

6 Sanctions for foreign bribery

This chapter examines whether Croatia is able to impose “effective, proportionate and dissuasive” sanctions against natural and legal persons for foreign bribery, as well as to confiscate the bribe and the proceeds of bribery as required by the OECD Anti-Bribery Convention.

The third Accession Criterion on the framework for fighting foreign bribery concerns the sanctions for this crime. The OECD Working Group on Bribery assesses the sanctions available in an accession candidate against Convention Art. 3. It also considers the sanctions that have been imposed in practice for foreign and domestic bribery.

6.1. OECD standards on sanctions for foreign bribery

Convention Art. 3 deals with sanctions for foreign bribery. In sum, countries must be able to impose “effective, proportionate and dissuasive” sanctions against natural and legal persons for this crime. They must also confiscate the bribe and the proceeds of foreign bribery, and consider additional civil or administrative sanctions:

Article 3

Sanctions

The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.

Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.

Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

6.2. Principal penalties for bribery of a domestic and foreign public official

6.2.1. Sanctions against natural persons for domestic and foreign bribery

Sanctions available against natural persons

Foreign and domestic bribery are punishable under CA Art. 294 by imprisonment of one to eight years for bribery in breach of duty, and six months to five years for bribery to perform one's duty. CA Art. 47 provides for aggravating and mitigating factors for sentencing. The court must consider all relevant circumstances, and especially the degree of endangerment or violation of a legally protected good; motive for committing the crime; degree of violation of the perpetrator's duties; manner of the offence's commission and consequences of the crime; the perpetrator's personal and financial circumstances, and behaviour after the crime; the relationship with the victim and the efforts to compensate the damage.

Fines are also available. Under CA Art. 40(4), a fine can be imposed as a principal penalty for offences that carry a sentence of imprisonment of up to three years. Foreign and domestic bribery do not qualify because their maximum sentences exceed this threshold. However, a fine can be imposed as an ancillary penalty under CA Art. 40(2) and (5) for “offences committed out of greed.” Croatian authorities state that foreign and domestic bribery are always motivated by greed.

The quantum of fines is set out in CA Art. 42. A fine for offences committed out of greed is between 30 and 500 “daily units”. The number of daily units is determined based on the aggravating and mitigating sentencing factors in CA Art. 47. The monetary amount of each “daily unit” is then fixed according to the perpetrator’s income, property, and average expenses necessary for maintaining him/herself and his/her family. The amount of a “daily unit” must be between HRK 20 and HRK 10 000, however. The available fine for foreign and domestic bribery is therefore HRK 600-5 million (EUR 80-660 000).

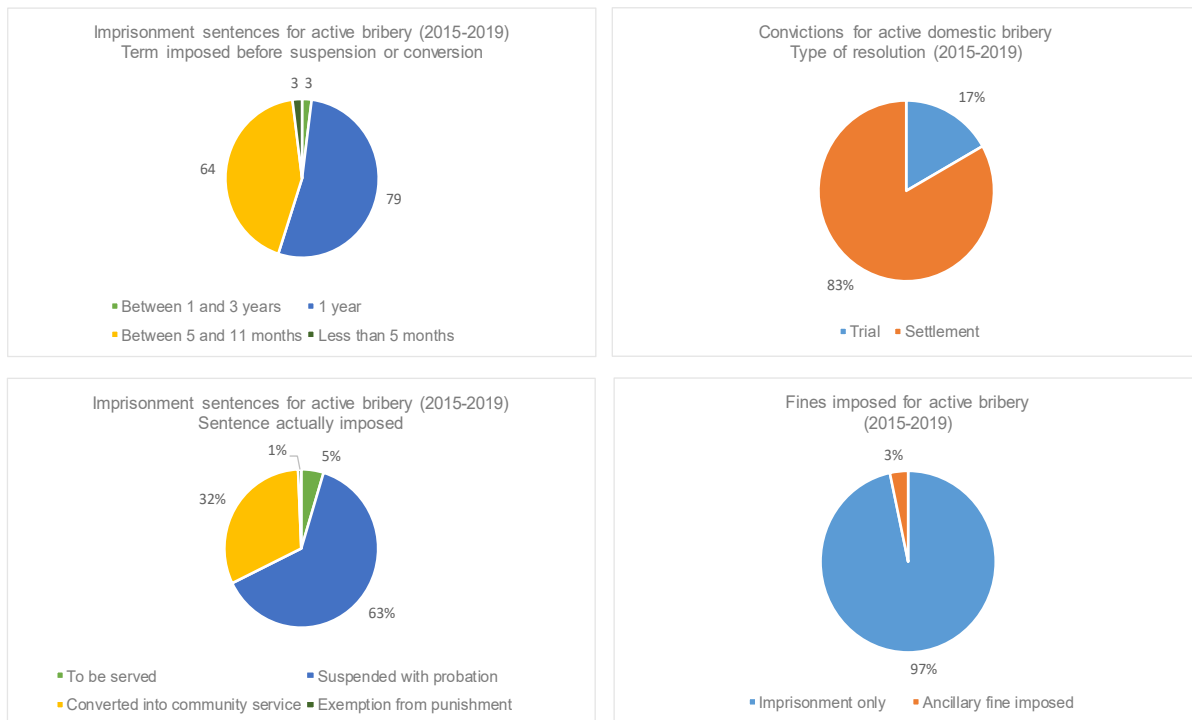
The maximum available fine might be considered insufficient. By definition, the Convention covers foreign bribery committed to obtain or retain international business. Many actual cases under the Convention have involved foreign bribery to win business and secure profits worth millions of euros. Substantial fines at least of the same order of magnitude is necessary as a deterrent. The Croatian Ministry of Justice and Public Administration argues that the amount of the fine must diminish the offender’s standard of life while still allowing him/her (and his/her family) to live. However, dozens of individuals in the Croatian business community reportedly have hundreds of millions of euros in wealth. The maximum must by definition be capable of addressing such extreme cases. The Ministry also argues that confiscation is available (see Section 6.3.2). But the measure only removes ill-gotten gains. It puts the offender in the same position as before the crime, and is therefore not a sufficient deterrent for wrongdoing. The OECD Working Group on Bribery has therefore recommended that countries increase the maximum fines available against natural persons for foreign bribery, notwithstanding the availability of incarceration for the crime.¹

A sentence may also be converted into community service (CA Art. 55) or suspended (CA Arts. 56-58). An imprisonment sentence of less than one year and a fine of less than 360 daily units can be converted into community service. An imprisonment sentence of not more than one year or a fine can be suspended and replaced with probation for one to five years. A fine or imprisonment of more than one and less than three years can also be suspended partially and served through probation. In deciding whether to suspend a sentence, the court considers factors such as the circumstances of the offence, and the offender’s personality, antecedents, family circumstances, criminal history, post-offence behaviour, and likelihood of re-offending.

Sanctions against natural persons in practice

As explained in Section 7.3, there are no convictions in Croatia for foreign bribery. Croatia provided data on sanctions imposed for active domestic bribery under CA Art. 294. The cases initiated under this provision between 2014 and 2019 have yielded 149 convictions, of which 124 (or 83%) resulted from non-trial resolutions.² Three convictions resulted in imprisonment sentences of over a year (one year and three months, two years, and two years and ten months). All but three of the remaining convictions resulted in jail of five months to one year. However, only seven prison sentences (5%) were served in custody. Most were suspended and replaced with probation (63%) or community service (32%). One offender was exempted from punishment due to effective regret (see Section 4.6.2). Fines were imposed against only five individuals (3%). Data on the amount of the fines are not available.

Figure 6.1. Sanctions against natural persons for domestic bribery (2015-19)



Source: USKOK

Croatian authorities provided additional information on the sanctions imposed in two high-level domestic corruption cases.³ The sanctions imposed in these cases for the “active” side of corruption are also relatively low. Ancillary fines were also not imposed:

- In the *Planinska* case, a former parliamentarian and his companies paid the then-Prime Minister HRK 17 million (EUR 2.2 million) to sell a building to the government at a significantly inflated price. The defendants were convicted of abuse of office and authority and complicity in such offence (CA Arts. 291(2), 37 and 38). The former Prime Minister was sentenced to 6 years in prison. However, the former parliamentarian received a 1-year sentence that was replaced by community service.⁴
- In the *INA/MOL* case, a company CEO allegedly promised the then-Prime Minister EUR 10 million to acquire a substantial stake in a Croatian state-owned company and to divest unprofitable business. The CEO and former Prime Minister received 2 and 6 years in prison respectively. The charges were under the former Criminal Act, which only had a maximum sentence of 3 years for active bribery. The Supreme Court upheld the convictions in October 2021, but the defendants could still challenge these before Croatia’s Constitutional Court.⁵

The OECD Working Group on Bribery often recommends that countries ensure that sanctions imposed in practice in foreign bribery cases are effective, proportionate and dissuasive. It has expressed concerns when, for instance, custodial sentences are rare in practice and most convictions result in conditional prison sentences and probation.⁶

6.2.2. Sanctions against legal persons for domestic and foreign bribery

Sanctions available against legal persons

CLL Art. 10 sets out the fines applicable for legal persons. Four ranges of fines are available depending on the punishment applicable to the natural person for the offence. CLL Art. 10(2) applies to offences punishable by imprisonment of five years or more but less than ten years, which is the case for foreign and domestic bribery. Legal persons are thus subject to a fine of HRK 15 000 to 10 million (EUR 2 000-1.3 million). If a legal person is convicted of two or more concurrent offences, the resulting fines cannot exceed the sum of the individual fines or the maximum legal measure of the fine (CLL Art. 11).

The maximum fines available against legal persons for foreign bribery are not effective, proportionate and dissuasive. As explained in the section on Sanctions available against natural persons, many cases under the Convention have involved companies committing foreign bribery to secure profits worth millions of euros. The maximum fine available in Croatia is well below these levels. The Croatian Ministry of Justice and Public Administration argues that confiscation is also available and important. However, confiscation is not a sufficient deterrent for wrongdoing, as pointed out in the section on Sanctions available against natural persons. The OECD Working Group on Bribery has recommended that countries increase the maximum fines available against legal persons for foreign bribery, regardless of the availability of additional administrative sanctions such as debarment and termination.⁷

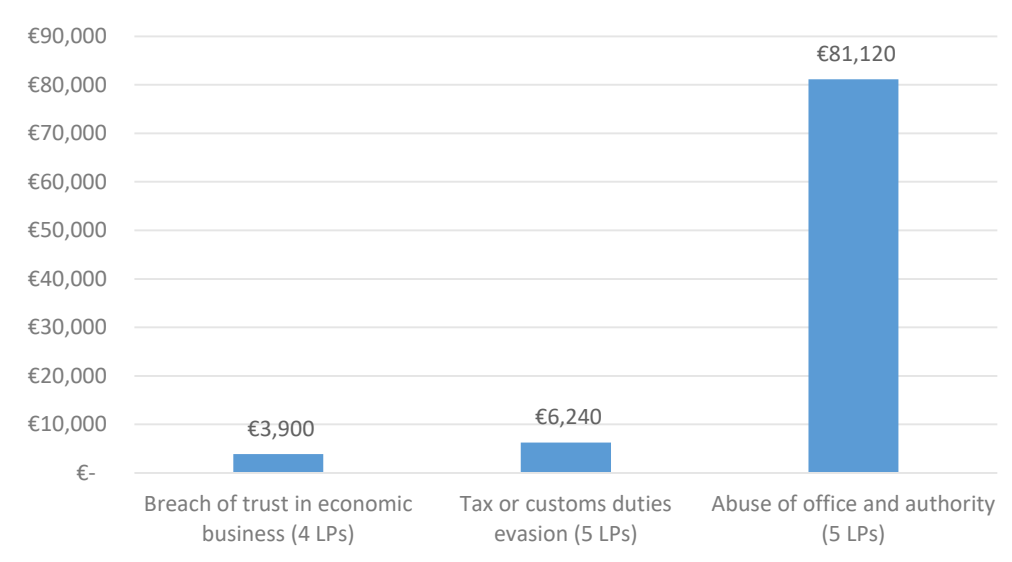
Sentences against legal persons may be suspended (CLL Art. 13). A fine of less than HRK 50 000 (EUR 6 600) may be suspended for one to three years. The fine is cancelled if the legal person does not commit an offence during this period.

Termination of a legal person and additional administrative sanctions are considered in Section 6.5.

Sanctions against legal persons in practice

As explained in Section 7.3.3, in 2015-2019 Croatia has not investigated – and hence not sanctioned – legal persons for active foreign or domestic bribery. However, sanctions were imposed against 15 legal persons for other offences within the competence of the Office for the Suppression of Corruption and Organised Crime (USKOK). Nine of the convictions resulted from non-trial resolutions. Six of the legal persons were convicted of abuse of office and authority (CA Art. 291).⁸ Leaving aside one fine that was exceptionally high (EUR 1.7 million), the average fine imposed for this offence was EUR 81 120. Four entities were convicted of breach of trust in economic business (CA Art. 246) and received an average fine of EUR 3 900. Five other entities were fined an average of EUR 6 240 for tax or customs duties evasion (CA Art. 256).

Figure 6.2. Average fines against legal persons (2015-2019)



Source: USKOK.

6.3. Seizure and confiscation

Convention Art. 3 requires each Party to provide that the bribe and the proceeds of foreign bribery, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable. Commentary 21 elaborates that the “proceeds” of bribery are the profits or other benefits derived by the briber from the transaction or other improper advantage obtained or retained through bribery. Commentary 22 states that “confiscation” includes forfeiture where applicable, and means the permanent deprivation of property by order of a court or other competent authority.

6.3.1. Seizure

The Criminal Procedure Act (CPA) governs the seizure of the bribe and the proceeds of bribery.⁹ Items subject to confiscation must be seized (CPA Art. 556(1)). The prosecutor may seek “insurance by any temporary measure” to preserve such items (CPA Art. 557a). Measures include freezing of bank accounts; seizure of cash and securities; and prohibition of the transfer of real property or real property rights. Measures are judicially reviewed every three months (CPA Art. 557e(3)). With some exceptions, they may last for a maximum of two years, extendable by the State Attorney for 60 days (CPA Art. 557e(2)).

6.3.2. Confiscation

CA Art. 5 states that “no one may retain the proceeds of an illegal act”. CA Art. 77 provides for the confiscation of the proceeds of crime against natural persons in Croatia. A “property gain” must be confiscated upon a court decision that an unlawful act has been committed. Confiscation also applies to persons who do not acquire the property gain in good faith. Where the property gain cannot be confiscated, the court must order the perpetrator to pay an equivalent monetary amount. A court may decide not to order confiscation if the property gain is insignificant.

Confiscation of the bribe against natural persons is covered by CA Art. 79. The court may seize objects and means that are intended or used for the commission of an offence. Confiscation may be imposed even when the perpetrator of the unlawful act is not convicted.

These provisions are also applicable against legal persons. CLL Art. 19 states that the provisions of the Criminal Act and special laws on the confiscation of property gain and of objects apply to legal persons.

Croatia provided statistics on the application of confiscation covering cases of all crimes within USKOK's competence and not only active bribery. In 2015-2019, the Office for the Suppression of Corruption and Organised Crime (USKOK) obtained on average annually HRK 34.4 million (EUR 4.56 million) in confiscation against 112.5 persons. The amount confiscated was unusually high in 2018. If the data from this year is omitted, the average annual amount of confiscation falls to HRK 20.2 million (EUR 2.7 million).

Table 1. Confiscation of proceeds of offences within USKOK's competence (2015-19)

Year	Number of persons from whom proceeds were confiscated	Value (HRK)	Value (EUR)
2015	120	7 903 603.00	1 027 468.39
2016	95	16 876 824.25	2 193 987.15
2017	114	37 315 266.07	4 850 984.59
2018	138	89 422 969.01	11 624 985.97
2019	121	20 663 018.59	2 686 192.42
Total	588	172 181 680.92	22 383 618.52

Source: USKOK.

6.4. Penalties and mutual legal assistance / penalties and extradition

Sanctions for foreign bribery in Croatia are sufficient to enable effective mutual legal assistance (MLA) and extradition. The Mutual Legal Assistance in Criminal Matters Act does not limit the seeking of MLA and extradition to offences with a particular level of penalties. As mentioned at para. 0, foreign bribery to breach official duties is punishable by imprisonment of one to eight years, and by six months to five years for bribery to perform one's duty. This should be sufficient for most if not all bilateral and multilateral extradition and mutual legal assistance treaties, as well as the legislation for non-treaty-based international co-operation in foreign countries.

6.5. Additional civil and administrative sanctions

Convention Art. 3(4) requires countries to consider imposing additional civil or administrative sanctions for foreign bribery. Commentary 24 states that such sanctions may include the exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from participation in public procurement or from the practice of other commercial activities; placing under judicial supervision; and a judicial winding-up order. The 2009 Recommendation XI.i further asks countries to suspend enterprises that have committed foreign bribery from competition for public contracts or other public advantages. If procurement sanctions are applied to enterprises for domestic bribery, then they should be applied equally to cases of foreign bribery.

Croatia provides for mandatory debarment from procurement contracts against individuals and companies convicted of foreign bribery. Under the Public Procurement Act 2016¹⁰ Art. 251(1)(1)(b), an economic entity established in Croatia is excluded from a public procurement procedure if it or its representative has been convicted of bribery under CA Art. 294. Debarment is for five years unless a final judgment specifies otherwise (Art. 255(6)). However, an economic operator convicted of bribery may nevertheless avoid debarment if it proves its “reliability” (Art. 255(1)-(2)). Reliability is assessed in light of the entity’s compensation of damages caused by the criminal offence, active cooperation with the investigators, and adoption of appropriate organisational measures to prevent further offences.

CLL Art. 17 allows for additional administrative sanctions against legal persons. A legal person may be banned from acquiring permits, authorisations, concessions or subsidies issued by state bodies or units of local and regional self-government. A ban is between one to three years. However, a ban may be imposed only if the acquisition of the permit, etc. could be “an incentive to [commit a] criminal offence”. Croatian authorities explain that a ban would therefore only be imposed if there is a danger that the legal person commits further offences.

A legal person may also be judicially wound up as a sanction for foreign bribery. Under CLL Art. 12, a legal person may be terminated if it is established for the purpose of committing offences or its predominant activity is to commit offences. A fine may be imposed in addition to termination.

6.6. Conclusions on the sanctions for foreign bribery in Croatia

Croatia provides a range of sanctions against natural and legal persons for foreign bribery, including imprisonment (for natural persons), fines, confiscation and debarment. To further improve this regime, Croatia could consider the following:

- a Increase the maximum fines available against natural and legal persons for foreign bribery;
- b Take steps to ensure that the sanctions imposed against natural and legal persons in practice are effective, proportionate and dissuasive; and
- c Maintain detailed statistics on the sanctions, including on the amount of fines, as well as on confiscation and debarment that have been imposed in domestic and foreign bribery cases.

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Notes

¹ For example, see (OECD, 2014^[1]), para. 55 and Recommendation 4(a); (OECD, 2013^[2]), paras. 39-40 and Recommendation 3(b); (OECD, 2012^[3]), para. 58 and Recommendation 3(a); (OECD, 2015^[4]), para. 66 and Recommendation 5(a).

² Corruption cases can be resolved without trial. Under the CPA, the defendant and the Prosecutor can conclude an agreement on guilt and punishment, which is then validated by the court (CPA Arts. 360-361).

³ The cases mentioned are not included in the statistics provided by USKOK because the investigations were initiated before 2014.

⁴ See also [Tportal \(5 April 2019\)](#), last accessed on 1 April 2021.

⁵ [Financial Times \(30 December 2019\)](#), last accessed on 1 April 2021; [N1 Info \(25 October 2021\)](#), last accessed on 7 February 2022; [MOL Group, press release \(25 October 2021\)](#), last accessed on 7 February 2022.

⁶ For example, see (OECD, 2011^[5]), paras. 40-41 and Recommendation 3(a); (OECD, 2013^[10]), paras. 61-64 and Recommendation 3(a).

⁷ For example, see (OECD, 2011^[5]), para. 45 and Recommendation 3(c); (OECD, 2014^[6]), para. 72 and Recommendation 3(d); (OECD, 2012^[3]), para. 62 and Recommendation 3(b); (OECD, 2011^[7]), paras. 100-102 and Recommendation 3(d); (OECD, 2015^[4]), paras. 70-72 and Recommendation 5(c); (OECD, 2011^[8]), paras. 61-62 and Recommendation 3(b); (OECD, 2012^[9]), paras. 46-49 and

Recommendation 4(a); (OECD, 2013^[10]), para. 65 and Recommendation 3(c); (OECD, 2012^[11]), para. 56 and Recommendation 2.

⁸ The offence of abuse of office and authority (CA Art. 291), when the offender has obtained substantial property benefit or caused significant damage, carries higher penalties than those available for active bribery.

⁹ Criminal Procedure Act (*Zakon o kaznenom postupku*), Official Gazette No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19.

¹⁰ Public Procurement Act ([*Zakon o javnoj nabavi*](#)), Official Gazette no. 120/2016.



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