

7

Enforcement capacity

This chapter analyses Croatia's track record of investigating and prosecuting domestic and foreign corruption cases, including cases against legal persons. It also addresses other matters that may be relevant to Croatia's capacity to enforce its foreign bribery laws.

The fourth accession criterion related to the legal and enforcement framework to fight foreign bribery concerns the capacity to enforce foreign bribery laws. Under this criterion, the OECD Working Group on Bribery assesses: (i) whether a country has a track record of investigating and prosecuting domestic and foreign corruption cases; and (ii) any other matter relevant to a country's capacity to enforce its foreign bribery laws which raises significant concerns.

7.1. OECD standards on foreign bribery enforcement

Art. 5 of the Convention sets the standard on foreign bribery enforcement:

Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Additional guidance is found in Commentary 27 and the 2009 Anti-Bribery Recommendation Annex I.D. These documents require competent authorities to seriously investigate complaints of foreign bribery, and that adequate resources are provided to permit effective prosecution of such crimes.

7.2. Rules and principles on investigations and prosecutions

In Croatia, the investigation and prosecution of corruption offences, including domestic and foreign bribery, fall under the exclusive jurisdiction of the Office for the Suppression of Corruption and Organised Crime (USKOK). The State Attorney is the public prosecutor of criminal offences in Croatia. USKOK is a specialised State Attorney's office that was established in 2001. Its jurisdiction is set out in Art. 21 of the Act on the Office for the Suppression of Corruption and Organised Crime (USKOK Act).¹ This includes active and passive foreign and domestic bribery, as well as other corruption offences.² The National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK) supports USKOK's investigations. USKOK cases are heard in four County Courts.³

The Criminal Procedure Act (CPA) and the Corporate Liability Law (CLL) set out the rules for investigating and prosecuting foreign bribery against natural and legal persons. The USKOK Act provides additional rules for USKOK's cases. The main stages of a corruption case are generally: preliminary proceedings, formal investigation, trial before the County Court, and appeals to the High Criminal Court and Supreme Court.⁴

The principle of "mandatory prosecution" applies with some qualifications. Unless otherwise prescribed by law, the State Attorney must initiate criminal proceedings if there is a reasonable suspicion that a criminal offence prosecutable *ex officio* has been committed (CPA Art. 2(3)). However, prosecutors can dismiss a report of a crime with a reasoned decision if there are insufficient grounds to conduct an investigation (CPA Art. 206). In subsequent stages, they may also file the investigation or drop the charges for lack of grounds (CPA Arts. 224, 380, 452). Prosecutors can reject a criminal report or drop charges against a legal person that has no or insignificant assets, or is subject to bankruptcy proceedings (CLL Art. 24).

7.3. Track record of investigating and prosecuting domestic and foreign corruption cases

Under the criteria for acceding to the Convention, the OECD Working Group on Bribery assesses a country's enforcement track record over a previous five-year period. Particular emphasis is given to foreign

bribery cases, politically sensitive cases, cases impacting national economic interests, enforcement actions for active (as opposed to passive) corruption, and enforcement actions against legal persons.

7.3.1. Record of foreign bribery enforcement

As mentioned in Chapter 3, Croatian companies are active in countries with substantial levels of corruption, and are thus at risk of committing foreign bribery. Nevertheless, USKOK has never had a foreign bribery investigation or prosecution.

There has been at least one foreign bribery allegation implicating the representative of a Croatian company since 2015. According to media reports, a Monaco-based energy consulting firm allegedly paid EUR 2.5 million to the general manager of a Croatian state-owned oil company in Syria. The funds would then be used to bribe high-officials in Syria to win two gas plant contracts in the country for a client of the consulting firm. The general manager of the Croatian company has Syrian nationality and was also Croatia's honorary consul in Damascus.⁵

Croatian authorities became aware of these allegations in 2017 but did not conduct any investigations. The prosecutors at the fact-finding mission explain that the allegation did not relate to the activities of the Croatian state-owned company. Croatian authorities did not inquire whether the company benefited from the transaction. Nor did they consider whether they had jurisdiction over the company general manager's alleged acts. For example, Croatian authorities did not inquire whether the manager also had Croatian nationality that would subject him to extraterritorial jurisdiction under Croatian law. After reviewing a draft of this report, the Croatian Ministry of Justice and Public Administration states that, according to the information available on the case, there was no legal basis for further action by the Croatian authorities.

A second foreign bribery allegation surfaced in November 2021. According to media reports,⁶ a Croatian company agreed in 2004 to purchase used weapons from the Bosnian government. Sometime in 2009-2011, Bosnia and Herzegovina's then-defence minister allegedly altered the terms of the contract in favour of the Croatian company without authorisation. In November 2021, Bosnian authorities charged the minister with corruption and abuse of office over the transaction. USKOK states that its only information on the case is from media reports, which do not refer to "bribery". Based on this information, USKOK believes that "the matter falls within the jurisdiction of the judicial authorities of Bosnia and Herzegovina, and that the judicial authorities of the Republic of Croatia have no jurisdiction in this matter". USKOK further states that it "has received no request issued by any foreign judicial authority to provide assistance or information regarding" this case. It is unclear why USKOK has not considered exercising Croatia's jurisdiction over the foreign bribery offence in CA Art. 294 committed by Croatian nationals and companies. No efforts have been made, for example, to determine whether part of the alleged foreign bribery took place in Croatia.

7.3.2. Record of enforcement of domestic bribery and other cases

USKOK has a stronger track record in domestic corruption enforcement. Croatian authorities provided data on USKOK cases in 2015-2019 against natural persons for three categories of offences: active and passive bribery in business dealings (CA Arts. 252 and 253), active and passive bribery (CA Arts. 293 and 294), and trading in influence (CA Arts. 295 and 296). For these three categories of corruption offences:

- USKOK investigated 285 individuals (193 for active and 92 for passive corruption) and indicted 306 individuals (202 for active and 104 for passive corruption).
- The courts decided 323 cases: 304 convictions (168 for active and 136 for passive corruption) and 19 acquittals (10 for active and 9 for passive corruption).
- 219 of the convictions (72%) resulted from a non-trial resolution (138 for active and 81 for passive corruption).

In recent years, USKOK has also had several high-level corruption cases, including five against a former Prime Minister. An evaluation by another international organisation found that USKOK has a solid track record of investigating and prosecuting high-level corruption, “with several indictments filed against persons who formerly held top executive functions”.⁷

7.3.3. Record of corporate enforcement

In 2015-2019, USKOK did not initiate or conclude any cases against legal persons for any bribery or trading in influence offences (CA Arts. 253, 294 and 296). However, it took enforcement action for other offences including fraud (CA Art. 236), breach of trust in economic business (CA Art. 246), tax or customs duties evasion (CA Art. 256), and abuse of office and authority (CA Art. 291):

- USKOK investigated 106 legal persons and indicted 72 legal persons.
- The courts decided 19 cases and entered 15 convictions.
- of the convictions (or 60%) resulted from non-trial resolutions.

Information on additional high-level corruption cases paints a similar picture. In the *Planinska* case, a former parliamentarian and his two companies paid the then-Prime Minister to secure a property sale. The companies were convicted of incitement to commit abuse of office and authority (CA Arts. 37 and 291(2)).⁸ In the *HEP/Dioki* and *INA/MOL* cases, legal persons were involved but not indicted.

The complete absence of corporate enforcement of bribery offences is striking for two reasons. First, over the same period, USKOK investigated and indicted hundreds of natural persons for these crimes. It is surprising that none of these cases resulted in investigations or prosecutions of legal persons. Second, USKOK investigated and indicted many legal persons for non-bribery offences during this time, which demonstrates a willingness and ability for corporate enforcement. Why this does not extend to bribery offences is unclear.

Participants at the fact-finding mission offered a range of explanations for the lack of corporate enforcement of bribery offences. Prosecutors cite the difficulty of proving an “illegal property gain” under the CLL (see Section 5.5). This was the reason why legal persons were not prosecuted in the *INA/MOL* case. Parliamentarians and a private sector representative note that it seems easier for prosecutors to charge individuals than companies. Parliamentarians add that corporate enforcement is pointless because companies usually have insufficient assets or are bankrupt. However, that USKOK has actively enforced non-bribery offences against companies would seem to refute all of these explanations.

The OECD Working Group on Bribery has observed that the prosecution of legal persons is a horizontal issue that affects several Parties to the Convention. It has recommended that Parties draw the attention of prosecutors to the importance of applying effectively the liability of legal persons in foreign bribery cases.⁹

7.4. Other matters relating to enforcement capacity

Under the fourth accession criterion, the OECD Working Group on Bribery also considers any other matter relevant to a country’s capacity to enforce its foreign bribery laws that raises significant concerns. This report considers two issues: executive interference in investigations and prosecutions, and delay in proceedings.

7.4.1. Executive interference in investigations and prosecutions

Croatia’s legal system has several formal guarantees of judicial and prosecutorial independence. The Constitution and statute provide for autonomy and independence of the Judiciary and State Attorney’s

Council. Deputy State Attorneys are independent in their work. Influence and coercion of State Attorneys and Deputy State Attorneys are prohibited.¹⁰

Despite these provisions, the judiciary is perceived to lack independence. According to a 2020 European Commission report, the level of perceived judicial independence in Croatia among companies is the second lowest in the EU. Among the general public, it is the lowest, with only 24% of respondents perceiving judicial independence to be fairly or very good. This figure dropped to 17% in the following year. The main reason cited by the general public for their opinion is the perception of interference or pressure from the government and politicians.¹¹

Only some of the fact-finding mission participants share these views. Civil society representatives and one parliamentarian question the State Attorney's independence, especially in high-level corruption cases. They also criticise the process for appointing the State Attorney General and President of the Supreme Court. Other participants are critical of a Constitutional Court decision in a corruption case against a former Prime Minister. But none of the participants describes specific instances of political interference or a lack of independence in corruption cases.

Other fact-finding mission participants, particularly those in the judiciary and law enforcement, are more positive about judicial independence. Judges acknowledge the public's perception of their lack of independence. But they insist that they have not personally been subject to political interference or heard of colleagues with such experiences. They also argue that trials and appeals are heard by three-judge panels and thus difficult to influence. Likewise, prosecutors and investigators state that they have not been subject to undue interference, even in complex corruption investigations. They believe that a vertical hierarchy in their institutions enhances independence. Prosecutors also refer to USKOK's track record of corruption cases, including convictions of high-level officials such as a former Prime Minister. Representatives of academia, the legal profession, and the private sector also think that these cases attest to USKOK's independence.

7.4.2. Delay in criminal proceedings

The 2020 and 2021 European Commission reports mentioned above also criticise Croatia for protracted criminal proceedings. Although investigations in 2020 took longer owing to case complexity and the COVID-19 pandemic, overall investigations appear relatively speedy. In 2019, "USKOK received and resolved a larger number of cases, and registered a declining number of unresolved cases". About 90% of its investigations took up to 6 months to complete, down from 12 months in 2016. However, "considerable backlogs and lengthy proceedings" in the criminal justice system are a challenge. USKOK has encountered "issues with the inefficiency of the justice system, where lengthy court proceedings and appeals often impede closure of cases." From 2019 to 2020, backlogs and average length of proceedings increased in first instance cases at Municipal courts from 691 to 705 days. The figure for County courts is even higher (804 in 2020).¹²

Participants at the fact-finding mission agree with these findings, especially in high-level corruption cases. Journalists, representatives of civil society, and a parliamentarian state that final sentences in high-level corruption cases take a long time. This fuels a public perception that enforcement is selective and favours low-level corruption. Information provided by Croatian authorities points to the same conclusion. Of the five corruption cases brought against a former Prime Minister, one was concluded after seven years. The others were opened in 2010-2011. Of these, three were concluded with Supreme Court decisions in October-November 2021 (two convictions and one acquittal). The defendants may still challenge the decisions before the Constitutional Court, however. One other case is still ongoing at the time of this report.

Fact-finding mission participants proffer two explanations for the delay. First, prosecutors, judges, academics and lawyers blame the complexity of these corruption cases, which usually have multiple defendants and frequent amendments to the indictments. Additional complication results from complex

facts, the amount of evidence including documentation, numerous witnesses and expert opinions, according to the Ministry of Justice and Public Administration. Recent amendments to criminal procedure have helped but certain issues remain. One law professor cited as an example certain rules on appeal that often lead to retrials. Second, judges state they have very limited resources and significant caseloads. One judge believes creating a court specialising in USKOK cases would improve efficiency. But such a measure would increase susceptibility to political interference, according to a parliamentarian.

Protracted corruption cases are an issue faced by Parties to the Convention. The OECD Working Group on Bribery has therefore recommended that these countries take steps to effectively reduce delay in these cases.¹³

7.5. Conclusion on enforcement in Croatia

Croatia has a track record of enforcing domestic bribery offences against natural persons. Available data indicate hundreds of investigations, indictments and convictions for these crimes in 2015-2019. However, there was no such similar enforcement against natural persons for foreign bribery over the same period. Also absent was enforcement against legal persons for foreign and domestic bribery. To strengthen its enforcement record, Croatia could consider the following:

- a Enhance enforcement of the domestic and foreign bribery offences against natural and legal persons whenever appropriate; and
- b Take steps to reduce delay in criminal proceedings in corruption cases.

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[1]

Notes

¹ Act on the Office for the Suppression of Corruption and Organised Crime (*Zakon o Uredu za suzbijanje korupcije i organiziranog kriminaliteta*), (USKOK Act), Official Gazette no. 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17.

² These include taking and giving bribes in bankruptcy proceedings (CA Art. 251), taking bribes in business dealings (CA Art. 252), giving bribes in business dealings (CA Art. 253), abuse of office and official authority (CA Art. 291) if committed by an official person under CA Art. 87(3), illegal intercession (CA Art. 292), taking bribes (CA Art. 293), giving bribes (Art. 294), trading in influence (CA Art. 295), giving bribes for trading in influence (CA Art. 296), and bribing elected representatives (CA Art. 339) (USKOK Act Art. 21(2)(1)).

³ USKOK Act, Art. 31.

⁴ Criminal Procedure Act, Articles 19.c(1)(b), 19.e(1)(1), and 19.f(1), 205, 216-217, 341-343, 367; USKOK Act Arts. 24 and 29(2). The “High Criminal Court” was instituted with an amendment to the CPA in 2008, and should hear appeals against first-instance County Court rulings. Its establishment was suspended pending a constitutional challenge, but resumed as of 1 January 2021 as decided by the Constitutional Court. See Total Croatia News (3 November 2020), “[Const. Court Decides High Criminal Court to Start Working on 1 Jan 2021](#)”.

⁵ The Age and Huffpost, [The Bribe Factory: World's Biggest Bribe Scandal](#) (last accessed on 26 March 2021).

⁶ Reuters (26 November 2021), “[Bosnian security minister indicted over corruption allegations](#)”; Balkan Insight (29 November 2021), “[Former Bosnian Defence Minister Indicted for Abuse of Office](#)” (both last accessed 14 February 2022).

⁷ GRECO (2019), [Evaluation Report of Croatia, Fifth Round](#), GrecoEval5Rep(2019)1, paras. 13 and 100.

⁸ [Tportal \(5 April 2019\)](#), last accessed on 1 April 2021.

⁹ For example, see (OECD, 2012^[1]), paras. 34-35 and Recommendations 2(b) and 3(b); (OECD, 2013^[2]), paras. 75-76 and Recommendation 2(a); (OECD, 2014^[3]), paras. 49-51 and Recommendation 1(d); (OECD, 2014^[4]), paras. 92-103 and Recommendation 4(c)(i); (OECD, 2015^[9]), Recommendation 3(b)(iii); (OECD, 2013^[5]), paras. 93-95 and Recommendation 5(c)(iv).

¹⁰ Constitution Arts. 115 and 121a; State Attorney's Office Act Arts. 5-6; CA Art. 312.

¹¹ European Commission (30 September 2020), [2020 Rule of Law Report - Country Chapter on the rule of law situation in Croatia](#), SWD(2020) 310 final, pp. 2-3; and European Commission (20 July 2021), [2021 Rule of Law Report - Country Chapter on the rule of law situation in Croatia](#), SWD(2021) 713 final, pp. 2-3.

¹² European Commission (30 September 2020), [2020 Rule of Law Report - Country Chapter on the rule of law situation in Croatia](#), SWD(2020) 310 final, pp. 8 and 13; and European Commission (20 July 2021), [2021 Rule of Law Report - Country Chapter on the rule of law situation in Croatia](#), SWD(2021) 713 final, pp. 8-9 and 11.

¹³ For example, see (OECD, 2014^[6]), paras. 86-99 and Recommendation 5(c); (OECD, 2017^[7]), paras. 81-87 and Recommendation 5(e); (OECD, 2012^[8]), para. 154-156 and 215(c).



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