA*

*Costs*

*(1) Remuneration of costs incurred in respect of afforded mutual legal assistance shall not be claimed, except:*

- 1. costs incurred by the expert testimony,*
- 2. costs incurred by a temporary transfer of persons deprived of liberty,*
- 3. costs of substantial or extraordinary nature.*

*(2) Costs referred to in paragraph 1 point 3 of this Article shall be remunerated according to an arrangement between the Ministry of Justice and the competent authority of the foreign state in each individual case separately.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (a)**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 3, paragraph 1, subparagraph 1 of the Act on Mutual Legal Assistance in Criminal Matters (cited above, reproduced below for ease of reference) in relation to the provision under review.

*Article 3*

*(1) In particular, this Act shall regulate the following:*

- 1. mutual legal assistance in criminal proceedings pending in the Republic of Croatia or a foreign country (procuring and transmitting articles to be produced in evidence,*

*service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other acts necessary to carry out the court proceedings);*  
(...)

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (b)**

*29. The requested State Party:*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 261 and 262 of the Criminal Procedure Act in relation to the provision under review and explained that in a concrete case, the judicial authorities competent for execution of the request for mutual legal assistance by provision of documents which are not available to the general public, will apply these provisions in the absence of an explicit regulation in the Act on MLA.

They further clarified that data and information from the criminal register, the register maintained by the Ministry of Interior, the register of residence or other data are provided for the purposes of the criminal proceedings only.

*Article 261, Criminal Procedure Act*

*(1) Objects which have to be seized pursuant to the Penal Code or which may be used to determine facts in proceedings shall be temporarily seized and deposited for safekeeping.*

*(2) Whoever is in possession of such objects shall be bound to surrender them upon the request of the State Attorney, the investigator or the police authorities. The State Attorney, the investigator or the police authorities shall instruct the holder of the object on consequences arising from denial to comply with the request.*

*(3) A person who fails to comply with the request to surrender the objects, even though there are no justified causes, may be penalized by the investigating judge upon a motion with a statement of reasons of the State Attorney pursuant to Article 259 paragraph 1 of this Act.*

*(4) The measures referred to in paragraph 2 of this Article shall not apply either to the defendant or persons who are exempted from the duty to testify (Article 285).*

*Article 262, Criminal Procedure Act*

(1) *Temporary seizure shall not apply to:*

- 1) *files and other documents of state authorities, the publication of which would violate the confidentiality obligation, until decided otherwise by the competent authority;*
- 2) *written notices of the defendant to the defense counsel, unless the defendant requires otherwise;*
- 3) *tapes and private diaries found with the persons referred to in Article 285 paragraphs 1 to 3 of this Act, which were taken or written by this person and contain recordings or notes on the facts regarding which these persons are exempted from the duty to testify;*
- 4) *records, registry excerpts and similar documents possessed by the persons referred to in Article 285 paragraph 1 item 3 of this Act that have been made by these persons regarding facts disclosed to them by the defendant while performing their respective professions;*
- 5) *written records of facts made by journalists and editors in the media regarding sources of information and data disclosed to them during performance of their profession and which were used in the media editorial process and which are in their possession or in possession of the editorial office they work for;*

(2) *The ban on the temporary seizure of objects, documents and recordings referred to paragraph 1 items 2 to 5 of this Article shall not apply:*

- 1) *with regard to a defense counsel or persons who are exempted from the duty to testify pursuant to Article 285 paragraph 1 of this Act if there is probability that they have helped the defendant in committing the criminal offence, assisted him after committing the criminal offence or acted as accessories;*
- 2) *with regard to journalists and editors in the media if there is probability that they have helped the defendant in committing the criminal offence, assisted him after committing the criminal offence or acted as accessories of the criminal offence, and criminal offences referred to in Article 305 and 305(a) of the Penal Code;*
- 3) *in case these are objects that may be seized pursuant to law;*

(3) *Until preferring the indictment, at the request of the State Attorney, the investigating judge shall decide by a ruling on the probability of providing help in the criminal offence referred to in paragraph 2 of this Article. The investigating judge shall bring a ruling within 24 hours from the submission of the request by the State Attorney. The panel shall decide on the appeal against the ruling of the investigating judge. After preferring the indictment, the court before which the proceeding is conducted shall bring a decision. The appeal against the decision of the indictment panel and the trial court shall not be allowed.*

(4) *The ban on temporary seizure of objects, documents and recordings pursuant to paragraphs 1, items 2 and 3 of this Article shall not apply in relation to investigations of criminal offence committed against children and minors referred to in Article 117 of the Juvenile Court Act.*

(5) *The State Attorney, the investigator or the police authorities may seize objects pursuant to paragraphs 1, 2 and 3 of this Article even when they are carrying out inquiries into criminal offences or when the investigator or the police authorities are executing a court's warrant.*

*(6) When seizing an object it shall be noted in the record where it has been found and it shall be described, and if necessary its identity shall be stipulated in another way. A receipt shall be issued for temporarily seized objects.*

*(7) An object seized contrary to the provisions of paragraph 1 of this Article cannot be used as evidence in criminal proceedings.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Croatian legislation adequately reflects the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian experts made reference to relevant agreements concluded with Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro and Slovenia in relation to the provision under review.

On 9 November 2007, Croatia signed an Agreement on Cooperation with Eurojust. In addition, Croatia takes an active part in the meetings of the European Judicial Network in criminal matters.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatia makes efforts in concluding agreements, and engaging in arrangements, that would enhance cooperation in mutual legal assistance as per the Convention.

They further recommended that the national authorities continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of MLA proceedings.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to article 65 of the Act on Mutual Legal Assistance in Criminal Matters in relation to the provision under review.

*Article 65, Act on MLA  
Surrender of the criminal proceedings*

*(1) If a foreigner domiciled in a foreign county committed an offence in the territory of the Republic of Croatia, criminal prosecution may be surrendered to that country, provided it does not object thereto.*

*(2) Criminal prosecution may be surrendered for offences with prescribed punishment up to ten years of imprisonment.*

Moreover, the taking over the criminal proceedings by the Republic of Croatia is regulated by the Article 62 of the Act on mutual legal assistance in criminal matter. The State Attorney's Office of the Republic of Croatia per year takes over significant amount of criminal proceedings from foreign judicial authorities.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review, with the exception of one potential obstacle to the full implementation of the article, namely the requirement that the offence in question be sanctioned with up to ten years imprisonment. Accordingly, there is a limitation on the transfer of proceedings to less serious offences.

**Article 48 Law enforcement cooperation**

**Subparagraph 1**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*



*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 8 and 10 of the Law on the Police and to a variety of bilateral and multilateral agreements concluded in relation to the provisions under review.

*Article 8, Law on the Police*

*In undertaking measures aimed at the realization of the safety of citizens and property, the police shall co-operate with the bodies of local and regional self-government units as well as with self-government units.*

*The police shall co-operate with other authorities, organizations, communities, non-governmental organisations, associations of citizens and self-organized citizens, with the aim of developing partnership in preventing or revealing unlawful behaviour and the perpetrators.*

*Article 10, Law on the Police*

*In undertaking its work, the police co-operates with the police and other bodies from other states in the way prescribed by an international treaty or special act.*

Croatia has concluded an Agreement on Strategic and Operative Cooperation with EUROPOL, as well as an agreement regulating the deployment of police officers as “liaison officers” with Croatian Embassies and Consulates abroad, concluded between the Ministry of Interior and the Ministry of Foreign Affairs and European Integration.

The following bilateral Police Cooperation agreements were also referred to in connection with the provisions under review, and Croatian experts affirmed that information is exchanged with other States’ authorities on a daily basis: Austria, Bosnia and Herzegovina, Bulgaria, France, Germany, Hungary, Israel, Malta, Moldova, Montenegro, Serbia, Slovakia, the Russian Federation and the United States of America.

**(b) Observations on the implementation of the article**

The reviewing experts generally noted that the Croatian legislation, including relevant agreements concluded by the national authorities, adequately reflects the requirements of the provision under review.

## **Article 48 Law enforcement cooperation**

### **Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the legislation and agreements referred to in article 48, paragraph 1 above. No information was provided on the issue whether the UNCAC can be used as a legal basis for purposes of law enforcement cooperation in the absence of other agreements or arrangements.

#### **(b) Observations on the implementation of the article**

They further recommended that the national authorities continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of law enforcement cooperation.

## **Article 48 Law enforcement cooperation**

### **Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the Agreement on Strategic and Operative Cooperation with EUROPOL and the bilateral Police Cooperation agreement with Hungary in relation to the provision under review.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the agreements referred to adequately fulfil the requirements of the provision under review and indicate a solid implementation of the provision.

## **Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities indicated that agreements on joint investigations are concluded on a case-by-case basis.

**(b) Observations on the implementation of the article**

The reviewing experts noted that no specific examples from already formed joint investigation teams were provided in order to assess the implementation and effectiveness of this measure. Therefore they recommended that the national authorities systematize and make best use of information on joint investigations, including information on the means employed, and the criteria used, for the formulation of joint investigation teams.

**Article 50 Special investigative techniques**

**Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to articles 332-333 of the Criminal Procedure Act in relation to the provision under review.

*Chapter XII, Special Collection of Evidence*

*Article 332, Criminal Procedure Act*

*(1) If the investigation cannot be carried out in any other way or would be accompanied by great difficulties, the investigating judge may, upon the written request with a statement of reasons of the State attorney, order against the person against whom there are grounds for suspicion that he committed or has taken part in committing an offence referred to in Article 334 of this Act, measures which temporarily restrict certain constitutional rights of citizens as follows:*

- 1) surveillance and interception of telephone conversations and other means of remote technical communication;*
- 2) interception, gathering and recording of electronic data;*
- 3) entry on the premises for the purpose of conducting surveillance and technical recording at the premises;*
- 4) covert following and technical recording of individuals and objects;*
- 5) use of undercover investigators and informants;*
- 6) simulated sales and purchase of certain objects, simulated bribe-giving and simulated bribe-taking;*
- 7) offering simulated business services or closing simulated legal business;*
- 8) controlled transport and delivery of objects from criminal offences.*

(2) *By way of exception, when circumstances require that the actions are to commenced immediately, the order from paragraph 1 of this Article may be issued by the State Attorney prior to commencement of the investigation for the term of twenty-four hours.*

*The State Attorney must deliver the order with a note on the time of issue and a statement of reasons to the investigating judge within eight hours from the issue. The investigating judge shall decide immediately on the legality of the order. If the investigating judge accepts the order of the State attorney, he shall proceed pursuant to paragraph 1 of this Article. If the investigating judge denies the order, the State Attorney may file an appeal within eight hours. The panel shall decide on the appeal within twelve hours.*

(3) *If the panel does not approve the order, it shall be ordered by a ruling that the actions shall be immediately ceased and the data collected pursuant to the order of the State Attorney shall be handed over to the investigating judge who will destroy them. The investigating judge shall make a record on the destruction of the data.*

(4) *Actions referred to in paragraph 1 item 1 of this Article may be ordered against persons against whom there are grounds for suspicion that that he delivers to the perpetrator or receives from the perpetrator of the offences referred to in Article 334 of this Act information and messages in relation to offences or that the perpetrator uses their telephone or other telecommunications devices, who hide the perpetrator of the criminal offence or help him from being discovered by hiding the means by which the criminal offence was committed, traces of the criminal offences or objects resulting or acquired through the criminal offence or in any other way.*

(5) *Under the conditions referred to in paragraph 1 of this Article, the measures referred to in paragraph 1 items 1, 2, 3, 4, 6, 7 and 8 of this Article may with his written consent be applied to means, premises and objects of that person.*

(6) *In case there is no knowledge about the identity of the accomplices in the criminal offence, the measure referred to in paragraph 1 item 8 of this Article may be determined in accordance with the object of the criminal offence.*

(7) *The application of measures referred to in paragraph 1 items 5 and 6 of this article should not constitute an instigation to commit a criminal offence.*

#### *Article 333, Criminal Procedure Act*

(1) *Recordings, documents and objects obtained by the application of the measures referred to in Article 332 paragraph 1 item 1 to 8 of this Act may be used as evidence in criminal proceedings.*

(2) *An undercover agent and an informant may be interrogated as witnesses on the content of discussions held with the persons against whom the measures referred to in Article 332 paragraph 1 items 5 to 8 of this Act are imposed, as well as all accomplices in the criminal offence for whose disclosure and evidence collecting the measure was imposed and their statements may be used as evidence in the proceedings.*

(3) *A ruling and evaluation on inadmissibility of evidence may not be based exclusively on the witness testimony referred to in paragraph 2 of this Article.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation adequately reflects the requirements of the provision under review.

**Article 50 Special investigative techniques**

**Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities made reference to the Police Cooperation Agreement concluded with Hungary in relation to the provision under review.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the objectives of the provision under review were achieved and that the conclusion by Croatia of an agreement with Hungary to this effect was evidence of the fact that Croatia made use of the possibility prescribed under the said provision.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The Croatian authorities indicated that agreements on special investigative techniques employed at the international level are concluded on a case-by-case basis.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatia made use of the possibility prescribed in the provision under review by concluding agreements on a case-by-case basis.

## Article 50 Special investigative techniques

### Paragraph 4

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Croatian authorities made reference to article 14 of the Police Cooperation Agreement concluded with Hungary in relation to the provision under review.

*Article 14, Agreement between Croatia and Hungary on Cooperation in the Fight Against Cross-Border  
Controlled delivery*

*(1) Upon request the law enforcement authorities of the Contracting Parties shall enable controlled delivery within the territory of their own states in accordance with the conditions set forth in this Article.*

*(2) In addition to the data set forth in Article 4 (1) of this Agreement, the request referred to under paragraph (1) of this Article shall include data on:*

- (a) the content of the consignment, the expected route of travel, the time frame and means of transportation, information enabling the identification of the vehicle;*
- (b) the mode of escort;*
- (c) the technical instruments to be used;*
- (d) the number of participants in the escort on the part of the requesting law enforcement authority and information about the participation of an undercover agent;*
- (e) the mode of maintaining contact with the participants of the controlled delivery;*
- (f) the circumstances of handing over and taking over the consignment;*
- (g) the measures to be carried out upon arrest;*
- (h) the measures to be carried out in unexpected circumstances.*

*(3) If the delay could pose a risk or threaten the interests of crime suppression the request for controlled delivery may be directly sent or received by the law enforcement authorities. Such a request shall be sent subsequently as soon as possible to the central contact points of the Contracting Parties. The request shall contain documents substantiating controlled delivery.*

*(4) The law enforcement authorities shall agree on the date and modus operandi of the controlled delivery and the extent of their involvement on each occasion. The requested law enforcement authority may restrict or refuse controlled delivery if it could endanger the persons participating in it or public security to an unacceptable extent.*

*(5) The requested law enforcement authorities shall be in command of the controlled delivery; the requesting law enforcement authority shall be informed of the person in charge. The controlled delivery shall be carried out in a manner that will allow easy interception at any time. Following takeover, the requesting law enforcement authority may escort the consignment but may not exercise official powers. In the course of this, the requesting law enforcement authorities shall act in accordance with the provisions of this*

*Article, the laws and regulations of the state of the requested law enforcement authority and the instructions of the person in charge of the requested law enforcement authority.*

*(6) Upon existence of the conditions laid down in this Agreement the law enforcement authorities shall also enable the execution of controlled deliveries starting out from a third country to a further country. In this case, the requesting law enforcement authority shall obtain the prior authorisation of the competent law enforcement authorities of the states concerned, of which the requested law enforcement authority shall be notified.*

**(b) Observations on the implementation of the article**

The reviewing experts noted that Croatian legislation, including the cited agreement, adequately reflects the requirements of the provision under review.