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**Review of implementation of the United Nations  
Convention against Corruption**

**Executive summaries**

**Note by the Secretariat**

**Addendum**

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## **II. Executive summaries**

### **Croatia**

#### **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 Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.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 (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.

## 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>1</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 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 ...”.

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<sup>1</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.

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>2</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.

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<sup>2</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.

*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.

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.

## Morocco

### Legal system

The Kingdom of Morocco is a constitutional, democratic, parliamentary and social monarchy. On 1 July 2011, a new Constitution, adopted by referendum, entered into force. The Constitution acknowledges the principle of the primacy of international treaties over national legislation. International treaties are approved by the Prime Minister and signed by the King. It is not necessary that the treaties be approved by Parliament to come into effect, with the exception of treaties relating to the State finances.

Morocco signed the United Nations Convention against Corruption (the Convention) on 9 December 2003, and ratified it on 9 May 2007. The Convention came into effect on 30 November 2007. Self-executing provisions of the Convention can be applied directly by the Moroccan authorities.

The main institutions which are mandated to prevent and combat corrupt practices in Morocco are: The Central Body for the Prevention of Corruption (established by Chapter 36 of the Constitution, which provides for the creation of a national body for integrity and the prevention and control of corruption); the Financial Information Processing Unit; the General Prosecution's office and police; the Inspectorate General of Finance; the Inspectorate General of Territorial Administration; and the Financial Courts (the Higher Council of Accounts and the Regional Councils of Accounts).

Legal instruments for the implementation of the Convention in Morocco include: the Penal Code adopted in 1962 which was amended on several occasions; the Criminal Procedure Code adopted in 2002; the Code of Financial Courts adopted in 2002; Law No. 43-05 against money-laundering adopted in 2007; Law No.10-13 amending anti-money-laundering legislation adopted in 2011; and, with respect to offences in the private sector, the Commercial Code and the Company Law, both adopted in 1996. A series of bilateral treaties in the area of mutual legal assistance including with France, the Netherlands, Portugal, Spain, the United States of America, are also applicable.

The criminal process in Morocco entails three phases, namely, the preliminary research and preparatory investigation stage, the investigation by a judge (the *juge d'instruction*), and the trial phase. The preliminary investigation stage involves all relevant law enforcement departments, including the judicial police supervised by the General Prosecution's office. Corruption related cases are investigated by police units responsible for economic crime. Upon completion of the first phase, the prosecution's office would submit cases that do not need further investigative action directly to the court for hearing and judgement. If additional evidence is required, the prosecution's office would refer the case for further investigation by a judge. When the investigation is completed, the case is submitted to the competent court for hearing and judgement.

## **Criminalization and law enforcement**

### **Criminalization**

Most of the offences listed in the Convention are criminalized in the Moroccan Penal Code and other legal texts, such as Law No. 43-05 on money-laundering.

The most significant development in Morocco in recent years with respect to criminalization of corruption related offences is the adoption of Law No. 13-10, amending Law No. 43-05 on money-laundering. A draft amendment to the Penal Code, which will bring changes also to corruption related offences, is also being discussed.

Bribery of national public officials appears to be adequately covered in Moroccan legislation, although it has been observed that the Penal Code does not make express reference to bribery committed indirectly or through intermediaries. On the other hand, the reviewing experts noted that an adequate specific provision criminalizing bribery of foreign public officials is not included in the Moroccan legislation and they identified the absence of such a provision as one of the challenges with respect to the implementation of the Convention by Morocco. Morocco reported that this issue is being addressed in the draft amendment of the Penal Code still under discussion.

The provisions of the Moroccan Penal Code criminalizing trading in influence do not appear to fully reflect the elements of the offence as envisaged by the Convention, as they do not put emphasis on the influence exerted. Similarly, a divergence between the text of the Convention and the relevant provisions of the Moroccan Penal Code is noted with respect to the offences of concealment and abuse of functions.

However, it is important to note that the crime of treachery constitutes a form of abuse of power, which the Moroccan legislation punishes with imprisonment of up to 5 years.

The State of Morocco has stated that it has not taken steps towards establishing illicit enrichment as a criminal offence. Furthermore, although Morocco has implemented subparagraph (a) of article 25 of the Convention by criminalizing obstruction of justice by unlawful interference with witnesses and production of evidence, Moroccan legislation does not fully comply with subparagraph (b) of article 25 of the Convention, as interference with the duties of justice or law enforcement officials is punished only if committed by other public officials. The current sanctions for obstruction of justice seem rather lenient, which raised concerns about their deterrent effect.

Although laundering of proceeds of crime is exhaustively regulated in the Penal Code and Law No. 43-05, the Moroccan legislation is not always fully in compliance with the provisions of the relevant articles of the Convention. The Moroccan legal provisions on money-laundering were amended by Law No. 3-10, adopted in January 2011, which significantly expanded the range of predicate offences to money-laundering, criminalized attempt of money-laundering and enhanced the framework and measures for the prevention of money-laundering.

Corruption and embezzlement of property in the private sector, as well as embezzlement, misappropriation or other diversion of property, are criminalized in compliance with the corresponding provision of the Convention. However, penalties for embezzlement in the private sector are lenient and their deterrent effect might be limited.

Although Moroccan criminal legislation does not specifically include a provision establishing the criminal liability of legal persons in general terms, penal sanctions and deterrent measures directed to legal persons held liable for specific offences are contained in a number of articles of the Penal Code, including provisions punishing money-laundering. Therefore, the Moroccan authorities argue that its laws do recognize criminal liability in respect of legal persons.

Participation and attempt are covered by provisions governing general criminal law, applicable to all offences. The statute of limitation provided for by the Moroccan legislation is viewed to be sufficient and can be interrupted by any investigative act.

Overall, with regard to the requirements of the Convention on criminalization, the following observations were made with respect to implementation by the reviewing experts:

- To include in relevant legislative provisions a specific mention of direct and indirect commission of the offence.
- To pursue legislative processes towards criminalizing, specifically and distinctly, bribery of foreign public officials and officials of public international organizations.
- To consider amending legislation on trading in influence and abuse of functions, in order to bring it in closer conformity with the provisions of the Convention.
- To consider establishing illicit enrichment as a criminal offence, and to that end, make use of technical assistance as available.
- To amend legislation on obstruction of justice in order to include all requirements of article 25 (b) of the Convention as well as to establish more severe and dissuasive penalties.
- To review the regulation of liability of legal persons with respect to corruption related offences.

### **Law enforcement**

In general, the sanctions applicable to corruption related offences under the Moroccan legislation could be strengthened, in order to ensure their deterrent effect and sufficiently reflect the gravity of the acts.

The new Constitution of the Kingdom of Morocco adopted in July 2011, limited the extent of immunities accorded to members of Parliament and magistrates. The requirements on release of defendants pending trial or release of convicted persons on parole are adequately covered by the Moroccan legislation, but more specific and clear measures for the removal, suspension or reassignment of public officials involved in corrupt activity, as well as for their disqualification from holding public office, are required.

There are gaps in the legislation of Morocco with respect to confiscation of proceeds of offences established in accordance with the Convention, as the legislative provisions on confiscation in Morocco appear to apply only to instrumentalities used in offences and not to the proceeds of crime. Also, these gaps were partially addressed by the amendments to anti-money-laundering legislation, under which confiscation of all proceeds of crime in money-laundering cases has become mandatory.

Equipment or instrumentalities used in offences can be confiscated without a conviction, whereas for the confiscation of proceeds of crime, where permitted, a conviction is needed. Further, freezing of alleged instrumentalities and proceeds of crime is allowed before conviction. Confiscation and freezing of assets can be ordered only by a judge. Banks and financial institutions are required to cooperate with the prosecuting authority and provide information related to alleged irregular movements of funds as requested. Moroccan law does not contain a provision that would foresee shifting the burden of proof to the defendant to show that alleged proceeds of crimes were actually of legitimate origin as provided for in the optional paragraph 8 of article 31 of the Convention.

Current Moroccan legislation establishes an adequate framework for the protection of witnesses, experts and victims, but does not include a specific and comprehensive witness protection programme. Amendments to the Penal Procedure Code are expected to enhance protection of witnesses, experts and reporting persons, reflecting the comprehensive regime provided for in the Convention. Anti-money-laundering legislation in force already contains provisions on protection of persons making bona fide suspicious transaction reports.

The legal system of Morocco recognizes the right either to appear as a civil party and seek compensation in criminal proceeding or to initiate legal proceeding before civil courts to any person who has suffered damage from a criminal offence. In case a public procurement process is tainted by corruption, Moroccan legislation provides for the annulment of the tender and the exclusion of the service provider from future contracts with the public authorities.

The review process revealed that there is no established body specialized in combating corruption through law enforcement. The Central Body for the Prevention of Corruption and the Financial Intelligence Unit are important players in the fight against corruption. However, they are not vested with law enforcement functions. It was recommended to build specialized law enforcement capacity to deal with corruption offences. This was expected to be addressed by draft legislation under discussion which will put in place specialized anti-corruption teams of trained prosecutors working in partnership with officials of the Ministry of Interior, the Ministry of Finance and financial institutions.

**Reference was made during the dialogue to some new legislative texts that provide, inter alia, for the establishment of national and regional teams of the judicial police, which are entrusted with special tasks, including research and investigation in financial and economic crimes. However their content could not be adequately reviewed during the country review process.**

Moroccan legislation does not foresee a comprehensive regime of incentives to encourage cooperation with law enforcement authorities of persons that have participated in offences. Further, Moroccan law does not allow for plea and sentence



agreements. Exchange of information between public authorities and law enforcement is mainly ensured through the work of the Central Body for the Prevention of Corruption and the Financial Intelligence Unit, which are empowered to solicit information from public institution and bodies. Also, the Financial Inspectorate within the Ministry of Economy and Finance notifies law enforcement of irregularities detected through controls or audits of the public sector.

Jurisdiction of the Kingdom of Morocco for criminal offences is regulated by the Criminal Procedure Code and the general provisions are in compliance with the requirements on jurisdiction set forth in paragraphs 1 to 3 of article 42 of the Convention.

With regard to the requirements of the Convention in the area of law enforcement, the following observations with respect to implementation were made by the reviewing experts:

- To encourage Morocco to consider adopting comprehensive and specific measures for the freezing, seizure and confiscation of proceeds of crime, as contemplated in article 31 of the Convention, including confiscation in value and requiring that an offender demonstrate the lawful origin of alleged proceeds of crime.
- To consider adopting more severe sanctions for corruption related crimes, in order to ensure their efficiency, proportionality and dissuasive effect.

### **International cooperation**

According to the Moroccan Penal Procedure Code, international treaties have supremacy over domestic legislation with respect to international cooperation matters. General provisions of Moroccan Penal Procedure Code (Section III of Book VII), including provisions on extradition, apply to such matters that are not regulated by bilateral or multilateral treaties. Morocco is considered to meet the main requirements set by the Convention in the area of international cooperation.

### **Extradition**

In Morocco, the requirements and procedures of extradition are regulated in a chapter of the Criminal Procedure Code. Morocco has concluded a number of bilateral treaties on extradition, but does not make extradition conditional to the existence of a treaty. In the absence of an applicable treaty, it can grant extradition on the basis of the provisions of the Criminal Procedure Code.

Moroccan nationals cannot be extradited, but they may be prosecuted in Morocco for offences committed abroad if a foreign country requests officially the Moroccan authorities to do so (*aut dedere aut judicare*). In the same context, the Moroccan authorities would not consider enforcing a sentence imposed by a foreign authority on Moroccan citizens.

Morocco requires that the principle of dual criminality is respected in all cases, as extradition will not be granted if the act is not punishable according to Moroccan law. Morocco cannot exercise discretion to grant the extradition of a person for any of the offences of the Convention that are not punishable under national law, as provided for in paragraph 2 of article 44 of the Convention, due to the strict adherence by Morocco to the principle of dual criminality.

The offence for which extradition is sought should be punished in the requesting State with a maximum penalty of at least one year of imprisonment. Moroccan law provides for the possibility to take the sought person into custody. The number of extradition requests for corruption related offences received by Morocco appears to be limited: out of 65 extradition requests received in 2009 and 2010 only three were related to financial or money-laundering offences.

Extradition is only granted on the condition that the person extradited shall not be prosecuted, tried, arrested, or subjected to any other measures which would curtail his or her personal liberty, on account of any act made prior to the date of extradition, apart from the act for which he or she is being extradited. Moreover, according to Moroccan law, extradition shall not be granted if the act for which extradition is sought is considered to be a political offence or related to a political offence.

### **Mutual legal assistance**

Moroccan legislation does not include a specific, separate legal text on mutual legal assistance. The matter is regulated by the Moroccan Penal Code and the Moroccan Criminal Procedure Code. Also, a series of bilateral agreements have been concluded by Morocco in the area of mutual legal assistance, which include treaties with the Netherlands, Portugal, Spain, Turkey and the United States of America. These agreements deal with several features of international judicial cooperation and are not limited to a particular area. The reviewing experts noted with appreciation the significant number of treaties concluded by Morocco in the field of mutual legal assistance, and encouraged the conclusion of similar agreements with additional States in order to further strengthen cooperation.

The central authority designated by the Kingdom of Morocco for receiving requests of mutual legal assistance is the Ministry of Justice. The Secretary-General of the United Nations has been notified of this designation. According to the Moroccan legislation, mutual legal assistance requests have to be submitted through diplomatic channels. However, some bilateral agreements, such as the one with Portugal, allow submission directly to the central authorities. Moreover, Morocco agrees that in urgent circumstances requests be submitted through INTERPOL. As far as the language to be used is concerned, Morocco has reported that as a rule, a translation of incoming mutual assistance requests in Arabic, the official language of Morocco, was required.

Mutual legal assistance requests for corruption-related offences are not frequently submitted to Morocco: In 2009, the Moroccan judicial authorities received 241 requests for legal assistance, of which four were related to money-laundering, one to illegal currency trade and two to embezzlement of public funds. In 2010, the Moroccan judicial authorities had received 24 requests for legal assistance relating to money-laundering, and two related to bribery.

A wide range of purposes for which mutual legal assistance may be requested, have been included in Morocco's national legislation and the applicable bilateral treaties. However, the reviewing experts noted that mutual legal assistance for the purpose of asset recovery, as foreseen in paragraph 3 (k) of Article 46 of the Convention, appeared not to be adequately covered.

Morocco does not decline to render mutual legal assistance on the ground of bank secrecy. This principle is expressly set forth in applicable bilateral treaties, but has also been adhered to in the practice by Moroccan judicial authorities, which respond to requests for disclosure of bank records as long as those requests are submitted in the context of judicial investigations.

On average, Morocco requires three months to respond to a request for mutual legal assistance, but would consider requests to speed up procedures in case of urgent circumstances in the requesting State. Moroccan legislation does not provide for grounds of refusal other than those included in the Convention: Requests for legal assistance will not be implemented if they do not fall within the jurisdiction of the Moroccan judicial authorities, or if their implementation would compromise the sovereignty, security, order public or other essential interests of the Kingdom of Morocco. The requesting State is always notified of refusal of its request and the reasons thereof are provided.

### **Law enforcement cooperation**

Morocco reported the existence of an extended network of law enforcement cooperation with international counterparts, as Morocco is a member of INTERPOL and is party to a series of international conventions, bilateral and multilateral agreements, which provide for technical cooperation, cooperation in the field of security and exchange of information. These instruments include memoranda of understanding concluded at the level of governmental departments and national public administrations.

Morocco also reported that it makes full use of the channels of communication available among INTERPOL members. As the Financial Intelligence Unit became a member of the Egmont Group on 13 July 2011, communication and information sharing through the secure database of the Egmont Group is expected to develop.

A number of liaison officers are posted to Moroccan embassies in other countries. Their functions include fostering cooperation and engaging in joint technical assistance programmes with counterparts in the host States.

With respect to joint investigations, a draft amendment of the Penal Procedure Code would introduce the possibility for the competent judicial authorities, subject to prior agreement with the Minister for Justice and at the discretion of the State Party or Parties concerned and within relevant judicial guidelines at the national level, to form joint investigative teams to carry out complex and large-scale search proceedings in other countries, in relation to crimes that require concerted and centralized action.

Although controlled delivery was not regulated in national law until January 2011, Morocco has responded to several requests for judicial cooperation involving controlled deliveries in 2009 and 2010 within the context of implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

### **Technical assistance**

A number of technical assistance needs in the implementation of the provisions of the Convention were identified by Morocco throughout the review. These needs

include provision of summaries of good practices and lessons learned, best practices, model legislation, assistance in legislative drafting and legal advice for incorporating in domestic law the provision of the Convention.

Morocco noted that in order to assess compliance with chapters III and IV of the Convention, it would require programmes for the evaluation of application measures, as well as assistance in identifying and distributing appropriate computer equipment to collect relevant statistical data.

In the area of protection of witnesses, victims and reporting persons, Morocco expressed a need for training workshops, capacity-building programmes and on-site assistance by anti-corruption experts. Also, in order to better implement the provisions of the Convention on international cooperation, Morocco noted that programmes to enhance the capabilities of competent authorities would be of assistance.