Croatia

Building integrity in defence - an analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and eGovernment (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Croatia. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

Ingelin Killengreen
Director General

Abbreviations and acronyms

CAF	The Croatian Armed Forces
CHOD	Chief of Defence
CoI	Conflict of interest
CPCI	The Committee for the Prevention of Conflicts of Interest
CSA	The Civil Servant Act
CSO	Chief Security Officer
CSO(s)	Civil society organisation(s)
EUROSAI	The European Organisation of Supreme Audit Institutions
EQUINET	EQUINET The European Network of Equality Bodies
GSO	Government statistics organisations
HDZ	Croatian Democratic Union
HRM	Human resources management
ICC	The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
IG	Inspector General
INA	The national Croatian oil company
INTOSAI	The International Organisation of Supreme Audit Institutions
MoE	The Ministry of Economy
PNUSOK	The Police National Office for the Suppression of Corruption and Organised Crime
PPA	The Public Procurement Act
SAO	The State Audit Office
SDP	Social Democratic Party
SOA	Security and Intelligence Agency
TI DSP	Transparency International's Defence and Security Programme
USKOK	The Office for Combating Corruption and Organized Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*)
VSOA	The Military Security and Intelligence Agency

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1 Executive Summary

In summary, the Parliament has sufficient legal powers to carry out budgetary oversight while the State Audit Office is empowered to audit the execution of the budget and report its findings to Parliament. The armed forces are included within the remit of that oversight. Yet some past concerns connected with public procurement at the MoD and the armed forces pointed out by civil society organisations have raised doubts about the effectiveness of oversight mechanisms. Arguably, there is room to improve the parliamentary oversight and to increase the transparency of defence spending.

With regard to control over the intelligence services the legal framework seems to be adequate. Yet some doubt remains as to its actual implementation. Improving the supervision of the security and intelligence services would strengthen their professionalism and credibility.

The Ombudsman institution was imported into the country at the initiative of foreign institutions, especially the EU, without sufficient domestic understanding of its functions and potential roles. The institution found difficulties in establishing itself on the Croatian institutional landscape. Despite having being created in 1992, twenty years later in 2012 the European Commission's regular report was still advocating strengthening the Ombudsman institution. The capacity and resources of the ombudsman must undoubtedly be reinforced.

The State Audit Office was given special attention during the years preceding EU accession, including granting it constitutional standing, and it is now one of the institutions working rather satisfactorily.

In respect of the prevention of conflicts of interest the asset declaration scheme is fairly effective. The public character of asset declarations is recognised as an effective tool of societal control and is freely used by the media. The Conflict of Interest Commission, in charge of the enforcement of the conflict of interest legislation, is quite strong and independent. However, recent cases of malpractice may give reason to ask whether the normative basis for the conflicts of interest regime is sufficiently internalised.

Access to information is constitutionally guaranteed, but inertia and resistance to the legal provisions weaken their implementation. Furthermore, inconsistency between the Act on Access to Information and the Act on Personal Data Protection has a negative impact. The public interest test and the test of proportionality related to the confidentiality of data are conducted by the same body as had classified the information previously. The Information Commissioner's Office is a new institution in charge of the enforcement of the Access to Information Act. The office is under-staffed and lacks appropriate funding. These factors prevent it from fully meeting its responsibilities. The state budget projections for next two years show no prospect of increasing the funds. During the past years some positive developments can be observed, however, in the defence sector. The amount of classified information is

decreasing. Efforts to change the culture of secrecy in state security institutions are visible.

Moreover, the public internal financial control systems need to be reinforced. The professional autonomy of the Defence Inspector should be better protected so he will be in a better position to refuse compliance with illegal or ethically dubious political orders. Risks of politicisation of both the public internal financial control function and that of the inspectorate should be reduced.

Concerning public procurement policies the exceptions to the general procurement rules are too numerous when it comes to the defence sector. Single source procurements are often used and may not always be fully justified. Safeguards against corruption risk in defence procurement are not adequate. The situation concerning public procurement appears to have been improving recently mainly at the initiative of the European Commission with the aim of minimising corruption risks, including in the defence sector.

In summary, the disposal of military assets and other public assets does not present major problems. Those disposals are managed centrally by a State Office for Asset Disposal under the Ministry of Finance. Nevertheless, the disposal of military assets, especially movable assets, is difficult to track down, a fact which creates corruption risks. Moreover, the control mechanisms over privatisation of immovable state assets are not fully adequately regulated, creating corruption risks which should be prevented more effectively.

Human resource management in the civil service and in the army is improving; the merit system has been strengthened even if shortcomings remain in recruitment and performance appraisal. There are still some concerns (by civil society organizations in particular) about politicisation of the recruitment procedures and the role of political affiliation and patronage in career progression, regardless of the fact that the standard legislation is in place.

Regarding anticorruption policies it is the EU accession process rather than domestic political initiatives that appears to be the key factor in the fight against corruption. There is a lack of information on anticorruption strategic policies in the defence sector. Little attention has traditionally been paid to corruption and integrity in national security strategic documents. Anticorruption bodies, in particular the Office for Combating Corruption and Organized Crime (USKOK), are performing relatively well, but the resources allocated are diminishing. No administrative unit within the MoD is assigned special responsibility for preventing and suppressing corruption, but the Chief Secretariat is in charge of promoting integrity and has also many other responsibilities.

2 Introduction

The performance of NATO member countries as reliable allies within the organisation depends on a number of factors, including the actual functioning of the overall governance and administrative systems. Evaluating these capacities entails scrutinising the main institutional settings and working arrangements that make up their public governance systems and their resilience to corruption. This report carries out such an analysis of Croatia.

The starting point is the observation that a holistic approach to security sector reform is increasingly called for[1]. Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Croatian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; *i.e*. mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps *the* major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

a. Parliamentary oversight;
b. Anti-corruption policies;
c. Specialised anti-corruption bodies;
d. Arrangements for handling conflicts of interests;
e. Arrangements for transparency/freedom of access to information;
f. Arrangements for external and internal audit, inspection arrangements;
g. Ombudsman institutions.

In addition to examining the checks and balances, this gap analysis focuses on two high risk areas susceptible to corruption/unethical behaviour:

h. Public procurement (or alternatively: disposal of defence assets);
i. Human resources management (HRM).

[1] See for instance OECD (2007) *The OECD DAC Handbook on Security System Reform (SSR) Supporting Security and Justice*.

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex *procurements* that may facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the ministry. *Human resources* are central to the quality of performance of defence sector bodies.

The report mainly concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector".

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action-oriented: it proposes a number of recommendations for reform action to be undertaken by the government.

3 Parliamentary oversight over defence policy

Article 80 of the Constitution grants parliament the powers to adopt legislation and to carry out oversight of the action of the executive. Article 86 empowers MPs to pose questions to the government and individual ministers. The parliament (article 105) authorises the impeachment of the president of the Republic who wields, among other powers, that of the commander-in-chief of the armed forces.)

Questions from deputies, the submission of interpellations, as well as several other oversight mechanisms are regulated in more detail by the Standing Orders of the Parliament. The President's accountability to parliament is regulated by article 118 of the Standing Orders: to initiate answerability proceedings against the President of the Republic a petition to parliament by one fifth of MPs is required. The government's accountability to parliament (MoD included) is regulated by articles 123-127 of the Standing Orders. The Prime Minister and government members shall be jointly accountable for government's decisions and individually for their own specific policy area.

Questions from deputies may be posed in writing or orally. MPs may raise oral questions at the "Morning Question Time" held at the beginning of each parliamentary session. A special regulation has been introduced on confidential information, which is relevant for the defence sector. To answer a question on a confidential matter, the government may either respond directly or request that a closed session of the relevant parliamentary committee be held. The parliament may form inquiry commissions on any issue of public interest. The composition, remit and powers of inquiry commissions shall be defined by law. Parliamentary standing committees debate legislative initiatives and monitor the government.

The parliament determines the financial resources to be allocated to the defence sector, adopts long-term plans on the development of the armed forces, debates and adopts annual defence reports on the defence capabilities of the armed forces, personnel management and organisation, and gives an opinion on the appointments of the Chief of Defence in accordance with the Defence Law.

The MoD shall provide parliament with information about military purchases in the same way as any other publicly funded body does, except when it comes to classified data, which has a vague and very broad definition at odds with transparency requirements. For instance, the 2008 Public Procurement Law, specifically its article 11 on defence and security, does not impose any obligations on the MoD to inform the parliament about specific procurement issues. However, information about MoD procurement is available on the official website of the ministry.

Other laws, however, prescribe certain obligations. Ministries are obliged to prepare and advocate specific parts of the budget before parliament, including the defence budget in accordance with the Defence Law. As for intelligence

agencies, the body authorised and responsible for proposing a draft budget to parliament is the National Security Council[2]. Two parliamentary committees, namely the Defence Committee and the Internal Policy and National Security Committee, examine the budgets before their presentation to a plenary session of parliament. These committees can ask representatives from ministries and other state agencies to explain any issues of interest.[3] Finally the Finance and State Budget Committee looks at the budgetary transparency of the MoD and other defence-related state bodies as it does in the case of other state institutions and authorities.

Within the structures of the parliament there are several committees with responsibilities in the field of oversight of the defence sector, although they are not specifically established for the control of the defence sector. The first one is the Internal Policy and National Security Committee. The committee shall monitor policy implementation, especially in matters pertaining to actions and decisions of the Office of the National Security Council. Its main aim is to check that the Constitution and legally-established human rights and fundamental freedoms as well as the rights and freedoms established by international law are respected. The committee also gives opinions on the appointment of directors of security agencies. It reviews reports from i.a. the Central Audit Office and criminal investigations by the police concerning irregularities in the financial operations of state bodies. The second committee is the Defence Committee. The Defence Committee monitors the implementation of policies in matters of defence and security and fosters cooperation with bodies that operate in those areas.

The third committee is the Council for Civilian Oversight of Security and Intelligence Agencies. The council consists of a chairperson and six members, all of whom are appointed by parliament. Council members have to be Croatian citizens with university degrees, while at least one member must have a degree in law, one a degree in political science and one a degree in electrical engineering. Neither the chairperson nor the council members may be members of the leadership of any political party.

The Council monitors the legal compliance of security agencies, especially the implementation of confidential data gathering, an activity where citizens' constitutionally-guaranteed human rights and fundamental freedoms are at stake. Any findings and information thereon are reported to the National Security Council, the Speaker of the Parliament, the chairperson of the parliamentary committee in charge of national security, and the directors of all security and intelligence agencies. The council also disseminates information on how citizens, governmental bodies and legal persons may file complaints on illegal or irregular procedures of security and intelligence agencies, particularly

[2] *Law on Security Intelligence System*, at the Official Website of Security and Intelligence Agency:https://www.soa.hr/UserFiles/File/Zakon_o_sigurnosno-obavjestajnom_sustavu_RH_eng.pdf , art 3.

[3]BCSP/DCAF (2012), *Almanac on Security Sector Oversight in the Western Balkans*, Belgrade, p. 81, available at: http://www.bezbednost.org/upload/document/almanac.pdf

in cases of violation of constitutionally-guaranteed human rights and fundamental freedoms.

The council notifies the results of its investigations to complainants. Answers to complainants are circumscribed to the comments specified in the complaint. The council may review reports and other documents as well as interview the heads and other officers of security and intelligence agencies to ascertain facts that are crucial for assessing the legality compliance of these agencies. It reports the results of its oversight activities to the President of the Republic, the Speaker of Parliament, the Prime Minister and the Chief Public Prosecutor. In addition, every six months its chairperson must submit a report on the council's activities.

All in all, the parliament has strong legal powers to carry out budgetary oversight while at the same time the State Audit Office (SAO) is empowered to control the execution of the budget and report its findings to parliament. No agency is exempt from its control[4]. However, past public procurement issues in the defence sector has raised the awareness of both the public and the MPs. There is obviously considerable room to improve the parliamentary oversight and to increase the transparency of defence spending.

The legislative framework seems to be appropriate and should allow parliamentary control mechanisms to function effectively. However, the argument is heard that i.a. strong party discipline limits the actual extent of parliamentary oversight over the security sector.[5]

Parliamentary committees may invite scholars, professionals, public officials and other persons to give their views and advice on matters being discussed at a given session, but there is little information publicly available about professional staff in parliament. There are no signals from the committees revealing significant shortages in resources or procedures that would disable effective parliamentary oversight over the defence sector.

A positive track record in the use of these mechanisms for the oversight of the defence sector is observable, which confirms improvements in the last decade. Numerous regular hearings take place on a monthly and even weekly basis concerning the security sector and other related committees. Their main purpose is to scrutinise the legality of actions and financial accountability of the defence institutions and organisations. Representatives of these bodies are usually invited to take part in parliamentary committee sessions. There are also frequent field visits to defence organisations and units and regular reviews of defence policies and actions in the form of scrutiny of the reports they prepare.

[4] *Ibid.*

[5] For details about existing parliamentary culture and practice, please see a very illustrative description (in Croatian) of the leading NGO in the field of good governance – *Tko se demokratskom procedurom dici, a tko trguje?*, available at: http://gong.hr/hr/dobra-vladavina/sabor/tko-se-demokratskom-procedurom-dici-a-tko-podmuklo/

Civil society has been actively involved in revealing numerous misdeeds in the defence sector, hence initiating or influencing reform processes. It is now a regular practice to conduct consultations with NGOs and human rights experts while designing and implementing laws on constitutional rights in connection with security institutions.

In summary, the parliament has sufficient legal powers to carry out budgetary oversight while the SAO is empowered to audit the execution of the budget and report its findings to parliament. The armed forces are included within the remit of that oversight. Yet some past concerns raised by civil society organisations, connected with public procurement in the MoD and armed forces, have raised doubts about the effectiveness of oversight mechanisms. Arguably, there is room to improve the parliamentary oversight and to increase the transparency of defence spending.

3.1 Control of the Intelligence Services

The Council for Civilian Oversight of Security and Intelligence Agencies oversees the intelligence services. The council was established by article 110 of the Act on the Security Intelligence System, and consists of a chairperson and six members appointed by the parliament for a four-year term with the possibility of re-appointment. Council members are required to be Croatian citizens with university education. At least one member has to have a law degree, a second member a degree in political science and a third member a degree in electrical engineering. Council members are accountable to the parliament where the Committee for National Security is in charge of overseeing it. Article 113 of the Act mandates the council to deliver the information on its findings to whoever submitted the request. If the council observes unlawful acts, its chair shall notify the President of the Republic, the Speaker of Parliament, the Prime Minister and the Chief Public Attorney.

Article 26 of the Standing Orders of the Council Rulebook[6] gives the council access to intelligence services' data, written reports and other intelligence documents. The council may request written statements and interviews with leaders and officials of the relevant agencies. Decisions on initiating and conducting an inquiry can be made by the council (by a positive vote of four members) or by the parliamentary committee for national security. It is difficult to estimate to what extent the council's powers enable it to effectively oversee the intelligence services, given that much depends on the political will of those in power.

According to article 103 of the Act on the Security Intelligence System, the National Security Council is one of the three institutions in charge of overseeing the intelligence agencies. The National Security Council is

[6] *The Standing Orders of the Council for Civilian Oversight of Security and Intelligence Agencies*, available at the Official Website of the Parliament: http://www.sabor.hr/Default.aspx?sec=5184, art.26.

composed of the President of the Republic, the Prime Minister, the member of the government responsible for national security, the minister of foreign affairs, the minister of justice, the national security advisor to the President of the Republic, the Chief of the General Staff of the Armed Forces, the Director of the Security and Intelligence Agency (SOA) and the Director of the Military Security and Intelligence Agency (VSOA). The President of the Republic and the Prime Minister jointly convene the sessions and determine the issues to be put on the agenda of the National Security Council. The National Security Council sessions are chaired by the President of the Republic, and the decisions thereof are co-signed by the President of the Republic and the Prime Minister.

Article 2 of the Act on the Security Intelligence System establishes that the Government is one of the actors in charge of oversight of security intelligence agencies. Article 5 of the same Act mandates the Government, together with the President of the Republic, to give directions to the security and intelligence agencies' work. Government members are part of the control mechanisms monitoring the security and intelligence agencies. In consequence, the government has full control over the intelligence and security services.

Two laws regulate recruitment into the intelligence services. One is the Civil Servant Act and the second is the Act on the Security Intelligence System. According to article 69 of the Act on the Security Intelligence System, the public announcement of vacancies in secret intelligence agencies is not mandatory. Persons who take up employment in agencies also have to fulfil special conditions stipulated by the internal ordinances of security and intelligence agencies in addition to conditions regulated by the Civil Servant Act. These conditions refer to specific education and profession, working experience, special skills and training, special health conditions and mental strengths. The fact that public competition is non-mandatory is a shortcoming that may lead to politicisation and unprofessionalism in the security and intelligence services. Neither of the two existing security agencies have ever recruited through public competition.

According to the Act on the Security Intelligence System, the collection of secret information[7] may only be carried out subsequent to the issue of a written warrant by a judge of the Supreme Court. However, this refers only to measures such as the secret surveillance of communications, postal censorship, secret surveillance and wiretapping inside facilities, closed spaces and objects. If a delay in gathering secret information might frustrate the intended objective, the measures may be permitted by the director of a security intelligence agency,

[7] According to article 33 of the Act on the Security Intelligence System, the collection of secret information includes: 1. Secret surveillance of telecommunication services, activity and traffic: a. surveillance of the communication content, b. surveillance of telecommunication data traffic (intercept related information), c. surveillance of the location of the user, d. surveillance of international telecommunications; 2. Postal censorship; 3. Surveillance and technical recording of indoor facilities, closed spaces and objects; 4. Surveillance and monitoring, with recording of images and photos of persons in open and public spaces; 5. Surveillance and monitoring, with audio recording of the content of communication between persons in open and public spaces and 6. Purchase of documents and objects.

who shall immediately inform the competent judge of the Supreme Court. The fact that in some cases written warrants are directly issued by directors of the security and intelligence agencies may lead to questions about the effectiveness of judicial control: Is control ex-post as effective as control ex-ante? In 2011, the Centre for Peace Studies raised concerns regarding control of the security and intelligence systems and the criminalisation of possible misdeeds. Their opinion was that the National Security Council remains in control, but only on paper. This argument is based on past abuses by the intelligence services that have never been adequately sanctioned (e.g. wiretapping a journalist's phone in the Puljiz case).

In conclusion, the legal framework seems to be adequate for the control of the intelligence services, but some doubt remains as to its actual implementation. Improving the supervision of the security and intelligence services would strengthen the professionalism and credibility of those services.

3.2 Independent Bodies Reporting to Parliament

3.2.1 Ombudsman Institution

The Ombudsman's Act of 1992 created the institution. The Act was amended in 2001 and 2010 to strengthen and extend the ombudsman's authority. The 2001 amendment was on the election of the ombudsman and in 2010 the amendment was linked to his/her constitutional role. Other additional, specialised ombudsman institutions were created afterwards, namely the Children's Ombudsman (2003), the Ombudsman for Persons with Disabilities (2007) and the Ombudsman for Gender Equality (2008). The 2009 Anti-Discrimination Act entrusted the ombudsman with additional powers. A new Ombudsman's Act was adopted and entered into force in 2012. With the Anti-Discrimination Act, the ombudsman institution became the Central Equality Body. It acceded to EQUINET, the European Network of Equality Bodies, on 1 January 2009.

Given the fact that 1992 was a period of wartime, it is very difficult to determine the extent to which the international community had an influence in establishing the Ombudsman's Office. Nevertheless, in order to become part of the UN, Croatia had to ratify conventions related to human rights protection, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This doubtless contributed to the establishment of the Ombudsman's Office. In the initial steps of the existence of the contemporary Croatian state, it was created as something that was required by the international community, not as an institution that was really needed. There was a limited interest and understanding of the ombudsman's role, both by the political elites and the public. This resulted in the fact that his competences and authority were rather limited and these have been enhanced only after 'warning from outside', i.e. the conditionality of various international organisations, in particular the EU.

The capacity and functionality of the Ombudsman's Office were among the conditions put forward by the last EC monitoring report, which was issued a few months prior to the EU accession. This relates that little had changed in the eyes of political elites with regard to the Ombudsman's Office, not to mention the general public, apart from those who are interested parties in cases pending before the ombudsman. In view of the nature and character of the new political system, which defines itself as against discrimination and as a protector of human and minority rights, it would be only natural that the State develops adequate institutional infrastructure to meet those policy goals. One element of this infrastructure would be the strengthening of the ombudsman.

Article 93 of the Constitution states that the ombudsman represents the parliament in the promotion and protection of human rights and freedoms enshrined in the Constitution and in laws and international legal instruments on human rights and freedoms. The ombudsman, like other representatives of the parliament, has the same immunity as that of MPs. The ombudsman's independence is guaranteed by the Constitution and by the Ombudsman's Act. According to the provision of article 7 of the Ombudsman's Act, his independence and autonomy have to be ensured and any form of influence is forbidden.

The ombudsman is appointed by the parliament for an eight-year term with the possibility of reappointment. The conditions for appointment and dismissal of the ombudsman and his deputies are determined by the Ombudsman's Act. This Act states that no later than six months before the expiry of the ombudsman' mandate, or no later than 30 days after the expiry of the term for other reasons, the parliament shall publish a public call requesting candidates for ombudsman. The Parliamentary Committee on the Constitution, Standing Orders and Political System, with the prior opinion of the Committee on Human and National Minority Rights, selects at least two candidates and submits them to a plenary session of parliament.

Candidates shall hold Croatian citizenship, a law degree and have 15 years of practice in the legal profession. They shall have no affiliation to political parties and meet all other conditions defined by article 11 of the Ombudsman's Act. Article 12 entrusts the ombudsman with proposing to Parliament candidates to act as his deputies no later than 30 days after the termination of a public call for applications. The same article defines the conditions for the election of the ombudsman's deputies. The election shall respect gender parity. Article 14 states that the ombudsman and his deputies can voluntarily resign or be dismissed before the expiry term if he no longer meets the conditions of article 11 of the Act or if for any reason he is prevented from fulfilling his obligations for more than six months. The parliament decides on the dismissal of the ombudsman upon previous opinion of the parliamentary committees on Human and National Minority Rights, and on Constitution, Standing Orders and Political System.

The ombudsman's staff is recruited in accordance with the Civil Servant Act. Personnel expenditure shall remain within the budgetary limits determined by the state budget upon approval by the Ministry of Finance. The financial and

technical support to the ombudsman has always been an issue. The ombudsman's office does not have a separate budget, which may jeopardise its financial independence. According to the 2012 EC Report, the ombudsman offices needed to be further strengthened in order to ensure better human rights protection. This recommendation requested adequate financing and office premises as well as the setting up of a joint database.

The ombudsman reports to the parliament regularly once a year. He can also submit reports on specific issues, particularly in cases where constitutional or fundamental rights have been violated. The annual report is submitted by the end of the first quarter for the previous calendar year. All reports are published on the website of the Ombudsman's Office.

The annual report looks at the protection of rights and freedoms, especially concerning violations of the rights of individuals belonging to specific social groups. It also contains recommendations on the protection of rights guaranteed by the Constitution and laws. Annual reports also contain statistics such as the number of complaints, inquiries, cases resolved, cases investigated and investigations pending, recommendations made and whether or not they were followed up. The ombudsman shall consult social partners and civil society organisations dealing with the protection and promotion of human rights, with the protection of groups exposed to a risk of discrimination, as well as churches and religious organisations entered in the Register of Religious Congregations. The 2013 Ombudsman's Annual Report registered about 3,021 written complaints, which is a considerable increase of 63% in comparison with 2012; many complaints dealt with the consequences of the economic crisis and the increasingly difficult social situation.

The Ombudsman's Office had four offices and twenty-nine civil servants and one employee in 2013. In order to improve its capacities and capabilities, the Ombudsman's Office was the beneficiary of a United Nations Development Programme project named *"Capacity building of the Croatian People's Ombudsman Office"*. The goal of that project was to improve the effectiveness and coordination of the whole system for human rights protection as well as to strengthen the capacities of the Ombudsman Office. The project lasted for two years and ended in June 2012. The total project budget was covered by the donor.

According to the Ombudsman Strategic Plan 2012–2014, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), which is the representative body of National human rights institutions in the United Nations, has accredited the Croatian Ombudsman as an independent national human right institution with "A" status, based on the Paris Principles. However, the above-mentioned committee has recommended that the ombudsman's competences should be enlarged. There has been no explicit attempt to reverse the role of the ombudsman, but as an institution it has not been taken yet seriously and its recommendations are not implemented correctly.

Croatia ratified the UN Optional Protocol to the Convention against Torture in 2005. In 2011 the Parliament passed the Law on National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. According to article 2 of this Law, the Ombudsman is the implementation and reporting mechanism for the Convention. A wide range of activities and recommendations is presented in the Ombudsman's 2013 Summary Annual Report, as well as the shortcomings detected.[8]

According to article 18 of the 2007 Data Secrecy Act, classified information is made available only to persons who have a need-to-know or who have personnel security clearance. The Act did not include the ombudsman among those having access to classified information. The 2012 amendments to the Act (article 20) gave the ombudsman access to classified information without the need for personnel security clearance. The Ombudsman's Act (article 9) establishes that the ombudsman, his deputies, civil servants and employees at the Ombudsman Office shall be bound by regulations on the secrecy and protection of data during and after their terms of office, irrespective of the way in which they gained knowledge of these data.

According to the Decree on Constitutional Change,[9] the Ombudsman's Office is in charge of the legal protection of citizen's rights vis-à-vis the Ministry of Defence, the armed forces and security services, and the protection of the rights of citizens before the bodies of the local and regional government and self-government as well as the protection of the rights of the local and regional self-government before the central governmental bodies.

In conclusion, the ombudsman institution was imported into the country at the initiative of foreign institutions, especially the EU, without sufficient domestic understanding of its functions and potential roles. The institution found difficulties in establishing itself on the Croatian institutional landscape. Despite having being created in 1992, twenty years later in 2012 the European Commission's regular report was still advocating strengthening the ombudsman institution. The capacity and resources of the ombudsman undoubtedly need to be reinforced.

3.2.2 External Audit

The body responsible for external audit and budgetary control is the State Audit Office (SAO). The SAO has constitutional standing (article 54) as the supreme, independent and autonomous audit institution in the country. The SAO reports to parliament. It is chaired by the Auditor General, appointed by the parliament for an eight-year term, renewable. The establishment, organisation, purview and operation of the State Audit Office are defined by the 1993 State Audit Act.

Apart from article 54 of the Constitution, the independence of the SAO is guaranteed by article 2 of the State Audit Act. Several additional specific

[8] P. 29-32.
[9] Official Gazette 113/2000.

provisions in the Act support its organisational independence, especially the wide spectrum of responsibilities assigned to the Auditor General. The financing of the SAO is guaranteed from the state budget by article 15 of the Act. The SAO submits a financial proposal which is regularly accepted by the Parliament in the state budget. The SAO may generate its own revenues by delivering audits of national and international resources and participation in international projects and programmes. Own revenues are used to improve the operations of the SAO.

The SAO employs around 300 staff. Some 240 are auditors. Staff numbers, premises and funding appear to be sufficient since the SAO's capacity to generate extra-budget revenues supplies it with additional funds. According to article 17 of the State Audit Office Act, state auditors are recruited through public competition while decisions about their employment or dismissal are taken by the Auditor General. The SAO has been a member of the International Organization of Supreme Audit Institutions (INTOSAI) since 1994 and of the European Organization of Supreme Audit Institutions (EUROSAI) since 1996, and this entails participating in the working parties of these organisations. Through INTOSAI and EUROSAI, employees of the SAO participate in seminars, meetings and conferences in order to improve the state audit function and their own professional capabilities. Employees are also engaged in different international seminars and training programmes.

The SAO has investigative powers. The Act defines the audit objects and the audits are planned in annual work programmes and plans. They are also carried out at the specific request of the parliament if the Auditor General finds the request justified. The auditing standards are those of INTOSAI.

According to article 6 of the State Audit Office Act, the SAO has clear authority to audit all state revenues and expenditures, financial reports and transactions of state sector units, as well as local and regional self-government units.. The SAO submits an annual report to parliament on the execution of the state budget. An annual report on the conducted audit tasks is published also on the web-site of the Office[10].

Audits cover regularity and performance. The audit goals are to check the functioning of the system of internal financial controls within the planning and execution of the state budget; to check the revenue and receipts and expenditures in accordance with what was planned; to check borrowing and the issue of guarantees and granting funds from the budgetary reserve; to investigate the organisation and conduct of accounting government budget; and to express an opinion on the annual report on the execution of the state budget.

The defence sector is not excluded from the mandate of the SAO. The financial policy of the MoD and other sectorial bodies is reviewed annually. However, no significant remarks on and criticism of the MoD's financial performance have

[10] *2011 Report of State Audit* Office, available at the Official Website of the State Audit Office; http://www.revizija.hr/izvjesca/2012-rr/izvjesce-o-obavljenoj-reviziji-godisnjeg-izvjestaja-o-izvrsenju-drzavnog-proracuna-rh-za-2011.pdf.

been recorded recently. The only detail worth mentioning is the fact that the MoD was given "a conditional opinion"[11] in the 2012 report of the Office, which means that according to ISSAI 400 INTOSAI standards[12] there is uncertainty in one or more sections which is material but not essential for understanding the financial report, i.e. there is an indication of minor deviation from existing rules of procedure.

The annual report is presented to parliament each year by 1 June. Reports are published on the website of the SAO.[13] Additionally, the video footage of the parliamentary debate on the report is available on the Parliament's website. But these reports cannot contain audit results involving classified information. For this reason, some parts of the audits on the MoD and the armed forces are not available online.

The parliamentary monitoring of the budgetary policy lies with the Finance and State Budget Committee of the Parliament which deals with the SAO reports. The committee has often remarked that the scope of the SAO audits should be deeper and broader. The implementation of the recommendations from the SAO was analysed in its 2011 report, which assessed that only few recommendations had been implemented whereas the majority remained ignored by the state bodies affected. The media and civil society organisations seem unconcerned with internal and external audit and financial control of the state authorities. With the exception of big scandals at the highest political level, little serious public criticism has been raised recently.

Throughout the EU accession process, the institutional set-up and effectiveness of the SAO was improved. In July 2010 the parliament passed constitutional amendments ensuring the existence and independence of the SAO. Simultaneously the SAO delivered for the first time a report to parliament on the government's statement on the budget execution.

In operational terms, no major difficulties were experienced by either the MoD Independent Department for Internal Audit as it only has an advisory role to the MoD, or by the SAO as a body in charge of external audit because it has access to all data (reports, records and all other relevant documents) subject to audit. Neither of these two bodies have reported any particular pressure from political parties or other bodies.

The State Audit Office has been given special attention during the years preceding EU accession, including granting it constitutional standing, and it is now one of the institutions working fairly satisfactorily.

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[11] For details see the latest 2012 State Audit Office Report at its official Website: http://www.revizija.hr/izvjesca/2012-rr-2012/izvjesce_o_radu_drzavnog_ureda_za_reviziju_za_2012.pdf

[12] For details on these standards, see the Official INTOSAI Web-page: http://www.intosai.org/en/issai-executive-summaries/view/article/issai-400-reporting-standards-in-government-auditing.html

[13] www.revizija.hr

3.3 Prevention of Conflict of Interest

Conflict of interest prevention is regulated by the Law on Preventing Conflict of Interest. The first law was introduced in 2003 under the title Law on Preventing the Conflict of Interest in Exercise of Public Office. It was amended six times afterwards. Since most amendments were introduced in the course of the EU accession negotiations, the EU influence through its conditionality mechanisms as well as the wider influence of the international community are unquestionable.

According to the Law, the declaration of assets is mandatory for public officials. In terms of this Law "officials" are a numerous group of high ranking senior officials ranging from the President of the Republic to senior civil servants, listed in article 3 of the Law. The obligation to declare assets also applies to spouses, partners and underage children of the officials. Ordinary civil servants are outside the scope of this Law and come under the Civil Servants Act. The regulations for the MoD do not differ from the regulations regarding other officials. All regulations on conflict of interest apply to all officials mentioned in article 3 of the Law.

Within 30 days of taking up their duties, officials shall report data on their property, permanent or expected income, and the property of their spouse and children, with the balance as of that day. They shall report variations at the end of their mandate, as well as at the end of the year if a major change has occurred in their assets. Otherwise the report is to be submitted every four years. Information on assets shall include inherited property and otherwise acquired assets. Data on inherited assets must include the type and amount of the inheritance and on the *de cujus* or decedent. Information on assets shall include data on acquired assets and income earned in any way (article 8) by conveyance *inter-vivos*. The report shall include data on acquired assets and sources of funds used to purchase movable and immovable property which the official is required to report under this Law. Officials are required to truthfully and fully answer questions about the property and the manner of its acquisition and funding.

The Commission of Conflict of Interest shall review and verify the data. The verification process is closed to the public. The Commission is required to publish the final results after the completion of the data review. The data verification has two forms: Provisional Administrative Clearance (on the formalities of the declaration) and Regular Checks (on the contents by crosschecking with the tax administration and other databases). Article 10 of the Law states that the Conflict of Interest Commission shall immediately request a written explanation from officials, accompanied by the necessary evidence, as soon as the data verification finds discordance and imbalance on the wealth reported by an official. The official is given a 15-day deadline to provide the requested data. If the official fails to submit a written statement to the Commission within these 15 days or fails to justify the discrepancy or imbalance, the Commission will take action against the official for violation of the Act and notify the competent authorities.

The asset declarations of officials are accessible online on the web site of the Commission.[14] The database includes detailed data on assets (description, market value, method of financing, property details, etc.). The asset declaration scheme is generally considered effective. The public character of the declarations is recognised as an effective tool of societal control and is freely used by the media.

The Conflict of Interest Commission consists of four members and a president. Commission members are appointed by parliament upon proposal of the Committee for Election, Appointments and Administrative Affairs. The appointment of a member of the Commission shall be based on strict qualifications defined by the Law. The competences of the Commission are also clearly defined by the Law, which also prescribes that the body should submit its report to the parliament no later than 1 July. Funds for the Commission are secured within the state budget, as defined by the Law. It is worth noting that the Constitutional Court unanimously rejected the clauses of the Law related to the powers of the Conflict of Interest Commission, but the Law has not yet been amended accordingly.

If an official holds shares or interests in a company that account for 0.5% or more of its capital, he/she is required to transfer his/her managerial rights stemming from this to a trustee who is not a relative (defined in the article 4). If a company where such managerial rights have been transferred to a trustee is to enter into business transactions with any central government authority, local or regional government unit, or company in which the state or any local or regional government unit holds any shares, it is obliged to notify the Commission about this. A business entity in which an official holds shares accounting for 0.5% or more of its capital may not enter into any transaction with the public authority where the official in question discharges his duties, nor may it act as a member of any tendering consortium or a sub-contractor in such a transaction. The same applies to any family member of an official if the family member acquired shares from the official during a period of 2 years prior to his election or appointment.

The media and civil society organisations (CSO's) act as "corrective mechanisms" concerning conflict of interest. But a recent example involving the minister of agriculture, who failed to transfer his shares and managerial rights as company director to a trustee even after a year in office, shows that there is room for improvement in understanding the importance of the provisions of the Law and respecting it in appropriate manner. The issue was uncovered by the media. GONG, a leading CSO in the field of combatting corruption, ran an effective public campaign on the issue.

While in public office, an official shall not hold another public office, unless otherwise provided by Law. Officials who professionally perform public duties cannot perform other regular and permanent jobs unless the Commission, upon prior request by the official, authorises it. Prior approval of the Commission is

[14] http://www.sukobinteresa.hr/posi/ws.nsf/wi?OpenForm&1

not required for scientific, research, educational, sporting, cultural, artistic and independent agricultural activities. Such authorisation is not required to earn income from copyright, patent and related intellectual and industrial property rights and for the acquisition of income and benefits arising from participation in international projects funded by the European Union, a foreign state, foreign and international organisations and associations. But officials are obliged to notify the Commission about their income regardless. Counselling legal or natural persons is not allowed. According to article 7 of the Law, it is forbidden to earn income by holding two public offices.

In general, officials may not be members of the governing body and the supervisory boards of companies, institutional councils and supervisory boards of extra-budgetary funds, nor can they perform management functions in businesses (article 14). Exceptionally, officials can be members of a maximum of two administrative councils or supervisory boards of extra-budgetary funds which are of national interest or are of special interest for the local and district (regional) governments. They can be members of boards of maximum two non-profit organisations, but shall not earn economic benefits from that activity. MoD officials and high ranking military personnel are prevented from working for the military industry.

Article 34 of the Civil Servants Act obliges civil servants to submit a written report to their superior on any financial or other interest which a civil servant, his spouse or partner, child or parent may have in the decisions of the state body in which the civil servant is employed. The superior shall examine the circumstances and notify the chief executive of the state body thereof. If these circumstances lead to a conflict of interest, the chief executive of the state body shall remove the civil servant in question from working on those operations or decision-making procedures.

A gift in terms of the Law is money, items (regardless of their value), rights and services received free of charge, which may lead to a relationship of dependency or create an obligation of the official to the giver. Under the Law, donations between family members, relatives and friends, and national and international awards, medals and prizes are not considered gifts. A gift may have symbolic value if below HRK 500.00 (some €70). An official shall reject a gift of symbolic value if it is cash. All gifts above HRK 500.00 in value are the property of the Republic of Croatia. In 2012 the media raised concerns about a case in which a former Prime Minister violated the Law on Preventing the Conflict of Interest. At that time she was a member of the political party HDZ (Croatian Democratic Union) which had offered her a brooch worth HRK 5 000. By law she could only keep a gift of a maximum value of HRK 500.00.

There is a one-year cooling-off period before public officials may enter into employment or a business relationships with companies, institutions or employers with which they dealt while in office. Nevertheless, the Commission may authorise an appointment or contract if the circumstances show that there is no conflict of interest. MoD officials are required to keep information obtained during their professional service in the MoD confidential. However, there are no restrictions on their post-employment. In practical terms, due to the

fact that there is a small defence industry, these matters appear to be of minor importance.

Article 28 of the Law on Preventing Conflict of Interest determines that the Conflict of Interest Commission is a permanent and independent state body in charge of monitoring conflict of interest (CoI). The Commission reports to parliament. The Commission can initiate a conflict of interest procedure and decide whether an official by act or omission has violated the Law. It has the power to adopt the Rulebook of Commission and checks the data from the reports on the assets of officials. It also produces guidelines and directives for officials in order to ensure effective prevention of conflict of interests, and cooperates with state bodies, NGOs and international organisations on preventing conflict of interest. The Conflict of Interest Commission is the only body in charge of preventing, detecting and sanctioning conflict of interest cases.

For violations of the Law, sanctions such as reprimand, suspension of payment of part of a net monthly salary or public announcement of the decisions of the Commission can be imposed. However, if it is appropriate in view of the nature of the violation, the Commission may order the official to remove the causes of conflict of interest within a certain period and if the official does so, it may suspend the procedure, or may complete it and impose other sanctions.

Most amendments to the conflict of interest regime were made during Croatian accession to the EU. This spells out the influence of the EU and its conditionality mechanisms on the prevention of conflict of interest regime. However, according to the 2012 European Commission report[15], the country needs to increase its efforts to establish a track record of substantial results in strengthening prevention measures, as well as to ensure that immediate measures are taken to put in place a strong and effective mechanism for preventing, detecting and sanctioning conflict of interest cases, based on thorough checks and deterrent sanctions[16]. It is apparent that there is no adequate internalisation of values. Numerous CoI scandals that happened recently (even after the EU accession) show that the system has not been developed yet.

Many breaches of the conflict-of-interest legislation stem from the lack of knowledge and understanding of the concept of conflict of interest itself. This is partly due to the legal and societal framework inherited from the former political system, where political power meant the right to rule, not the obligation to serve. Moreover, the key factor for tackling the conflict of interest issue is an adequate perception of its nature as opposite to just simply listing the articles of the respective legal act. The system should be designed to reinforce the impartiality of and therefore the citizens' trust in state authorities.

[15] http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf

[16] *Comprehensive Monitoring Report on Croatia - 2013*, available on the Official Website of the European Commission: http://ec.europa.eu/commission_2010-2014/fule/docs/news/20130326_report_final.pdf , p.35.

Over the last few years there has been stronger political will in this field. The Commission issued more opinions and sanctions last year than in the entire period of its existence (from 2003 onwards). This leads to the conclusion that there is more political resolve to uphold and enforce the conflict-of-interest legislation. The fact that all the highest political figures in the country were subject to Commission investigations (the President, the Prime Minister, Deputies of Ministers, etc.) also supports this claim. However, there is still significant room for improving the legal framework based on empirical analysis of its current implementation. It is unlikely that political elites will question in the near future the importance of the prevention of conflict of interest and downgrade the authority of the Commission. Citizens already perceive the current stage of the prevention of conflict of interest as a standard. There is support from the public and NGOs.

In summary, the asset declaration scheme is fairly effective. The public character of the asset declarations is recognised as an effective tool of societal control and is freely used by the media. The Conflict of Interest Commission, which is in charge of the enforcement of the conflict of interest legislation, is fairly strong and independent. However, recent cases of malpractice may give reason to ask whether the normative basis for the conflicts of interest regime is sufficiently internalised.

3.4 Transparency, Free Access to Information and Confidentiality

Article 38 of the Constitution guarantees the right to access to information held by any public authority. Limitations to information access must be proportionate and reasonable and defined by law. The regulations regarding access are specified by the 2003 Act on the Right of Access to Information[17], which was first introduced in 2003 and amended twice in 2010 and 2011. After the new changes were adopted in 2010, the Constitutional Court abolished the Act because of procedural deficiencies (lack of the parliamentary quorum required to pass it). It was sent back to the Parliament for its re-adoption. The main objective of this Act was to ensure the rights which are guaranteed by the Constitution. The Act was introduced through an emergency procedure within a "package of laws" adopted to align the legal system with that of mainstream EU member countries.

The exceptions to free access to information and their duration are specified in article 15 of the Act. These exceptions have to do with classified information, professional, business or tax confidentiality, and the protection of personal data. Likewise restrictions apply to cases under administrative or judicial investigation or to public decisions in the making. Public authorities shall permit access to those parts of the information which may be published in terms of the nature of their content. Information shall become available to the public after the reasons for keeping its confidentiality have lapsed. Information with

[17] *Act on the Right of Access to Information*, available at the Official Gazette Website; http://narodne-novine.nn.hr/clanci/%20sluzbeni/2013_04_48_914.html

limited access can become publicly available when the decision about its publishing is made by the person who might be damaged by its disclosure. The maximum period for its disclosure is 20 years after the information came into existence.

GONG, a Croatian NGO, has pointed out the inconsistencies between the Law on Access to Information and the Act on Personal Data Protection[18]. As amendments to the latter have not yet been made, the Agency for the Protection of Personal Data does not have the power to check possible abuses when state bodies label information as confidential. The public interest test and the test of proportionality regarding the confidentiality of data are conducted by the same body which classified the information originally. The written negative decision is to be issued by the Agency for Protection of Personal Data, and appeals lodged against this must be brought before the Administrative Court. This significantly reduces citizens' ability to effectively appeal against a negative decision by a state body and lengthens the entire procedure, making it also more costly for them.

Some positive developments can be observed during the past years in the defence sector. The amount of classified information is decreasing. Efforts to change the culture of secrecy in state security institutions are visible[19]. The challenge is addressed by both administrative and legal measures, as well as by the training and education of public servants and defence sector personnel.

There is no minister responsible for freedom of access of information issues. According to the Act on the Right of Access to the Information, the Information Commissioner's Office is in charge of proposing legal initiatives related to the right of access to the information (article 35 of the Act) to the government.

The Commissioner was appointed in October 2013. The office is under-staffed and it lacks appropriate funding. These factors prevent it from fully meeting its responsibilities. The current annual budget of about €200 000 is, according to GONG, more than four times smaller than what is needed for the office to function properly. The state budget projections for the next two years show no indication of an increase in funding. This actually means that by leaving the office underfunded, the government is flouting the law.[20]

Information may be demanded by submitting an oral or written request to the competent public authority (article 18 of the Act). If the request is submitted orally or over telephone, it must be noted in writing, and if it is made electronically, it will be considered as a written request. A written request shall

[18]*Godišnji izvještaj GONG-a o provedbi ZPPI - Izvještaj za 2011 (Annual GONG Report on the Implementation of the Law on Freedom of Access to Information)*, GONG Website; http://www.gong.hr/hr/?PageID=219.

[19]BCSP/DCAF (2012), *Almanac on Security Sector Oversight in the Western Balkans*, Belgrade, p. 83.

[20] Info gathered at an interview with GONG experts and from several other independent defence expert and journalists. GONG is a leading NGO and watchdog in Croatia, dealing predominantly with wide range of issues related to the transparency and integrity of state administration. – Zagreb, 24.01.- 28.03.2014.

contain: the title and seat of the public authority to which the request is addressed, the data important for the identification of the information requested, the name and surname and address of the physical person making the request, the company, or title of the legal person and the domicile. The applicant is not obliged to give the reasons for requesting access to the information.

The requested information should be made available within no more than 15 days of the day the request is submitted. As an exception, this deadline can be extended for another 15 days for justified logistical reasons as specified in article 20 of the Act. Access to information is free of charge, but the applicant may be obliged to pay for the material costs of handling the information according to the criteria set up by the Commissioner.

An applicant may submit an appeal to the Information Commissioner against a decision by a public authority within 15 days of the date of issue of the decision. The appeal can also be submitted in the case of administrative silence. The appeal against the decision of the Information Commissioner opens the way to appeal before the High Administrative Court. The Court has to take a decision about the appeal within a term of 90 days.

The quality of the responses to information requests is checked by the administrative inspectors, including those in the MoD. The inspectors of the Ministry of Public Administration conduct yearly oversight of all documents related to requests for free access to information. In general, the quality of responses by the MoD is satisfactory. The only recommendation made in the last inspection was that administrative documents containing these answers should be written more specifically.

Before the new Act on the Right of Access to Information was adopted in February 2013, the Personal Data Protection Agency was in charge of reviewing the decisions related to the access to information. The Agency is an independent institution, with powers established by the Act on Personal Data Protection. The main responsibilities of the Agency are: supervising the implementation of personal data protection; indicating the violations observed during personal data collecting; compiling a list of countries and international organisations which have adequately regulated personal data protection; resolving requests to determine possible violations of rights guaranteed by the Act; and maintaining the Central Register. The Agency does not have adjudicatory powers.

According to the new Act, the Office of Commissioner for Information will take over the role of the Personal Data Protection Agency on information access-related issues, but since the Commissioner has been appointed only recently and is encountering serious obstacles (see above), doubts remain about its performance in the near future.

The Information Commissioner is appointed by the Parliament for a five-year term with the possibility of re-appointment and he is independent and accountable to the parliament. The conditions for appointment and dismissal are defined by articles 36-38 of the Act. The Parliamentary Committee on the

Constitution, Standing Orders and Political System publishes a public call requesting candidates for the office of Information Commissioner. The Committee, with the prior opinion of the Committee on Information, Computerization and the Media, selects at least two candidates for the office of Information Commissioner among applications from the public call. These candidates shall be submitted to the plenum of the Parliament.

Persons who can be appointed as Information Commissioner have to fulfil certain conditions, such as Croatian citizenship, law degree or degree in social science, at least ten years of practice in a relevant profession, be outstanding experts with recognised ethics and a solid professional reputation and experience in the field of human rights protection, media freedom and democracy promotion, a clean criminal record, not implicated in any penal procedure and not affiliated to any political party.

The parliament (article 38) can dismiss the Information Commissioner before the expiry of the term if he does not fulfil the provisions of article 37 of the Act; if he is prevented from fulfilling his obligations for more than six months; or if he does not fulfil his obligations in accordance with the Act. The parliament may dismiss the Information Commissioner in line with the previous opinion of the parliamentary Committee on Information, Computerization and the Media.

The Civil Servant Act applies to the employees of the Commissioner Office, which was established in late 2013. By law, the employees of the Personal Data Protection Agency who worked on the right of access to information issues became employees of the above-mentioned office. It means that there are no shortages of human resources. Salaries, premises and equipment are not considered as problematic. But the office suffers from insufficient financial resources, which represents a serious obstacle for its adequate performance.

Concerning the defence sector, CSO's have often raised concerns about the lack of transparency of defence budgets and various procedural irregularities. International organisations have played an important role in that regard, using accession frameworks and conditionality mechanisms to push for more transparency. In the 2013 Defence Procurement Plan, which was presented in February 2013, approximately 9% of the defence budget was intended to be spent on secret items. In comparison with previous years, the expenditure on secret items was reduced, given that in 2011 the amount was HRK 887 million, in 2012 approximately HRK 840 million whereas in 2013 the amount was HRK 154 million.

The freedom of access to information is frequently addressed by civil society organisations, but strangely enough, less so by the media. Intense social campaigns are conducted both by domestic and international CSOs such as GONG and Transparency International. The two most frequently raised issues are: a) the low level of social awareness on the right to access information and hence the low number of requests to public authorities in a legally prescribed way (e.g. not anonymous); b) the supply side and behaviour of persons in charge of providing the requested information, including the number of unjust refusals of information. The access to information has been improved in recent

years, however, as a consequence of relentless pressure from the European Commission, but it is not yet embedded into the administrative and political cultures.

Even though today freedom of access to information is guaranteed by the Constitution and specified in detail by the Law on Free Access to Information, the resistance to its implementation is strong. Public authorities often see it as an additional and time-consuming burden. They use the current financial constraints as an excuse to ignore information requests through "administrative silence" (more than 60% of the cases, according to the Commissioner). However, the MoD Department for Public Relations pointed out that ignorance and unawareness can lead to breaching the law, but there were no conscious and deliberate violations of freedom of access to information.

The access to information is constitutionally guaranteed, but inertia and resistance weaken the implementation of the legal provisions. Furthermore, inconsistency between the Act on Access to Information and the Act on Personal Data Protection plays a negative role. The public interest test and the test of proportionality regarding the confidentiality of data are conducted by the same body which had classified the information previously. The Information Commissioner's Office is a new institution in charge of the enforcement of the Access to Information Act. The office is under-staffed and lacks appropriate funding. These factors prevent it from fully meeting its responsibilities. The state budget projections for the next two years show no prospect of increasing the funds. However, some positive developments can be observed during the past years in the defence sector. The amount of classified information is decreasing. Efforts to change the culture of secrecy in state security institutions are visible.

4 Policies under the Control of the Executive

4.1 Internal Financial Control

The legal framework for internal financial control is contained in the Budget Law, the Law on the System of Internal Financial Control and Ordinance on Internal Revision in Budgetary Bodies and other specific regulations (Code of Ethics, Charter of Internal Auditors, Manual for Internal Auditors, etc.). With the introduction of the new laws the system has been synchronised and adjusted to internationally recognised standards (primarily EU ones), as well as finally structured as a comprehensive base for control, audit and management. The internal financial control and audit in the state bodies are coordinated by the Directorate for Financial Management, Internal Audit and Supervision of the Ministry of Finance. The Department establishes and develops a comprehensive system of internal financial control in the public sector.

Considering the fact that the EU and its conditionality mechanisms requires a candidate country to take measures and adopt legal frameworks in line with EU standards, Croatia as well as other countries first had to implement various laws and regulations towards raising the effectiveness of state administration. Despite the country having concluded the EU negotiation process, according to the report of the European Commission further efforts are required in the field of *financial control* in particular to consolidate the overall functioning of the Public Internal Financial Control and external audit at central and local level.

Concerning the defence sector, according to article 19[21] of the Regulation on the Internal System of the MoD, there is an Independent Department for Internal Audit. It carries out internal audit following the methodology designed by the Ministry of Finance in accordance with the professional standards and principles of internal auditing and the code of ethics of internal auditors. There are seven employees in the Independent Department for Internal Audit. All employees have to undergo a professional training programme delivered by the Ministry of Finance to become a certified public sector internal auditor. Successful trainees receive a certificate allowing them to engage in internal auditing in the public sector.

The legal framework does not provide automatic recovery mechanisms of amounts lost because of irregularities or negligence. However, if the irregularity is pending judicial trial, the accused may be fined and the sentence may include the return of the amounts lost because of irregularities or negligence. This has been the case in the "Trucks affair" (see below), where the minister and his assistant had to return around HRK 10 million (approximately €1.4 million).

[21] *Regulation on the Internal System of the Ministry of Defence*, available at the Official Website of the Ministry of Defence; http://www.morh.hr/images/stories/morh_sadrzaj/pdf/uredba_o_unutarnjem_ustrojstvu_290212.pdf.

Defence Inspectorate

In July 2012, upon recommendation of the Minister of Defence, a new Inspector General (IG) was appointed. According to article 85 of the Defence Law, the IG is accountable to the government and the minister of defence. Article 88 defines the competences of the Defence Inspectorate: a) reviewing defence-related documents, apart from the Croatian Armed Forces (CAF) Plan of Use; b) examining military locations, military facilities and material-technical resources used by the MoD and the Armed Forces; c) proposing the removal of non-compliance, enforcement of measures and actions in accordance with the plans and other documents; d) proposing the suspension of measures and actions that are not in accordance with the law, plans or prescribed defence measures; e) ordering those in charge of defence preparations to file reports to the Inspectorate; f) ordering the suspension of proceedings and actions that can endanger lives and properties; g) temporarily seizing documents or objects that can be used as evidence in disciplinary, misdemeanour, criminal or other proceedings and whose seizure would not hamper the regular fulfilment of tasks or cause distortion to combat readiness; h) submitting proposals for initiating disciplinary, misdemeanour, criminal or other proceedings and proposing incentives in accordance with specific regulations.

According to article 85 of the Defence Law, the government appoints the IG upon recommendation of the Minister of Defence for a four-year term without re-appointment. The Law does not define the selection process and conditions for his appointment or dismissal or for his officials. However, according to article 87, inspectors have to sit a professional examination prior to taking up the post of inspector. The dismissal of an IG on corruption charges just after 6 months in office and the non-appointment of a replacement for more than one year demonstrates the nature of the system and signals serious deficiencies or lack of political sensitivity for such an important issue.

The composition of the IG organisation is sufficient, but there are excessive wage differences between military and civil personnel. For instance, civil personnel have salaries equivalent to the rank of non-commissioned officers while military personnel are paid in accordance with their ranks. Moreover, the IG, according to article 89 of the Defence Law, submits inspection reports to the Defence Minister and chief of the Armed Forces General Staff.

However, as the testimony of the former IG (Gen. Milicevic) at the trial against a former minister and his state secretary clearly showed[22], there are various ways in which politicians in the defence sector can thwart the investigations of the IG. Whilst being legally independent, the efficiency of the IG in practice very much depends on the will of the minister. In other words, because of the very nature of the institutional setting it may be very difficult for the IG to

[22] *Afera kamioni*: *teške optužbe Joze Miličevića*, http://obris.org/hrvatska/afera-kamioni-teske-optuzbe-joze-milicevica/

satisfactorily perform its duties in an independent manner. Therefore, while the IG is independent *de iure* ("on paper"), it takes political will to protect *de facto* (in practice) its independence.

According to the Annual Report on Defence[23], the IG conducted 35 inspections in 2013 while 38 inspections were planned. The IG is in charge of inspections and technical assistance, but investigation comes under the jurisdiction of military police. Therefore, the IG can deliver guidelines and make suggestions as to how to avoid the repetition of mistakes and can carry out supervision, but the military police, military disciplinary court and State Attorney are in charge of sanctions.

The IG should be well respected by politicians given its institutional competences and authority in the field of defence, especially because the IG supervises the implementation of legislation on the evaluation of preparedness of Headquarters, command, units and institutions of the Armed Forces. However, there is an overarching impression that the media are not interested in its work and the overall public is not very aware of the role the IG plays in the defence sector, and consequently the entire state administration itself. In the ″Trucks affair″, in which former Minister of Defence Berislav Rončević was accused of procuring trucks at a high price causing a loss to the state budget of more than HRK 10 million, the former IG testified and indicated that he had informed the Minister of Defence about irregularities related to the trucks procurement. After the IG made a report, Rončević disagreed with it and asked him to change it, which he did.[24] These facts foster the impression that regardless of the fact that the IG was independent, the influence of politicians was unquestionable at that time.

According to article 9 of the Book on Procedure Regulations of the Defence Inspectorate, the IG is not obliged to announce the inspection performance but most of the inspections are in keeping with the annual plan which the Defence Minister has to approve. Within the IG there are five departments: 1) Military Defence Inspection; 2) Civil Defence Inspection; 3) Human Resource Inspection; 4) Material Resource Inspection; and 5) Financial Resource Inspection. These departments supervise some specific areas of the MoD, but they are also entitled to oversee other state bodies closely connected with the MoD. There is no "hotline" associated with the IG.

According to the Book on Procedure Regulations, the Inspector General has to inform the Minister of Defence on a regular basis about the inspections carried out. Subsequently inspectors have to submit reports to their supervisors with relevant facts and measures taken and proposed. The Defence Inspectorate can ask for professional help from other state bodies. Annual reports on defence preparedness are publicly available, but reports on the inspections are not.

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[23] *Annual Report on Defence*, the Official Website of the Croatian Government, https://vlada.gov.hr/hr/content/%20download%20/295131/.../152.%20-%2019.pdf.

[24] *Trucks affair: Miličević was persecuted because he did not want to lie*, The Official Website of Newspapers Free Dalmatia (we proposed the original name: Slobodna Dalmacija), http://www.slobodnadalmacija.hr/Hrvatska/tabid/66/articleType/ArticleView/articleId/97337/Default.aspx.

With the new 2013 Defence Law, the IG system was significantly improved but there is always room for progress, especially in the implementation of the inspection's findings. When failures are detected, the defence system should be able to react faster. This would undoubtedly improve its capacities and capabilities. While previous examples (the Trucks affair) revealed that the independence of the IG was questionable, the consolidation of the system in the last 5-8 years and its new role and performance clearly show a different trend, which means that the IG independence is now better guaranteed.

Public internal financial control systems need to be reinforced. The professional autonomy of the Defence Inspector should be better protected so he will be in a better position to refuse compliance with illegal or ethically dubious political orders. Risks of politicisation of both the public internal financial control function as well as that of the inspectorate should be reduced.

4.2 Public Procurement and Asset Surplus Disposals

4.2.1 Public Procurement

Public procurement is regulated by the 2011 Public Procurement Act. It encompasses any public procurement funded by public funds. The 2011 Act was amended twice in 2013 and once in 2014. Exceptions to that general rule are standardised and contained in articles 10 and 11.3.The EU conditionality had a decisive impact on the development of the public procurement system. Nevertheless, secrecy and exemptions in general represent a big concern to CSO's and independent researchers such as GONG. According to the State Audit's findings, some 2/3 of the defence budget is, if not secret, not entirely transparent.[25] The MoD itself shows different figures, significantly lower, for the period 2013–2014. According to the ministry, the adoption of the new Regulation on Public Procurement for Defence and Security Purposes[26] significantly decreased classified defence-related public procurements (2013 – 9% and 2014 – 7% of entire procurement plan), with the aim of increasing the overall transparency of the process.

A previous 2001 Public Procurement Act did not include a specific article on defence and security procurement, but excluded "arms, military equipment and special equipment" as well as goods related to state, military or official secrets from its scope of application. The 2011 Act contains provisions on defence and security procurement (article 11). As previously mentioned, the 2011 Act shall apply to public procurement contracts awarded by contracting authorities and entities in the field of defence and security, with the exception of the contracts listed in articles 10 and 11.3. A special regulation on procurement for defence and security includes: the supply of military equipment, including any parts,

[25] Data provided by CSO representatives (GONG).
[26] *The Regulation on procurement for defence and security*, Official Gazette Website, http://narodne-novine.nn.hr/ default.aspx.

components and/or subassemblies thereof; the supply of sensitive equipment, including any parts, components and/or subassemblies thereof; works, supplies and services directly related to the equipment for any and all elements of its life cycle; works and services for specifically military purposes; sensitive works and sensitive services.[27]

It is difficult to estimate the exact percentage of single source defence purchases. This issue is deemed problematic by relevant CSO's and independent defence experts. The Public Procurement Act (article 18) exempts from competitive procurement the purchase of assets of a value of less than HRK 200,000.00 (some €26,390.00). This may lead to slicing bigger procurements into smaller portions, a malpractice which may be conducive to illicit negotiations and corruption. Transparency International Croatia[28] estimates a moderate risk of corruption in the defence sector, especially in public procurement.

The public procurement authority is the Public Procurement Directorate within the Ministry of Economy (MoE) and is responsible for drafting relevant legislation on public procurement and oversight of its implementation. The second most important public procurement institution is the State Commission for the Supervision of Public Procurement Procedures.[29] The Act relating to this Commission, which was passed in 2003, defined it as an autonomous and independent national body of second instance with jurisdiction over complaints on public procurement. It is a quasi-judicial body of five members, which adjudicates in public-procurement-related matters. The abstention of members when adjudicating cases is not legally permitted. The Commission members are selected in the same way as judges and are subject to similar incompatibilities and conflict of interest regulations. The Commission is supported by a secretariat including expert services and a general administrative apparatus. Strangely enough, the secretariat is excluded from civil service status and is governed by labour law.

Public procurement in the MoD is managed by an internal Independent Public Procurement Department. Its work is regulated by the 2011 Public Procurement Act, the Regulation on Public Procurement for Defence and Security and the Instruction on Public Procurement Procedures in the MoD and Armed Forces from 2013, which regulate public procurement procedures excluded from the application of the above-mentioned Act (Art. 10, 11.3 and 18) and Regulation.

The 2013 official procurement plan of the MoD was made public.[30] However the published part of the document does not provide any methodological information on its preparation due to the fact that it has been precisely defined by the Public Procurement Act (PPA), or information about the ratio of

[27] *Ibid.*
[28] The Official Website of the Transparency International, available at: http://www.transparency.org/news/pressrelease/70%20_of_governments_fail_to_protect_against_corruption_in_the_defence_sector.
[29] http://dkom.hr/default.aspx?id=36.
[30] *Ministarstvoobrane – plan nabave 2013* (In Croatian), Official MoD Website: http://www.morh.hr/images/stories/morh_sadrzaj/pdf/plan_nabave_2013_ver_01.pdf.

published and unpublished procurements (although this data is publicly released at the end of every year when the MoD presents its procurement plan for the next year to the Parliamentary Defence Committee, National Council for Monitoring Anti-Corruption Strategy Implementation and the media). The plan includes information on the type of procured goods, planned initialisation and end of the procurement procedures, their expected value including VAT and so forth. The Independent Public Procurement Unit is responsible for the implementation of the plan. The procurement plan (unclassified) is easily accessible on the MoD official web-site.

The total number of staff responsible for procurement in the MoD is 33 (figures gathered at the interview with representatives of MoD's Independent Sector for Public Procurement). 28 of them are civil servants and 5 of them are military officers. The educational background is diverse (lawyers, economists, different kinds of engineers, etc.), depending predominantly on the branch of procurement they are dealing with. Out of 28 state administration employees, 19 have a university diploma, 2 have a college diploma and 7 have a high-school diploma. The optimal number of employees would be double, but this is unlikely to happen due to financial constraints and cost-cutting requirements. PPA regulations stipulate that a certificate is required in order for an employee to be permitted to deal with public procurement. The certificate has to be re-validated every three years. Obtaining the certificate is subject to strict procedures with the obligation to sit examinations and undergo training.

The question of technical specification in tenders is regulated by the Act in order to promote competition and avoid single supply sources. Article 81 determines that the technical specifications shall afford equal access for bidders and remove unjustified obstacles to competition. The technical specifications must enable the submission of tenders reflecting the diversity of technical solutions.

For the award of a public contract or the conclusion of a framework agreement, the contracting authority may freely choose either an open or a restricted procedure (article 25). In special cases and under circumstances specified in the Act, the contracting authority may use a negotiated procedure with or without prior publication. In special circumstances stated in the Act, the contracting authority may also use a competitive dialogue.

According to article 7, competitive procedures shall apply to the award of contracts on public works or services directly subsidised or co-financed by the contracting authorities above 50% of their value. Concessionaries of public services (article 9) are governed by the Public Procurement Act when contracting services for the concession. As stated, procurements with an estimated value below HRK 200,000.00 (approximately €26,390.00) are excluded from the Act.

In relation to bidding at the MoD or the armed forces there is no explicit legal reference to standards such as compliance programmes and business programmes on anticorruption required from companies or their subsidiaries and subcontractors. However, there are some clauses in the Act that call for

non-discrimination and not favouring any specific economic actor and so forth, mentioned in articles 80 to 83.

Part 6 of the Act deals with "misdemeanour offences" where administrative sanctions are defined in detail. Part 4 of the Act defines the appellate procedure before the State Commission for the Supervision of Public Procurement Procedures. There also are provisions on the debarment of entities that have breached the rules in previous contracts. They are completely barred from concluding new contracts.

The publication of the procurement bid is up to the contracting authority. This may apply special procedures and limit public accessibility. The Act foresees 10 kinds of procurement notices, as well as several publication levels. All public procurement notices equal to or above HRK 200,000.00 shall be published in the Electronic Public Procurement Classifieds of the Republic of Croatia, possibly accompanied by prior information notices on the intention to award a contract. A contracting authority which has awarded a public contract or concluded a framework agreement shall send a contract award notice for publication no later than 48 days after the award of the contract or the conclusion of the framework agreement. However, this is not always complied with.

The time allowed for bidders to prepare their proposal varies. To establish deadlines the contracting authority shall take into account the complexity of the contract and the time required for drafting the proposal. The usual deadline for submitting tender proposals is between 15 and 40 days. Moreover, the Act specifies time limits to request additional or complementary information from bidders.

At the MoD there is a Book of Regulations prepared jointly by the MoD and MoE on offset agreements where all the details are strictly defined. The Ministry of Economy is responsible for conducting offset agreement procedures for all sectors, defence included. CSO's argue that the offset agreements' oversight mechanisms are weak and entail considerable corruption risks.

Tender documents shall be drafted in a way which is clear, comprehensive and unambiguous, and which enables the submission of comparable tenders. According to the Act, the content, preparation and handling of tender documents shall be prescribed by the government in the Regulation on the methodology for drafting and handling tender documents and tenders.[31] This 28-page long document specifies i.a. the drafting methodology, contents, quantity of the subject-matter of procurement, cost estimate, the manner of

[31] *Regulation on the methodology for drawing up and handling tender documents and tenders*, The Portal of Public Procurement, available at: http://www.javnanabava.hr/userdocsimages/userfiles/file/ZAKONODAVSTVO%20RH/ENGLESKI/PODZAKONSKI/JAVNA%20NABAVA/2012/Regulation%20tender%20docum_tenders%20OG%2010-2012.doc.

setting a tender price, and the manner of setting the minimum levels of suitability of candidates or tenderers.

The Act does not establish a tendering committee, but an advisory ad hoc jury. The evaluation and examination of tenders are completed by the contracting authority on the basis of the criteria outlined in the Act. The contracting authority shall adopt the award decision based on the results of the examination and evaluation of tenders,. The competition notice must include information on the jury that will evaluate the proposals (including names of the jury) and indicate whether the jury's decision is binding on the contracting authority. Moreover, the Act provides general regulations regarding the jury. It shall be composed exclusively of natural persons who are independent of the participants. Additionally, where particular professional qualifications and experience are required from participants, at least a third of the members of the jury shall have the same or an equivalent qualification and experience. The jury shall be autonomous in its decisions or opinions. The jury shall examine the plans and projects submitted by the candidates solely on the basis of the criteria indicated in the competition notice. The jury shall record its ranking of projects in a report made according to the merits of each offer. The report shall include the jury's remarks and any points which may need clarification. The report shall be signed by all members of the jury. Confidentiality must be observed until the jury has reached its opinion or decision. Participants may be invited, if need be, to answer questions which the jury has recorded in the minutes in order to clarify any aspects of the offer. Completed minutes shall be drawn up from the dialogue between jury members and bidders. The decision, opinion, report and minutes shall be submitted to the contracting authority for further procedure.

The award decision is made by the contracting authority, but in defence-related procurement the Defence Committee of the parliament gives an opinion prior to initialising any defence-related procurement procedure with a value of more than 5 million kunas (article 6 of the Law on Defence).

According to article 180 of the Act, the contracting authority or entity shall submit all documents concerning procedures and contracts to the central state administration body responsible for the public procurement system and to the European Commission at its request and within stated deadlines. This obligation includes every public procurement procedure, qualification system, competition, awarded contract, framework agreement, or cancellation of a public procurement procedure.

The selection of bidders shall guarantee the quality of deliverables. The Act strictly defines reasons for selection criteria and exclusion of economic operators: mandatory and other reasons for the exclusion of candidates and bidders, financial standing, legal and business capacity, technical and professional ability, quality assurance standards, environmental management standards, different types of tender guarantees and so forth. There is no enhanced integrity procedure in procurements of high value.

The 2011 SAO Report[32] on the audit conducted in the MoD stated that the 2009 and previous audits showed irregularities in setting liabilities in purchase orders, their recording and the monitoring of contract implementation. The minister reacted by issuing in January 2010 a procurement guide for the Ministry and the Armed Forces. The 2011 SAO Report stated that the MoD had adopted the SAO recommendations and continued developing internal financial control in keeping with the Public Internal Financial Control Act. The MoD instructed the Independent Internal Audit Office to be more focused on the activities within the Ministry. In accordance with the Fiscal Responsibility Law[33] it plans to appoint staff responsible for the execution of particular goals, programmes and activities.

The State Commission for the Supervision of Public Procurement is competent to hear appeals against the procedures in awarding public procurement contracts, concluding framework agreements and designing competitions. The appellate procedure is based on the principles of legality, efficiency, cost-effectiveness and the adversarial nature of the procedure. Parties in the appellate procedure are the appellant, the contracting authority or entity, and the selected bidder. Parties shall present all facts grounding the appeal and propose evidence supporting these facts. The appellant shall document the procedural preconditions for lodging an appeal, including infringements of procedure and/or substantive law, referred to in the appeal.

The State Commission does not review the facts or the legal situation which were the subject of a previous appeal in the same procurement procedure. The appeal shall be lodged in writing within time limits specified by the Act. The parties may propose an oral hearing and present reasons for such a hearing, in particular when the aim is to clarify a complex set of facts or a complex legal issue. The oral hearing shall be open to the public, but the session can be held behind closed doors for reasons of confidentiality and security. The appellant shall pay a fee for initiating the appellate procedure amounting to between HRK 3 000 and HRK 27 000 (€400-3600). An administrative dispute against a decision of the State Commission may be initiated before a competent administrative court.

Not only have the media and the NGO's been concerned about the public procurement practices in the MoD, but the late President (Stjepan Mesic) also continuously questioned the procedure of purchasing military trucks under the former defence minister Berislav Roncevic. At that time both the MoD and the government were ignoring the issue. In 2009, The Office for the Suppression of Corruption and Organized Crime issued an indictment against former defence minister Berislav Roncevic and his financial assistant Ivo Bacic because of the case known as the "Trucks Affair". They were accused of purchasing trucks from a company, "Eurokamioni", whose offer was 10,000,000 HRK higher than

[32]*Izvjesce o obavljenojreviziji. Ministarstvoobrane 2011*, The Official Website of the State Audit Office:http://www.revizija.hr/izvjesca/2011-rr-2011/01-korisnici-drzavnog-proracuna/11-ministarstvo-obrane.pdf

[33]*Fiscal Responsibility Law*, Official Gazette Website: http://narodne-novine.nn.hr/clanci/sluzbeni/ 2010_12_139_3530.html

the offer of the German company MAN. Berislav Roncevic lost his parliamentary immunity and the court sentenced the former minister to four years in prison and his assistant Bacic to two years, but the charges against them were dropped in the 2nd instance court proceedings.

According to the MoD's Public Procurement Department, the situation is "substantially different" now because the last phase of the EU accession process has dramatically changed the procurement procedures and cleansed them from irregularities of previous periods. The MoD's Public Procurement Department claim to have established "an open and transparent" system when responding to the questions of the journalists and CSO's in cooperation with the PR Department. Complaints are predominantly received from "those who have failed to get the contract and therefore are dissatisfied or irritated with the system". The international community and the EU in particular have had a paramount effect on the establishment and development of the legal and administrative arrangements for public procurement. The conditionality mechanism within the EU accession process has proved to be of the utmost importance.

Intentional breaches of the public procurement legislation are diminishing, given the continuous efforts of the state administration in the last five years or so to make the system as transparent as possible and to harmonise the new legislation adopted in 2011 with the EU's *acquis*. Nevertheless, there are some lingering problems that obviously make the implementation of the afore-mentioned legislation difficult. The public procurement IT system should be improved. The system suffers from inertia and coordination difficulties. In addition, training of state administration employees responsible for public procurement can always be improved.

In summary, the exceptions to the general procurement rules are too numerous when it comes to the defence sector. Single source procurements are used often and may not always be fully justified. Corruption risk in defence procurement is not sufficiently prevented from occurring. The public procurement situation appears to have been improving recently, mainly at the initiative of the European Commission, and the aim is to minimise corruption risks including in the defence sector.

4.2.2 Military Asset Disposal

The disposal of public assets is regulated by the 2013 Act on Public Asset Disposal[34] and lower level legal acts, easily accessible at the web-site of the State Office for Asset Disposal[35]. This Office plays a crucial role in asset disposal, managing shares and stakes of companies and property, excluding

[34] *Zakon o upravljanju u raspolaganju imovinom u vlasništvu Republike Hrvatske,* The Official Website of the State Office for Asset Disposal: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_07_94_2121.html.

[35] *Asset Disposal Legislation of the Republic of Croatia*, Official Website of the State Office for Asset Disposal: http://www.duudi.hr/o-drzavnom-uredu-za-upravljanje-drzavnom-imovinom/zakonski-akti/zakonski-dokumenti/

agricultural and forest land, public water resources, and real estate used for the preservation of the Croatian sovereignty. The State Office for Asset Disposal drafts strategic plans. The most recent encompasses the period 2013–2015. The strategic plans are easily accessible on the Office website.

The State Office for Asset Disposal holds exclusive authority and responsibility for initiating a tender procedure or establishing a committee for asset disposals which is composed of representatives of various administrative units, depending on the type of asset. The MoD participates in the process only when defence-related assets are at stake. All participants in the procedure have to go through various "quality filters" which guarantee their professional and moral credentials. The prevention of conflict of interest is legally regulated by banning those with family relations or business interests from participating in the procedure. Complete and sufficiently detailed written records of each asset are kept in the State Registry of Assets as prescribed by article 47 of the Act, which was established under and is operated by the State Office. The entire register should be available on the website of the State Office by the end of year 2014.

Article 54 of the Act on the Management and Disposal of Assets determines that the final disposal decision is made by the head of the State Office for Asset Disposal if the market value of the assets is lower than 1 million HRK (some €130 000). In case of higher values, from 1 to 100 million HRK (€130 000-13 million), the final decision is made by the Committee for Disposal of Assets, upon recommendation of the State Office for Asset Disposal. Decisions on disposal of very high value assets is made by the Government, upon recommendation of the State Office.

The procedure is detailed in the Strategy of Asset Disposal[36] and in the Plan for Asset Disposal[37]. The system is organised in a way that obliges all interested parties to adhere to it. For example, in order for a contract or framework agreement on asset disposal to be valid, it has to be given "a legality clause" (*klauzula pravomocnosti*) by the State Prosecutor's Office, which does a thorough legal check of every detail of the contract or agreement prior to issuing it.

All funds drawn from asset disposals belong to the state budget (the Treasury) and not to any particular ministry's budget, including that of the MoD. Decisions on their spending follow a needs analysis at the state level. The State Office for Asset Disposal submits all data about disposed assets to the Ministry of Finance, as per the Government's Annual Plan.

The MoD has specific policies and plans for asset disposal. They are regulated by the Ordinance on the Management of the Assets of the Armed Forces of the

[36] *Strategy of Asset Disposal 2013–2017*, Offical Website of the State Office for Asset Disposal: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_76_1532.html.
[37] *Plan for Asset Disposal 2014*, Offical Website of the State Office for Asset Disposal: http://narodne-novine.nn.hr/clanci/sluzbeni/2014_04_53_1005.html.

Republic of Croatia[38], which introduces regulations regarding procurement from national and international markets, manufacturing, donation and sponsoring, mobilisation of material goods, as well as regulations regarding wartime and salvage. The assets of both the Armed Forces and the MoD fall within the scope of the Ordinance. The regulation establishes definitions, norms, quality control, classification of the assets, competences and responsibilities, modernisation and development.

The Directorate for Material Resources of the MoD is responsible for the development of plans and programmes on asset quality control, as well as for collecting and processing data on them. It also participates in the development of strategic planning documents. The Directorate is headed by an assistant minister. It is structured in two sectors: a) Armament and Property, b) Environmental Protection and Construction. The first is further divided into two departments: the Equipping and Modernisation Department and the Department for Support to Equipping and Modernisation. The second Sector includes Property Department, Contracting and Environmental Protection Department, Reception and Quality Control Department and Support Department. According to the Ordinance, the Directorate plans, organises and carries out tasks related to asset disposal, defines and classifies the asset, designs norms and criteria related to the asset, executes the procurement and so forth.

According to the 2013 SAO Report[39], the MoD has not been criticised because of disposed assets, but because of the fact that apartments, garages, business and military real estates were not properly registered. This absence of criticism concerning asset disposals is seemingly due to the fact that the MoD does not manage the assets since this is the task of the State Office. The MoD only uses state property, it does not own it. Misconduct regarding the use of facilities is practically impossible due to the fact that all the facilities are handed over to MoD only after a rigorous procedure of needs analysis and different procedural controls.

The media and CSO's played an important role in public awareness-raising about misconduct in the field of asset disposal. One major concern has been the way in which the privatisation of assets has been conducted. While it is difficult to prove corruption, some CSO's such as GONG and CMS argue that "adjustments to private interests" have frequently taken place in asset privatisation procedures. They underline that, while the procedure seems to have been respected, it is difficult to actually detect the ownership structure of companies buying state assets, which makes the entire process rather opaque. While the disposal of immovable assets seems difficult to track, movable assets (weapons, ammunition, etc.) are practically not traceable at all, which opens opportunities for misconduct.

[38] *Pravilnik o nacinu materijalnog zbrinjavanja OS RH*, The Official Website of Business Advisor : http://www.poslovni-savjetnik.com/propisi/obrana-i-vojna-obveza/pravilnik-o-nacinu-materijalnog-zbrinjavanja-oruzanih-snaga-republike.

[39] *Report of the State Audit Office*, The Official Website of the State Audit Office: http://www.revizija.hr/izvjesca/2013-rr-2013/korisnici-drzavnog-proracuna/ministarstvo-obrane.pdf.

In summary, the disposal of military assets as well as of any other public asset does not present major problems. These disposals are managed centrally by a State Office for Asset Disposal under the Ministry of Finance. Nevertheless, the disposal of military assets, especially movable assets, is difficult to track down − a fact which creates corruption risks. Moreover, the control mechanisms over privatisation of immovable state assets are not fully adequately regulated, which also creates corruption risks that should be prevented more effectively.

4.3 Human Resource Management

The current Civil Servant Act (CSA) was adopted in 2005 and subsequently amended seven times. The last version was published in 2012. The current Military Service Law was passed in 2013.

The general civil service legislation applies to civil servants and government employees. According to article 3 of CSA, civil servants are persons who perform information technology tasks, general and administrative tasks, planning, financial and accounting tasks and similar tasks in State bodies. Pursuant to the same article, government employees are persons in State bodies who perform supplementary and technical work and other tasks required for a timely and quality performance of tasks under the jurisdiction of State bodies.
The conditionality of the accession process to NATO and the EU together with a changing political climate derived from it have had a decisive impact in strengthening arrangements for meritocratic HRM in the civil service generally and in the MoD/the armed forces specifically. However, it would be incorrect to claim that the problem is solved and that political "appointments" and patronage do not affect negatively these arrangements anymore. The 2011 SIGMA report,[40] highlighted the public administration as one of the main concerns by saying that "*the politicisation of the civil service, the unclear and inefficient organisation of the administration, poor service-orientation, inadequate managerial skills, and the insufficient capabilities of many civil servants, heavy and formalistic bureaucracy, corruption and lack of transparency continue to be characteristics of the Croatian public administration*."

This is the case despite the 2011 Act on the State Administration System,[41] which attempts to separate political from professional positions. According to this Act, within the MoD the positions of minister, deputy and assistants belong to the political sphere, but often political appointments go far below that political sphere.

Recruitment and promotion of civil servants are regulated by article 50 of the CSA. For officers employed in the MoD this is regulated by article 27 of the

[40]*SIGMA Assessment - Croatia 2011*, The Official Website of the OECD, available at: http://www.sigmaweb.org/publicationsdocuments/48974853.pdf, p.4.
[41]*Act on State Administration System*, Official Gazette Website: http://narodne-novine.nn.hr/clanci/sluzben%20i/2011_12_150_%203086.html, Art.6.

Military Service Law. According to the respective legislation, posts may be filled only in compliance with the internal organisational rules in keeping with the adopted civil service recruitment plan. The necessary level of education and knowledge and expertise acquired by work experience are legal conditions for admission into the civil service. Vacant posts in the civil service may be filled by means of public competitions. However, prior to a public vacancy announcement, vacant posts may be filled from among the ranks of civil servants through an internal vacancy announcement or transfer. Selection from among the candidates to fill vacant posts shall be conducted on the basis of their expertise, skills, work experience acquired in the profession, performance in previous work and test results. Article 51 of the CSA states that the chief executive of the recruiting state body has to appoint a recruitment commission in which one member must be a representative of the central state authority responsible for civil service affairs. Other members are appointed by the chief executive of the recruiting body.

The rules and mechanisms for promotion included in the Civil Servant Act for civil servants and the Military Service Law for military personnel strictly define merit-based criteria, grading methodology and evaluation of employees. Together with categorisation of working places, this represent the basis for promotions.

According to article 39 of the CSA, every public administration with more than 50 employees has to have an organisational unit responsible for personnel management. The obligations of the unit include preparing plans for employment and following the procedure for admission to the civil service in cooperation with the central state authority responsible for civil service affairs. According to the Decree on Internal Structure of the MoD, the organisational unit must have a human resources unit.

Article 142 of the CSA determines that the state authority responsible for the civil service is in charge of administrative and inspectoral oversight of this law. Article 143 mandates inspectors who uncover irregularities in recruitment or in the rights and duties of civil servants to instruct that illegal or irregular practices be ended. An appeal may be filed against the inspection's resolution to the Civil Service Board within a 15-day deadline of its notification. Appeals suspend the implementation of the resolution.

However, concerns still remain about the politicisation of recruitment procedures given the fact that they remain fairly informal. The argument has been heard that staff turnover after an election is higher than during other periods. The role of political affiliation and patronage in career progression is high across all the sectors of society, including in the state administration.

CSO's and the media undertook a public campaign in 2011 against the alleged abuse of power by former Minister of Foreign Affairs and European Integration, Gordan Jandrokovic. They held that staff promotion at the ministry was illegal, as some diplomats did not fulfil all necessary conditions for their promotion. Some of the cases became public, for instance, one civil servant was sent to a diplomatic mission without having a university degree. The other

example was a case of an employee of the Ministry of Foreign Affairs who was promoted twice in the same year without fulfilling all necessary conditions.

Employment in public administration is permanent, but candidates have to undergo a probation period (of twelve months' duration for candidates without previous work experience and three months' duration for those with such experience). In some cases the probation period is reduced to three months. This is regulated by article 53 of CSA. During the probation period, all civil servants are evaluated. Article 55 of CSA prescribes that unsatisfactory appraisal during the probation period leads to exclusion from the civil service. A termination administrative resolution thereon shall be issued within eight days of the conclusion of the probation period.

The civil service relationship shall be terminated by mutual agreement; by expiry of a deadline; by disciplinary dismissal; by force of law, and in any other manner specified by law. In order to protect the rights of civil servants, article 137 of the Act specifies 14 cases where civil service relationships shall terminate by force of law: 1) death; 2) general incapability to work and passing to a situation of disabled retiree; 4) reaching the age of 65 having no less than 15 years of work service for pension eligibility; 5) unconditionally sentenced to imprisonment for a period exceeding six months; 6) conviction for a crime as specified in article 45; 7) absence from work for five consecutive days without excuse; 8) not taking the civil service examination within the stipulated period; 9) not meeting the admission criteria; 10) legal impairments at the time of admission to the civil service to such admission; 11) sanction of dismissal from the civil service imposed because of severe breaches of official duties; 12) failure to report for duty within the legally-stipulated period without just cause; 13) "unsatisfactory" performance appraisal on two consecutive occasions; 14) other cases specified by law. Moreover, the civil servants are also protected by the labour code.

Every employee within the state administration, including civil and military personnel within the MoD has pension rights upon fulfilling the conditions for retirement. Article 21[42] of the Military Service Law states that regarding the police, civil protection officers and civil servants and employees in peacekeeping missions and other activities abroad, the State guarantees the right to compensation in the case of injuries or death, at least up to the amounts provided by domestic legal acts and regulations.

Within the MoD there are two types of employees, civil and military. The salary scheme for civil servants is defined by the Decree on job titles and coefficients of complexity in the civil service and the collective agreement for government employees and civil servants, while the Military Service Law regulates the matter for the military personnel. Article 74 of the CSA, defines

[42] *Law on participation of members of the Armed Forces of the Republic of Croatia, police, civil protection and civil servants and employees in peace keeping missions and other activities abroad*, The Official Website of the Ministry of Defence, available at: http://www.morh.hr/images/stories/morh_sadrzaj/pdf/zakon%20o%20sudjelovanju%20pripadnika%20osrh%20u%20inozemstvu%20nn33-02.pdf, Art.21.

the classification of posts, which shall constitute the basis for the determination of the salary in the civil service. Article 129 of the Defence Law stipulates that civil servants and employees are entitled to a higher salary due to their special work conditions and the severity and nature of their obligations and responsibilities. Article 169 of the Military Service Law stipulates that the salary of military personnel, servants and employees consists of basic pay and bonuses. The basic pay of military personnel is based on coefficients attributed to ranks and the basis for calculation of salaries is increased by 0.5% for each year of service. The basic pay for all civil servants and employees is regulated by the Civil Servant Act.

The Rulebook on Bonuses and Salary Payment Method, defines details about bonuses and salary for military personnel. Every division within the MoD has a different coefficient. For instance, in aviation this depends on the type of airplane, years of service, readiness and what a pilot is in charge of. Article 8 of the Law on Salaries in Public Services[43] stipulates that every public official and employee can earn three additional salaries at the maximum for outstanding work results. The criteria for determining outstanding results and methods of payment is regulated by secondary legislation. Article 10 of the Law on Salaries in Public Services bestows the administration of salaries to the ministry responsible for the public service and the Ministry of Finance. The pay rates and allowances for civilian and military personnel are not published and they are not available online.

A performance appraisal scheme is in place, but its practical implementation had raised many doubts because of its pronounced risk of unchecked subjectivism by superiors.

The Law on the Office for Prevention of Corruption and Organised Crime (USKOK) deals with whistleblowing. All government bodies, the MoD and armed forces included, and all legal entities which within the scope of their activities or during the performance of their activities obtain knowledge about circumstances and information indicating the perpetration of a criminal offence are obliged to report them. Article 14 of the CSA also offers protection through anonymity to whistle-blowers. The civil service Code of Ethics encourages the reporting of unethical behaviour. In practice however, as in many countries worldwide, the protection of whistleblowing is haphazard, as the Vesna Balenovic case shows. Mrs Balenovic raised public concerns in 2001 about certain outsourcing operations of the INA, the national oil company, where she was employed. She ended up by being dismissed. The European Court of Human Rights confirmed the national Supreme Court's dismissal verdict in 2010.[44]

The Office for Suppression of Corruption and Organized Crime, as part of the State Attorney Office, is specialised in the prosecution of corruption and

[43] *Law on Salaries in Public Services*, Online Database of Croatian Legislative Documents: http://www.zakon.hr/z/541/Zakon-o-pla%C4%87ama-u-javnim-slu%C5%BEbama, Art.8.
[44] ECoHR: Application no. 28369/07: Decision on inadmissibility in the case of Balenovic vs. Croatia of 30 September 2010.

organised crime and it is the main anti-corruption body. If a civil servant wants to report suspicious behaviour on the part of his colleagues or any other person to USKOK, he can do it in many ways, such as by e-mail, telephone, fax or post, or by coming into one of USKOK's offices. Information about how and to whom to report corruption is available on the official website of the State Attorney Office. There is also a "hotline" available 24/7 for anonymous reporting.

The upholding and enforcement of the merit principle has significantly improved in the last few years. Due to the implementation of recruitment tests, for example tests of physical and mental condition, security checks, English proficiency, etc. the system is attracting more proficient staff. A stricter recruitment scheme has reduced the possibility of flouting the procedures.

In summary, human resource management in the civil service and in the army is improving while the merit system has been strengthened even if shortcomings remain in recruitment and performance appraisal. There are still some concerns (by CSO's in particular) about politicisation of the recruitment procedures and the role of political affiliation and patronage in career progression, regardless of the fact that standard legislation is in place.

5 Anticorruption Policies and Anti-corruption Bodies

5.1 Anticorruption Policies and Strategies

The election programmes of the most relevant political parties show that corruption remains one of the most significant concerns at present in the political discourse. Anticorruption is one of the priorities in the election programmes of the two leading parties – HDZ (Croatian Democratic Union)[45] and SDP (Social Democratic Party). Anticorruption has entered the current coalition government programme for the years 2011–2015.[46] The issue is addressed in a two-page long chapter on "Society without corruption" (Chapter 18). The increasing political discourse on anticorruption was primarily generated by the EU conditionality mechanism in the last phase of the accession process, which raises concerns about its sustainability.

The 2011–2015 government programme prioritises the following activities: identification of the rules and administrative procedures that support corruptive behaviour and introduction of required changes; adaptation of special measures regarding the operating of local government and regulatory bodies; development of a monitoring program for public enterprises and enterprises with public capital; development of proper measures related to the prevention of conflicts of interest; adaptation of measures which will allow an effective fight against corruption; expanding and enhancing the anticorruption atmosphere. Anticorruption also appears in the governmental programme as one of its crucial general goals: to remove corruption from all public authorities and the final establishment of a just and effective judiciary.

A fairly old national anti-corruption policy document is in force, a stand-alone programme: The Anti-Corruption Strategy[47], which was adopted by the parliament in June 2008. The defence sector was not mentioned in the strategy nor was the question of national security included, even in very general terms. The strategy introduced the Office for the Suppression of Corruption and Organised Crime (USKOK), a law enforcement body specialised in investigations on corruption and organised crime.

[45] It is worth mentioning initially that the HDZ is the first legal entity ever found guilty of corruptive activities in Croatian history. Its former president and Prime Minister Ivo Sanader faces multiple charges for corruption and has already been sentenced to multiple years in prison. Given the fact that all trial procedures are not finalised yet and not all details are publicly available, it is difficult at this stage to expect a comprehensive study about the extent and nature of political corruption in Croatia that devotes special attention to the Sanader/HDZ case. However, there are some very interesting brief overviews published by relevant sources, such as the one from the Croatian Anticorruption Portal: http://www.anticorruption-croatia.org/home/news-from-croatia/206-hdz-verdict-is-a-turning-point-for-political-transparency.

[46] *Program Vlade Republike Hrvatske za mandat 2011–2015*, The Official Website of the Ministry of Foreign and European Affairs, http://www.mvep.hr/CustomPages/Static/HRV/files/111227-Program_Vlade_2011-2015.pdf

[47] *Anti-Corruption Strategy*, Special Website of the Ministry of Justice (Antikorupcija): www.antikorupcija.hr/lgs.axd?t=16&id=540

The Strategy did not contain any information regarding the monitoring, assessment and adjustment mechanisms and criteria. However, a special parliamentary committee, the National Council for Monitoring the Implementation of the Anticorruption Strategy, shall promote the strengthening of supervision over the bodies in charge of the implementation of the Anticorruption Strategy. This Council controls and follows the implementation of the Anticorruption Strategy and regularly monitors the data on corruption provided by the bodies in charge of the implementation of this strategy. The Council reports to the Parliament twice a year. The Council for Monitoring the Anti-Corruption Strategy is supported by the Independent Sector for the Suppression of Corruption of the Ministry of Justice. Nevertheless, the monitoring, measurement and oversight over the results of the implementation of the anticorruption strategy is probably the weakest point of the anticorruption system. The processes are poorly structured and the attribution of responsibility is blurred.

A deep analysis[48] of key substantial changes implemented in the field of combatting corruption, as well as the tempo and pace of these changes, shows that they did not result from the policy framework outlined in the strategic documents, but from coordinated activities aimed at closing the 23rd EU Negotiation Chapter on 'Judiciary and Fundamental Rights'. Therefore it is the political context of the EU accession rather than the internal strategic political dynamics that appears to be the key factor in the fight against corruption. Unfortunately this report does not provide information on anticorruption strategic policies in the defence sector, nor do governmental sources provide such information. Transparency International scores Croatia quite invariably year after year since 2008 despite the anticorruption strategy.

Little attention has been paid to the issue of corruption and integrity in the national security strategic documents since 2002 when the potentially destabilizing effect of organised crime on government institutions was pointed out. The MoD has taken initiatives aimed at the penalisation, limitation and prevention of corruption in the defence sector. For instance, it concluded an agreement with Transparency International's Defence and Security Programme (TI DSP) and volunteered to take part in the Self-Assessment Process in 2009.[49]

The media, the civil society and international organisations have raised serious concerns about anti-corruption policies and the inefficiency of the fight against corruption which is high on the internal and international agenda when Croatia is considered. In the opinion of the 2012 European Commission report,[50] "law enforcement bodies remain proactive, especially on higher-level corruption cases. Local level corruption needs attention, particularly in public procurement. Croatia has improved its track record of strengthened prevention

[48] Prkut, D. (2012), *Antikorupcijska politika ili tek refleks pristupnog procesa- Analiza sadržaja i provedbe antikorupcijske politike u Hrvatskoj 2008–2011,* Zagreb: GONG, available at: *www.antikorupcija.hr/lqs.axd?t=16&id=3084*.

[49] See: *International Defence and Security Programme*, available at: http://www.ti-defence.org/our-work/defence-corruption-around-the-world/croatia.

[50] http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/hr_rapport_2012_en.pdf

measures by means of a number of legal instruments." These target the financing of political parties and electoral campaigns, access to information and public procurement among others. In addition to imprisoning a former Prime Minister, for the first time in Croatia's contemporary history a political party (HDZ) has faced trial for corruption as a legal entity and has been found guilty and requested to pay damages to the state budget amounting to more than €3 million.

In summary, it is the EU accession process rather than domestic political initiatives that appears to be the key factor in the fight against corruption. There is little information on anticorruption strategic policies in the defence sector. Little attention has traditionally been paid to corruption and integrity in national security strategic documents.

5.2 Anticorruption bodies

The specialised body in Croatia is the Office for Combating Corruption and Organized Crime (USKOK, *Ured za suzbijanje korupcije i organiziranog kriminaliteta*), established in 2001 as a separate section of the State Attorney's Office, that fulfils the functions of a specialised anti-corruption body. USKOK was established by the Law on the Office for Suppression of Corruption and Organized Crime.[51] Its legal status, organisational structure, functions, and remit are defined by that Law. It would be misleading to disregard the timing of the establishment of USKOK and the political context in which it was done. In 2000 a left-centre government replaced the decade-long "reign" of the Tudjman-led HDZ and did its utmost to change the image of the country abroad to speed up the EU and NATO accession processes. One major political criterion for accession was to strengthen the institutional capacity to combat corruption and organised crime. USKOK was intended to be the major institution with competences and responsibilities in that field.

The Office performs duties of the State Attorney's Office in cases of criminal offences of misconduct in bankruptcy proceedings, unfair competition in foreign trade operations, illegal influence peddling, accepting bribes, offering bribes, and unlawful deprivation, kidnapping, human trafficking, slavery, illegal transfer of persons across the state border, robbery, extortion, blackmail, money laundering and illegal debt collection, membership in criminal organisations, drugs trafficking, illicit pandering, illicit trade in gold, avoiding customs control, obstruction of evidence, attacking an official and so forth. USKOK is not entitled to promote new legislation. As stated in article 85 of the Constitution, only deputies, parliamentary parties and the working bodies of the parliament, as well as the government, can propose bills.

As part of the State Attorney's Office, the Office can act ex officio. The Law (article 41) recognises several specific situations where the Office may or

[51] *Law on the Office for Prevention of Corruption and Organised Crime*, The Official Website of the International Association of Anti-Corruption Authorities, available at: http://www.iaaca.org/AntiCorruptionLaws/ByCountriesandRegions/C/Croatia/201202/t20120221_808679.shtml.

should act ex officio: securing the means, proceeds or assets resulting from the criminal offences, ordering by the judge the measures of supplying simulated professional services or concluding simulated legal transactions. It can access documents and information in other state institutions and private premises.

The managerial independence of the body is significantly limited. USKOK is not an independent agency, but a body within the criminal justice system – more specifically part of the State Attorney's Office. Its competences are circumscribed by the Law on the Office and the Law on the State Attorney's Office. Its financial independence is regulated by the Law and the funds necessary for the functioning of the Office shall be provided by the national budget pursuant to the provisions of the Law on the State Attorney's Office. The Minister of Justice shall issue the Internal Rules of the Office. The personnel are under the merit system. The Head of the Office shall be appointed for a period of four years by the chief public prosecutor on the approval of the minister of justice. After the expiry of this period, he/she may be re-appointed.

The operational capacity of USKOK has been reinforced and the Police National Office for the Suppression of Corruption and Organised Crime (PNUSOK) is now fully staffed. Inter-agency cooperation has improved, including the implementation of memoranda of understanding, and this has contributed to improving the financial expertise of the Office although it is still facing problems due to lack of overall capacity. The total number of cases prosecuted is limited and very few implicate high level officials.

All in all, USKOK is highly valued as an institution within the wider framework against corruption and organised crime both internally and internationally. USKOK is evaluated positively mainly with regard to the cases of corruption implicating former top level officials. The media and NGOs express their criticism and reservation more in connection with the level of political culture among the elites and society than as regards the operational level of the Office. In other words, while its functionality and overall impact in the combat of corruption is not questioned, there remains the question of adequate perception of its importance by both political elites and the public. Education and anticorruption awareness-raising require reinforcement.

Apart from USKOK, other bodies have responsibility to combat corruption, namely PNUSKOK, the Committee for the Prevention of Conflicts of Interest (CPCI), the Office of the Ombudsman, the Auditor General, the Central State Administrative Office for e-Croatia, and the Public Procurement Office. The political authority in charge of legislative initiatives against corruption is the Ministry of Justice. A decree on the internal organisation of the Ministry of Justice determines the responsibilities of the main unit in charge of this matter, the "Independent Sector for the Suppression of Corruption".

There is no specialised anticorruption unit within the MoD. No responsibilities are specifically assigned to oversee the implementation of the anticorruption strategy in the field of defence beyond the general attributions of the Chief Secretariat. As the main coordinating body within the MoD system, it is responsible for the coordination of activities in the field of anticorruption with

all other relevant state administration bodies. Apart from that, the minister shall appoint “a person in charge of irregularities”. The fact that this person is also a head of the Chief Secretariat underlines the importance of that body for the process of integrity building within the MoD.

There is more political will to fight corruption as shown by the increasing number of prosecution cases involving the highest state officials. This was, of course, predominantly stimulated by the EU and its conditionality mechanisms, especially in the last phase of the accession process. However, the budgetary resources available to USKOK are diminishing year after year since the financial crisis began.

In summary, anticorruption bodies, in particular USKOK, are performing relatively well, but resources are diminishing. No administrative unit within the MoD is assigned special responsibility for preventing and suppressing corruption, but the Chief Secretariat is in charge of promoting integrity along with many other responsibilities.

6 Recommendations

6.1 Recommendations to the MoD

1. Human resource management

The Croatian MoD should continue its efforts to foster meritocratic HRM.

2. Public procurement

Defence-related exceptions to general rules on public procurement should be revised, reduced in number and made more precise and better justified. Education and training of employees responsible for public procurement can always be improved.

3. Free access to information

There is a need to focus on the issue of how the balance is struck between free access to information on the one hand and protection of personal data and state secrets on the other.

The combination of the various pieces of legislation gives an unclear picture of the restrictions to access to information. The culture of free access to information should be further embedded in the state administration and the defence sector in particular. In that regard, continuous education of staff, as well as better coordination of different bodies within the MoD is recommended.

4. Improved integrity framework

The proposals mentioned above should be addressed in a comprehensive effort to improve the integrity framework in the defence area.

6.2 General recommendations

5. The state administration needs to be further depoliticised and professionalised by clearly implementing the merit system.

6. Institutions such as the Ombudsman and Information Commissioner need strengthening, funding-wise in particular.

7. The issue of conflict of interest needs to be more adequately managed. While there are appropriate institutions and legislation in place, there have been breaches by state officials without proper reactions.

8. Transparency must be more efficiently implemented at all levels of government and in the functioning of every public institution.

9. The process of drafting of core strategic documents in the field of anti-corruption should be improved and made more open to all stake-holders in the society.

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Abstract:
This report assesses the institutional risks of corruption in the defence area of Croatia. It uses a holistic approach to security sector reform. Pro-integrity reforms internal to the defence sector are set in a wider reform perspective including appropriate instruments within civilian policy sectors. The current report mainly focuses on the Croatian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its environment and takes into account legal and administrative arrangements cutting across the national system of public governance and impacting on the MoD as on any other ministry.

Key words: Parliamentary control, control of intelligence and security institutions, ombudsman, freedom of access to information, internal and external audit, anti-corruption bodies, anti-corruption policies, human resources management, public procurement, asset disposal, corruption, integrity, good governance, corruption risks.

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