

Executive summary

Croatia has expressed an interest in acceding to the OECD Anti-Bribery Convention and joining the international community's efforts to fight transnational bribery. This report, which was prepared at the request of the Croatian authorities, provides an assessment of Croatia's legal and policy framework for fighting transnational bribery in light of OECD standards, and identifies areas for improvement.

Key findings

Croatia's legislative and institutional framework for fighting transnational bribery meets many of the elements required by the OECD anti-bribery instruments. Legislation could be further improved to be fully aligned with these instruments. Croatian authorities also have a track record of domestic bribery enforcement, including in high-level corruption cases. However, enforcement against legal persons for bribery offences is lacking. Croatia has yet to investigate a transnational bribery case.

The review of Croatia's anti-bribery framework resulted in the following main findings:

- Croatian companies are active in countries with substantial levels of corruption, and are thus at risk of committing foreign bribery. However, Croatian stakeholders may not be completely aware of or agree with this foreign bribery risk profile for the country.
- Croatia's criminal legislation, which covers both domestic and foreign bribery, contains many of the essential features required by the OECD Anti-Bribery Convention. However, these provisions do not appear to cover certain elements of the foreign bribery offence as defined in the Convention, and could therefore be further expanded or clarified.
- Croatia provides for the liability of legal persons for foreign bribery and meets many of the standards demanded by the OECD Anti-Bribery Convention. However, some of the criteria for triggering entities' liability appear too narrow and could be expanded.
- 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 increasing the maximum fines available against natural and legal persons for foreign bribery, and ensuring that the sanctions imposed in practice are effective, proportionate and dissuasive.
- Croatia has a track record of enforcing domestic bribery offences against natural persons, including in high-level corruption cases. There is no such similar enforcement for foreign bribery, however. Also absent is enforcement against legal persons for foreign and domestic bribery. Croatia could therefore enhance enforcement of domestic and foreign bribery against natural and legal persons where appropriate.
- Despite the existence of formal guarantees of judicial and prosecutorial independence, EU data show that the level of perceived judicial independence among companies and the general public is low. Croatian stakeholders in the judiciary and law enforcement are more positive about judicial independence, however. The EU data also show considerable delay in criminal proceedings. Some Croatian stakeholders suggest that this fuels a public perception that enforcement is selective and favours low-level corruption. Croatia could therefore consider taking steps to reduce delay in criminal proceedings in corruption cases.
- Croatia has treaty relations in extradition and MLA with many foreign countries. In the absence of an applicable treaty, these are available on the basis of reciprocity. The report identifies a few areas in which Croatia could further improve its international co-operation system.
- Croatia prohibits the tax deduction of bribes through a range of provisions in the tax legislation. To strengthen its framework, Croatia could consider enacting an explicit, legally binding provision on the non-deductibility of bribes.

1. Recommendations for fighting transnational bribery in Croatia

Abstract

This chapter summarises the recommendations covered in the report for fighting transnational bribery in Croatia.

In light of this report's analysis, Croatia is recommended to take the following steps to strengthen its legal and enforcement framework for fighting foreign bribery:

1. 1. With respect to the foreign bribery offence, Croatia could:
 1. i. Take steps to ensure that the offence's intent requirement is sufficiently broad to cover typical foreign bribery transactions, in particular bribery committed through intermediaries.
 2. ii. Expand the definition of a foreign public official, including to persons who hold legislative office in or who exercise a public function for a foreign country; employees of foreign state-owned or controlled enterprises; and officials of all public international organisations, including those in which Croatia is not a member.
 3. iii. Ensure that the definition of a foreign public official is autonomous and does not require proof of foreign law.
 4. iv. Clarify that the definition of a foreign country includes "all levels and subdivisions of government, from national to local", as well as any organised foreign area or entity, such as an autonomous territory or a separate customs territory.
2. 2. With respect to the liability of legal persons for foreign bribery, Croatia could take steps to ensure that liability can result from all acts of foreign bribery, and not only those that result in an "illegal property gain" to the legal person.
3. 3. Regarding sanctions for foreign bribery, Croatia could:
 1.
 1. i. Increase the maximum fines available against natural and legal persons for foreign bribery.
 2. ii. Take steps to ensure that the sanctions imposed against natural and legal persons in practice are effective, proportionate and dissuasive.
 3. iii. 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.
4. 4. With respect to foreign bribery enforcement, Croatia could:
 1.
 1. i. Enhance enforcement of the domestic and foreign bribery offences against natural and legal persons whenever appropriate.
 2. ii. Take steps to reduce delay in criminal proceedings in corruption cases.
5. 5. Regarding international co-operation in foreign bribery cases, Croatia could:
 1.
 1. i. Provide a broad range of MLA, including coercive measures, in foreign bribery-related civil or administrative proceedings against a legal person to a foreign state whose legal system does not allow criminal liability of legal persons.
 2. ii. Ensure that MLA is not refused because of *ne bis in idem* in cases in which criminal proceedings in Croatia have been discontinued on grounds other than the merits.
 3. iii. Ensure that cases that are declined for extradition solely on grounds of nationality are submitted to prosecution.
6. 6. Regarding the non-tax deductibility of bribes, Croatia could enact an explicit, legally binding provision prohibiting such deductions.