



**International
Competition
Network**

**ANTI-CARTEL
ENFORCEMENT
TEMPLATE**

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

**CROATIAN COMPETITION
AGENCY
20/12/2016**

ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	Croatian Competition Act (Article 8), available in both Croatian and English languages at Croatian Competition Agency's website: www.aztn.hr .
B. Implementing regulation(s) (if any): [name and reference number, availability (homepage)]	Regulation on the method of setting fines (OG 129/2010) Regulation on immunity from fines and reduction of fines (OG 129/2010) Regulation on block exemption granted to certain categories of horizontal agreements (OG 072/2011) Regulation on block exemption granted to agreements on distribution and

¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

<p>address) and indication of the languages in which these materials are available]</p>	<p>servicing of motor vehicles (OG 37/2011)</p> <p>Regulation on block exemption granted to certain categories of technology transfer agreements (OG 9/2011)</p> <p>Regulation on agreements of minor importance (OG 9/2011)</p> <p>Regulation on the definition of relevant market (OG 9/2011)</p> <p>Regulation on block exemption granted to agreements in the transport sector (OG 78/2011)</p> <p>Regulation on block exemption granted to insurance agreements (OG 78/2011)</p> <p>Above cited Regulations are available in both Croatian and English languages at Croatian Competition Agency's website: www.aztn.hr.</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>There are internal guidelines that are not publicly available.</p> <p>Several Interpretative Guidelines from the European Commission are used;</p> <p>Best Practices Notice on Articles 101, 102 TFEU (OJ C 308, 20.10.2011),</p> <p>Communication from the Commission- Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (2011/C 11/01)</p> <p>Leniency Notice (OJ C 298, 8.12.2006)</p> <p>2006 Guidelines on Fines (OJ C 210, 1.9.2006)</p> <p>Notice on Access to File (OJ C 325, 22.12.2005)</p> <p>http://ec.europa.eu/competition/antitrust/publications_en.html</p> <p>http://ec.europa.eu/competition/cartels/legislation/cartel_compilation_en.pdf</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Several brochures against cartels are published on the web site of the Competition Agency:</p> <p>Compliance program with anti-trust rules for undertakings (available only in Croatian):</p> <p>http://www.aztn.hr/uploads/documents/o_nama/programi_rada/Program_uskladenosti_AZTN.pdf</p> <p>No to cartels-10 golden rules about cartels:</p> <p>http://www.aztn.hr/uploads/documents/novosti/ne_kartelima.pdf</p> <p>Guide for contractors in public bids-how to detect and report bid rigging cartels: www.aztn.hr</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term "cartel"? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>Yes, it does. Regulation on Immunity from fines or reduction in fines contains definition of the cartel</p> <p>in Article 2:</p> <p>„Cartels are, by definition, secret and prohibited horizontal agreements entered into between two or more independent undertakings, or decisions by associations of undertakings or concerted practices of undertakings at the same level of</p>
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production or distribution chain, which have as their object distortion of competition between competitors, whereas cartel members may agree on such matters as purchase or sale prices, allocation of markets allocation of customers, limit total industry output and/or sales and technological development, bid-rigging and similar, which harm the consumers through higher prices and less choice of goods and/or services.“

Available at:

<http://www.aztn.hr/uploads/documents/eng/documents/legislation/>

Very similar definition is adopted in the Law on Damages for the breach of competition rules.

Article 8 of the Competition Act uses the term "prohibited agreements" and it states the following:

"(1) There shall be prohibited all agreements between undertakings, contracts, single provisions of agreements, explicit or tacit agreements, concerted practices, decisions by associations of undertakings (hereinafter: agreements) the object or effect of which is to prevent, restrict or distort competition in the relevant market, and in particular those which:

1. directly or indirectly fix purchase or selling prices or any other trading conditions;
2. limit or control production, markets, technical development or investment;
3. share markets or sources of supply;
4. apply dissimilar conditions to equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
5. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) The agreements that prevent, restrict or distort competition pursuant to paragraph (1) of this Article, and which may not be exempted in the sense of Article 10 of this Act shall be null and void.

B. Does your legislation or case law distinguish between very serious cartel behaviour ("hardcore cartels" – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of "cartels"? [Please

No. Cartels-prohibited agreements are considered as hard core breach of the competition law and as the most severe breach of the competition law.

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as "hardcore cartels". Hereinafter this terminology is used.

describe how this differentiation is made and identify the most egregious types of conduct.]	
C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]	There are no exceptions to the ban on hardcore cartels.
D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal liability, please clarify this.]	Yes, participation in cartel is illegal <i>per se</i> and it has to be proven through investigation process.
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	The proceeding before the Competition Agency is administrative and the Agency can impose fines for cartels. Only bid rigging is also determined as criminal offence in Criminal Code. In that case, public prosecutor is in charge of the criminal investigation.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	Croatian Competition Agency.
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Croatian Competition Agency Savska 41 (14. Floor), Zagreb, Croatia Phone: 385 1 6176 448 Fax: 385 1 6176 450 E-mail: agencija.ztn@aztn.hr web: www.aztn.hr (Croatian and English)
C. Information point for potential complainants:	As above under B.
D. Contact point where complaints can be lodged:	Complaints can be submitted in writing to the above address above: Mo-Fri: 8,30-15,00, 14 th floor or via e-mail stated above.

³ For the purposes of this template the notion of 'per se' covers both 'per se' and 'by object', as these terms are synonyms used in different jurisdictions.

<p>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</p>	<p>Any government body and other institutions such as regulatory bodies, chamber of commerce etc., may be requested to assist the investigation process by providing certain data or information necessary for the investigation.</p> <p>Dawn raids/surprise inspections can be conducted with the assistance of law enforcement authorities.</p>
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4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

<p>A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]</p>	<p>Competition Council of the Croatian Competition Agency.</p>
<p>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</p>	<p>As indicated under 3B.</p>
<p>C. Contact point for questions and consultations:</p>	<p>As indicated under 3B.</p>
<p>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</p>	<p>Expert staff of the Agency (Cartel Department with its teams consisting of lawyers and economists) investigate a case: collecting all relevant data and gathering evidence including conducting dawn raids, analysing them and preparing material for the Council to take a decision.</p> <p>Copetition Council, decision-making body of the Agency, takes a decision on the merits of the case based on the input prepared by the expert staff.</p> <p>Parties are notified on the decision of the Council (it is also published on the Agency's website) and the decision is published in the "Official Gazzette" of the Republic of Croatia.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>Only bid rigging is defined as criminal offence in the Criminal Code. The relation between public prosecutor and the Agency is still not formalized and so far there were no criminal cases. In relation between competition and criminal law cases, the Competition Act does provide the following: Where in the course of the conduct of the surprise inspection objects are found which indicate that a criminal offence has been committed which is prosecuted <i>ex officio</i>, the authorised persons of the law enforcement authorities shall describe the objects concerned in a separate police report and temporarily</p>

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	seize them, whereas a certificate on the seizure of this objects shall be issued at the spot. The authorised persons shall immediately report of the case to the public prosecutor."
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5. Handling complaints and initiation of proceedings

A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]	<p>The investigation can be initiated ex officio, by leniency applications or by initiative (written request, complaint, proposal or notice).</p> <p>The proceeding is formally always opened ex officio by the decision- procedural order on institution of the proceedings.</p>
B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]	<p>Yes, in writing. Initiative to start the proceeding has to be submitted in writing, personally, by fax, post or by e-mail. All the important facts have to be stated, but there is no special form prescribed. See, Article 37 of the Competition Act.</p>
C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]	<p>No, there are no limitations. The initiative to start the proceeding for the establishment can be submitted by any natural or legal person professional association or economic interest group or association of undertakings, consumer's association, the Government of the Republic of Croatia, central administration authorities and local and regional self-government units.</p>
D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]	<p>It does have discretion to decide upon the initiative whether to start the formal proceeding or dismiss the claim based on the initiative. If the Agency finds that the behaviour indicated in the initiative for initiation of the proceedings does not significantly distort competition in the relevant market, the Agency shall adopt a decision stating that there is no public interest for any steps to be taken and shall inform the complainant thereof. However, the Agency applies General Administrative Proceeding Act (GAPA), according to which every complaint has to be handled according to the applicable procedural rules. In that respect, every initiative is investigated and then either the decision to start a formal proceeding or a decision to dismiss the claim is adopted.</p>
E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?	<p>Yes, the Agency has to adopt a decision explaining why the proceeding will not be initiated. Such a decision is addressed to the person who filed the initiative. If, during the preliminary investigation of the relevant market and on the basis of the received initiative, the Agency finds that there is no basis for the initiation of the proceedings, it shall at the latest within 6 months from the day of the receipt of the initiative for the initiation of the proceedings issue a decision stating that there is no basis for the initiation of the proceedings and inform thereof the complainant. The decision of the Agency must undoubtedly state the reasons on the basis of which there was no public interest or no grounds for the initiation of the proceedings. Where the Agency finds during the course of the preliminary investigation of the relevant market with the view to establishing sufficient circumstantial evidence for the</p>

	<p>commencement of the proceeding relating to distortion of competition pursuant to Article 101 or 102 of the TFEU that there is no effect on trade between the EU Member States, it shall adopt a decision establishing that there are no grounds to open the proceeding. By means of a decision the Agency shall establish that there are no grounds to open the proceeding also in the case where the Commission or any competent competition authority of the EU Member State carries out the proceeding in the same case or where the Commission or any competent competition authority of the EU Member State have already closed the proceeding in the same case.</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>According to Croatian Competition Act, the Agency within 6 months from the day of the receipt of the complaint has to initiate proceeding or dismiss complaint.</p>

6. Leniency policy⁵

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public availability.]</p>	<p>There is no official name of the leniency policy. The name is: immunity from fines or reduction of fines.</p>
<p>B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?</p>	<p>Yes, both, full immunity and reduction of fines are available.</p>
<p>C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?</p>	<p>Yes, only the first one that comes forward is eligible for immunity. The Agency will grant immunity from any fine which would otherwise have been imposed to an undertaking – party to a cartel who first comes forward disclosing its participation in an alleged cartel if that undertaking is the first to submit information, facts and evidence which enables the Agency to open the proceeding, or, who first comes forward and submits evidence that enables the Agency to find an infringement of the provisions of the Act where the Agency has already initiated the proceeding but has not had enough evidence to close this proceeding and take a decision on infringement.</p> <p>Ringleader (originator) and coercer are not eligible for full immunity.</p>
<p>D. Is eligibility for leniency</p>	<p>In order to obtain full immunity undertaking must provide</p>

⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

<p>dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>evidence which will enable the Agency to initiate the proceeding in connection with the alleged cartel, or evidence which will enable the Agency to find the infringement in connection with the alleged cartel in the previously initiated proceedings where the Agency had no sufficient evidence to adopt a decision, i.e. to detect the existence of a cartel.</p> <p>Leniency application (in case of full immunity) can be submitted before and after the initiation of proceedings, but in general it should be submitted before conducting surprise inspection. Immunity from the fine may be granted to an undertaking after a surprise inspection has been carried out, only provided that at the time of the submission the Agency did not have sufficient evidence to take a decision on an infringement or to close a proceeding.</p>
<p>E. Who can be a beneficiary of the leniency program (individual / businesses)?</p>	<p>Only undertakings-legal persons.</p>
<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>In order to obtain full leniency undertaking must provide decisive evidence, must cooperate genuinely, fully, on a continuous basis and expeditiously from the time it submits its application, must end its involvement in the cartel immediately following its application to the Agency, except for what would, in the Agency's view, be reasonably necessary to preserve the integrity of the surprise inspections and when contemplating making its application must not have destroyed, falsified or concealed evidence of the cartel nor disclosed the fact or any of the content of its contemplated application to the Agency</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>Undertaking may be eligible to benefit from a reduction of the fine, if it provides the Agency with evidence which represents significant added value with respect to the evidence already in the Agency's possession and which substantially contribute to the closure of the proceeding concerned.</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>After the leniency application has been accepted undertaking must genuinely, fully and continuously cooperate with the Agency. This includes in particular:</p> <ul style="list-style-type: none"> - providing the Agency promptly with all relevant information and evidence relating to the cartel that comes into its possession or is available to it; - remaining at the Agency's disposal to answer promptly to any request that may contribute to the establishment of the facts; - making current (and, if possible, former) employees which may have knowledge on a cartel available for interviews with the Agency; - not disclosing the fact or any of the content of its application before the Agency has issued a Statement of objections.

<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>The undertaking must provide the Agency with the following documents as a constituent part of the application:</p> <ul style="list-style-type: none"> - A corporate statement (statement on the participation in a cartel), and - Information, facts and other evidence in the possession of the applicant at the time of the submission, which relate to the cartel concerned and which originate from the time of the duration of the cartel. <p>A corporate statement is a statement, made in a written form or orally, containing submission to the Agency of the existence of a cartel and its role and participation therein. Oral corporate statements shall be recorded and transcribed at the Agency's premises.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a final leniency agreement / decision)?]</p>	<p>Once the Agency has received the application, it shall verify that the information and evidence submitted meet the conditions for granting immunity / reduction of fines. Where the Agency establishes that leniency application meets set criteria, it will inform the undertaking in writing that the undertaking concerned has been granted conditional immunity / reduction of fines.</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>If the applicant perfects the marker within the period set by the Agency as referred to under paragraph (3) of this Article, submits the requested information, facts and evidence, the provided information, facts and evidence will be deemed to have been submitted on the date when the marker was granted by the Agency. The Agency will issue an acknowledgement of receipt of the undertaking's application for immunity from fines in which it shall confirm the date and, where appropriate, time of application.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>Competition Act and Regulation on immunity from fines and reduction of fines.</p> <p>The Agency (its Competition Council) decides about leniency applications. Granting of conditional immunity / reduction is given in written form and if at the end of the administrative procedure, the undertaking who has been granted conditional immunity / reduction has met all the conditions, the Agency will grant it immunity / reduction in the final decision establishing cartel/prohibited agreement, breach of the competition law.</p>
<p>M. Do you have a marker system? If yes, please describe it.</p>	<p>Yes. The undertaking may apply for a marker and the Agency may grant a marker protecting an immunity applicant's place in the queue for a specified period within which the applicant has to perfect the marker. In this case the date on which a marker was granted shall be considered the date of submission of application for immunity from fines. As a rule, the Agency shall disregard the application for immunity or the application for a marker if these have been submitted after the Statement of objections has been issued.</p> <p>The marker application must include the following:</p> <ul style="list-style-type: none"> - information on the applicant, its name and address; - the parties to the cartel, - the relevant product and geographic market, - the estimated duration of the cartel,

	<p>- the nature of the cartel conduct, and</p> <p>- information on other past or possible leniency applications or request for a marker to other competition authorities in relation to the cartel in EU Member States or outside EU.</p>
N. Does the system provide for any extra credit⁶ for disclosing additional violations? [e.g. a hardcore cartel in another market]	No.
O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.	Yes, but only until the Statement of objections has been issued. After SO has been issued Access to corporate statements (and with it identity of leniency applicant) shall be granted by the Agency only to the parties to the proceeding, and provided that the parties to the proceeding, commit not to make any copy by mechanical or electronic means of any information in the corporate statement to which access is being granted and to ensure that the information to be obtained from the corporate statement will solely be used for the purposes of judicial or administrative proceedings in the matter of competition concerns at issue in the related administrative proceedings and in judicial proceedings against the decision of the Agency.
P. Is there a possibility of appealing an agency's decision rejecting a leniency application?	Yes.
Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:	<p>http://www.aztn.hr/en/cartel-report-and-leniency-programme/</p> <p>Agencija za zaštitu tržišnog natjecanja</p> <p>Savska cesta 41</p> <p>10 000 Zagreb</p> <p>e-mail : agencija.ztn@aztn.hr</p> <p>Phone: +385 1 617 64 48.</p>
R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?	If the undertaking that was granted immunity / reduction does not thought the proceeding act in line with his obligations stated above in 6F or if the Agency at any point of the procedure finds that the undertaking has not met the conditions (i.e. it turned out that undertaking in question was ringleader), the Agency shall withhold the conditional immunity / reduction of fines that has been previously granted and shall urgently inform the undertaking thereof in writing.

⁶ Also known as: “leniency plus”, “amnesty plus” or “immunity plus”. This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	Yes.
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	No.
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.	Yes, for corporate statements. Access to corporate statements shall be granted by the Agency only to the parties to the proceeding, and after the receipt of the statement of objections. Access to the file shall be granted by the Agency provided that the parties to the proceeding, i.e. its legal representatives getting access on their behalf, commit not to make any copy by mechanical or electronic means of any information in the corporate statement to which access is being granted and to ensure that the information to be obtained from the corporate statement will solely be used for the purposes of judicial or administrative proceedings in the matter of competition concerns at issue in the related administrative proceedings and in judicial proceedings against the decision of the Agency. Additional protection will be given in the new Act on actions for damages claims for infringements of competition law in line with EU Directive 2014/104 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (Official Journal L 349/1, 5.12.2014.)

7. Settlement

A. Does your competition regime allow settlement? If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).	No.
B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?	/
C. What is the reward of the settlement for the parties?	
D. May a reduction for settling be cumulated with a leniency reward?	
E. List the criteria (if there is any) determining the cases which are suitable for	

settlement.	
F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties initiate, in which stage of the investigation settlement may be initiated, etc.].	
F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].	
G. Does a settlement necessitate that the parties acknowledge their liability for the violation?	
H. Is there a possibility for settled parties to appeal a settlement decision at court?	

8. Commitment

A. Does your competition regime allow the possibility of commitment? If yes, please indicate its public availability [link to the relevant rules, guidelines, etc.].	Yes. The Article 49 of Competition Act. http://www.aztn.hr/en/antitrust-and-mergers/legal-framework/
B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]? Are there commitments which are excluded from the commitment possibility?	Potential abuses of dominant position and vertical agreements. Commitments are not available for hard core cartels.
C. List the criteria (if there are any) determining the cases which are suitable for commitment.	Main criteria is that the commitments proposed by the parties are able to eliminate the negative effects on competition due to its actions or a failure to act. The Agency may accept the proposed commitments in the cases where the infringement is of short duration, where the undertaking concerned is open to cooperation to the proceedings carried out by the Agency and commits itself to meeting certain conditions and obligations in the first six months of the proceedings, where the action by the Agency involves a large number of parties and in other particular cases

	<p>where the Agency deems the acceptance of the proposed commitments justified and appropriate for efficiency reasons with the view to re-establishing of effective competition in the relevant market without carrying out unnecessary lengthy procedures.</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>Both, structural and behavioural measures are available.</p>
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>Following the initiation of the proceedings and at the latest before the Statement of Objections has been notified, a party to the proceedings may offer its commitments to the Agency. The commitments undertaken shall mean meeting certain conditions and obligations within a set time periods, in order to eliminate the negative effects on competition due to its actions or a failure to act. The Agency adopts a decision that makes the commitments in question binding on the undertakings if the proposed conditions and obligations, within a set time periods, are by the Agency deemed satisfactory for the removal of competition concerns and restoration of effective competition. The decision of the Agency shall establish a specified time period in which the undertaking in question must comply with the commitments. The Agency shall give notice on intention to accept commitments and to that end publish a summary of the case and the main content of the proposed commitments on its web site. The interested parties shall be requested to submit their written replies in the form of comments, observations and statements within 20 days from the day of the publication of the request for information.</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>No. The Agency in its commitment decision establishes that there are no longer grounds for action against the undertaking concerned. The commitments and obligations from the commitment decision do not represent act of acknowledgement of the liability for the violation of competition law by the parties and no such violation in the commitment proceeding has been established.</p>
<p>J. Describe how your authority monitors the parties' compliance to the commitments.</p>	<p>The decision of the Agency obliges the undertaking concerned to furnish evidence from which it is evident that it complied with the set commitments and on the basis of which the Agency may establish that there are no longer grounds for action against the undertaking concerned. Furthermore, the parties can have the obligation to inform the Agency about price changes or similar activities defined in the commitment decision. Where in the monitoring procedure for the implementation of the commitments the undertakings concerned should act contrary to their commitments, such behaviour shall constitute an infringement of Competition Act and the Agency shall issue a separate decision which will revert to prohibition and impose the fine for the infringement concerned in line with the provisions of Competition Act.</p>
<p>K. Is there a possibility for parties to appeal a commitment decision at</p>	<p>Yes, against the commitment decision the parties can bring a claim before the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision.</p>

9. Investigative powers of the enforcing institution(s)⁷

A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁸, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.

According to Articles 41 to 45 of the Competition Act the Agency is empowered to:

- request, in writing, from the parties to the proceedings or other legal or natural persons, professional associations or economic interest groups or associations of undertakings, consumers associations, public administration authorities and local regional self-government units to submit all necessary information in writing, or to make oral statements in respect of all relevant data and documentation;
- request, in writing, from the parties to the proceedings to ensure direct inspection of all business premises, all immovable and movable assets, business books, data bases and other documentation;
- request, in writing, from the parties to the proceedings to carry out other activities which the Agency finds necessary in order to establish the facts of the case.
- conduct a surprise inspections of business premises, other premises, land and means of transport which includes right to examine all records and objects relating to the business (including computers, servers, telephones) to seal any business premises or records and to seize objects and documents found on those premises, particularly if there it can be reasonably assumed that the evidence might be destroyed or concealed.

For the surprise inspections, the Agency has to have the court warrant issued by the High Administrative Court which has to decide within two days from the receipt of the request of the Agency on issuing a warrant for the conduct of surprise inspection. A warrant to carry out surprise inspection must contain:

- the reference to the subject of the surprise inspection
- legal grounds for the conduct of the surprise inspection,
- authorised persons from the Agency and other accompanying authorised persons who will carry out the inspection,
- the deadline for the conduct of the surprise inspection.

The Agency shall afford the European Commission the necessary assistance regarding the preparation for and the conduct of the surprise inspection in the territory of the Republic of Croatia. The Agency may authorise other officials

⁷ “Enforcing institutions” may mean either the investigating or the decision-making institution or both.

⁸ “Searches/raids” means all types of search, raid or inspection measures.

	<p>from the competent competition authority from other EU Member States to take part in the surprise inspection in the territory of the Republic of Croatia or it may carry out surprise inspection on behalf of the authority concerned. Similarly, the Agency can carry out surprise inspections jointly with competition authorities of other EU countries.</p>
<p>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?</p>	<p>Yes. If a reasonable suspicion exists that books and/or other records related to the proceedings carried out by the Agency, are being kept in any other premises, land and means of transport of the undertakings against no proceedings have been initiated, or in the homes of directors, managers and other members of staff of the undertakings against which the proceedings have been initiated or other persons, the surprise inspection shall be conducted in the presence of two adult witnesses.</p> <p>All surprise inspection conducted by the Agency require a warrant form High Administrative court of Republic of Croatia</p>
<p>C. May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</p>	<p>Yes, such evidence can be seized and used but only in case they are found "by accident" during search for documents that fall under scope of court warrant ("fishing expedition" is forbidden).</p> <p>Post-search court warrant is not required.</p>
<p>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</p>	<p>No, there have not been any significant legal challenges. There was only one claim submitted to the court against the manner the surprise inspection was conducted by the Agency but the claim was dismissed without by the court without going into the merits of the case.</p>

10. Procedural rights of businesses / individuals

<p>A. Key rights of defence in cartel cases: [e.g.: right of access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right</p>	<p>The parties have rights guaranteed by the Competition act and General Administrative Procedure Act such as: right to legal representation, right of access to file, right to oral hearing, right to receive a Statement of objections, right to written reply to Statement of objections.</p> <p>Article 47 - Right to Access to File</p> <p>Parties to the proceedings have the right of access to case files after they have received a Statement of Objections. The Agency shall make a photocopy of the file or of single documents at the expense of the parties concerned.</p> <p>The request for access to files shall be submitted to the Agency in writing.</p> <p>The Agency shall set the date and time for inspection of the file</p>
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**not to self-incriminate, etc.]
Please indicate the relevant
legal provisions.**

within fifteen days following the receipt of the request

By way of derogation, drafts of the decisions of the Agency, official statements, protocols and typescripts from the sessions of the Council, internal instructions and notes on the case, correspondence and information exchanged between the Agency and the European Commission, between the Agency and other international competition authorities and their networks and other documents which are covered by the obligation of business secrecy, may neither be inspected nor copied.

Article 48 - Statement of objections

The parties to the proceedings shall be informed by the Agency in writing of the preliminary established facts in the Statement of Objections in order to ensure the relevant parties to express their views on all relevant facts and circumstances of the case before the oral hearing is set.

The parties to the proceedings may submit their written replies relating to the Statement of Objections within a month from the receipt of the Statement of Objection.

In their written replies the parties to the proceedings may also propose that the Agency should hear other witnesses and present additional evidence.

A copy of the short form of the Statement of Objections which does not contain data which are covered by the obligation of business secrecy may be submitted upon request to the person who filed the initiative. The Agency shall set a time limit of one month from the receipt of the short form of the Statement of Objections within which the person who filed the initiative may inform the Agency in writing of his/her views.

Upon request the Agency shall transmit a copy of the short form Statement of Objections which does not contain data which are covered by the obligation of business secrecy to any person whose right or legal interest has been acknowledged by the Agency by means of a conclusion, in other words ensuring this person the same rights that are enjoyed by a person upon whose initiative the proceeding has been initiated, and instructing the person concerned that he/she holds the power to inform the Agency of his/her observations in a written reply to the Statement of Objections within a time limit of one month from the day of its receipt.

If the Agency after notifying the Statement of Objections carries out new analyses and establishes new facts or examines evidence which significantly change the facts of the case that had originally been established, it is empowered to take a decision which differs from the views established in the Statement of Objections. In this event, the Agency shall, prior to taking its final decision, notify the parties to the proceedings a new Statement of Objections which will contain new established facts and circumstances or drawn conclusions. The parties to the proceedings are again granted the right to send their written comments to the new Statement of Objections in the time period set by the Agency. The Agency shall act

	<p>accordingly also in respect of the persons referred to under paragraphs (4) and (5) of this Article, who will be submitted a new short form of the Statement of Objections.</p> <p>The Agency shall not base its decisions on the facts and circumstances in respect of which the parties to the proceedings have not been granted right of defence.</p> <p>Article 50 - Oral Hearing</p> <p>As a rule, in the proceedings establishing distortion of competition carried out by the Agency oral hearings will be held and they shall not be public in the legitimate interest of the protection of business secrets and other confidential information.</p>
<p>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>Regarding the secrecy obligation Competition Act, Article 53 states the following:</p> <p>Members of the Council and the employees of the Agency shall keep and not disclose the information classified as a business secret, irrespective of the way they came to know it, whereby the obligation of business secrecy shall continue to be in effect 5 years after the expiry of their engagement with the Agency.</p> <p>Under the term business secret, it shall be considered, in particular the following: 1. all which is defined to be a business secret by law or other regulations; 2. all which is defined to be a business secret by the undertaking concerned if accepted as such by the Agency; 3. all correspondence between the Agency and the European Commission and between the Agency and other international competition authorities and their networks.</p> <p>A business secret shall be in particular business information which has actual or potential economic and market value, the disclosure or use of which could result in economic advantage for other undertakings.</p> <p>The Agency will in particular apply the following non-exhaustive list of criteria to determine whether information can be deemed to constitute a business secret: 1. the extent to which the information is known outside the undertaking; 2. the extent to which measures have been taken to protect the information within the undertaking, for example, through non-compete clauses or non-disclosure agreements imposed on employees etc.; 3. the value of the information for the undertaking and its competitors.</p> <p>In principle, the Agency considers that the following information would not normally be covered by the obligation of business secrecy in the sense of this Act: 1. information which is publicly available, including information available through specialised information services or information which is common knowledge among specialists in the field; 2. historical information, in particular information at least five years old, irrespective of the fact whether they have been considered a business secret; 3. annual and statistical information. Turnover is not normally considered as a business secret, as it is a figure published in the annual accounts or otherwise known to the market, and 4. data and documentation on which the decision</p>

	<p>of the Agency is based.</p> <p>By way of derogation, where the undertaking submits to the Agency confidential documentation and data and fails to provide a copy of the relevant documentation and/or data containing no confidential information, the Agency shall after it has sent a reminder thereof to the undertaking concerned, finally assume that such a writing and/or documentation does not contain data which are covered by the obligation of business secrecy</p> <p>Within the meaning of the Council Regulation (EC) No 1/2003 and the Council Regulation (EC) No. 139/2004, and by way of derogation from the obligation of protection of business secrecy by the Agency provided in this Article, the Agency may disclose, use or exchange information covered with the obligation of business secrecy with the European Commission or the competent competition authorities of the EU Member States, and use these information as evidence exclusively in the proceedings relating to establishment of distortion of competition under Article 101 or 102 of the TFEU.</p>
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11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</p>	<p>Regarding the limitation periods Competition Act, Article 71 states the following:</p> <p>(1) The proceedings investigating the infringements of Competition Act or Article 101 or 102 of the TFEU and the imposition of fines shall be subject to a limitation period of 5 years from the day on which the infringement of Competition Act or Article 101 or 102 of the TFEU was committed.</p> <p>(2) In the case of continuing or repeated infringements of Competition Act or Article 101 or 102 of the TFEU, time shall begin to run on the day on which the infringement ceases.</p> <p>(3) Any action taken by the Agency for the purpose of the investigation of an infringement of Competition Act or Article 101 or 102 of the TFEU or the imposition of fines for the infringement shall interrupt the limitation period. Where the proceeding by the Agency is carried out against more undertakings or association of undertakings, the limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has the status of a party to the proceedings.</p> <p>(4) Each interruption shall start time running afresh. However, yet, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period referred to in paragraph (1) of this Article has elapsed.</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an</p>	<p>After initiation of the proceedings there is no time limit for completion of an investigation.</p> <p>The decision on prohibited agreements shall be made by the</p>

investigation or to make a decision on the merits?	Agency within the time limit of 4 months following the day on which it established all the facts of the case relevant for the adoption of a final decision, or at the latest within 4 months from the day of the conclusion of the main hearing held in the fine proceedings.
C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)	<p>Against the decision on initiation of the proceedings no appeal and no legal action at the High Administrative Court of the Republic of Croatia is allowed.</p> <p>Against the decisions of the Agency which establish the infringements of Competition Act or Articles 101 or 102 of the TFEU and impose fines, injured party may bring a claim before the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision.</p> <p>The claim referred shall not postpone the enforcement of the decision, save for the part of the decision which relates to the imposed fine.</p>

12. Types of decisions

A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]	<p>The Agency shall in its decision:</p> <ol style="list-style-type: none"> 1. specify the prohibited agreement, parties to the agreement, the category of the agreement, goods and/or services concerned, the geographic market concerned, the duration of the agreement, the object of the agreement and its implementation; 2. determine the terms and measures including the deadlines for the removal of adverse effects of the prohibited agreement; 3. impose fines for the infringements of the provisions of Competition Act or Article 101 of the TFEU.
B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).	Same as under A.
C. Can interim measures⁹ be ordered during the proceedings in cartel cases? (if different measures for	Yes. Interim measure may be adopted by the decision of the Agency in cases of urgency due to the risk of serious and irreparable damage to competition and on the basis of a prima facie finding of infringement of the provisions of Competition Act.

⁹ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<p>hardcore cartels please describe both¹⁰.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>In its decision on interim measures the Agency shall suspend all actions of the undertaking concerned, insist on meeting of particular conditions or impose other measures reasonably necessary to eliminate the risk and damage to competition, as well as the duration of the relevant measures, which as a rule, may not exceed a period of six months, and advise the undertaking that in case of its failure to comply with the imposed measures it will be fined for the infringement in line with the provisions of Competition Act.</p> <p>Duration of the interim measure may be renewed if the Agency finds it necessary in a particular case.</p>
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13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>Relevant provision of Competition Act:</p> <p>Article 62 - Fines for less severe infringements</p> <p>A fine not exceeding 1 % of the total turnover in the last year for which financial statements have been completed shall be imposed on an undertaking party to the proceedings where it:</p> <ol style="list-style-type: none"> 1. fails to submit the obligatory prior notification of concentration to the Agency; 2. submits to the Agency incorrect or misleading information in the concentration assessment proceedings; 3. fails to act in compliance with the request of the Agency; 4. obstructs the enforcement of the injunction of the High Administrative Court of the Republic of Croatia. <p>Article 63 - Fines for other infringements</p> <p>A fine in the amount ranging from HRK 10,000 to 100,000 shall be imposed on an undertaking who is not a party to the proceedings carried out by the Agency if it fails to act in line with the request of the Agency as referred to under Article 32 points 1 a) and b), and Article 41 paragraphs (1) and (3).</p>
<p>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</p>	<p>Administrative fines.</p>
<p>C. On whom can procedural sanctions be imposed?</p>	<p>On parties concerned and other undertakings (see the provisions under 13A).</p>
<p>D. Criteria for determining the</p>	<p>Criteria for determining the amount of the fine is set in the</p>

¹⁰ Only for agencies which answered “yes” to question 2.B. above

sanction / fine:

Competition Act and in more details in the Regulation on the method of setting fines.

Article 64 of the Competition Act states the following:

Method for the setting of fines

When setting the fine the Agency shall take fully into account all mitigating and aggravating circumstances, such as the degree of gravity of the infringement, the duration of the infringement and the damage caused for competing undertakings and consumers. The Agency will use the following two-step methodology when setting the fine:

first, it will determine a basic amount for each undertaking; second, it shall adjust that basic amount upwards or downwards depending on the mitigating and/or aggravating circumstances in each particular case.

The basic amount of the fine will be determined and set at a level of up to 30 % of the undertaking's turnover generated exclusively from the activity of the undertaking carried out in the relevant market where the infringement was committed. The amount determined on the basis of turnover will be multiplied by the number of years of participation in the infringement of Competition Act. The Agency will then take into account circumstances, aggravating or mitigating, that respectively result in an increase or decrease in the basic amount as previously determined.

Mitigating circumstances shall be considered in particular:

1. where the undertaking concerned provides evidence that it terminated the infringement urgently, as soon as the Agency initiated the proceedings. By way of exception, this will not apply to cartel agreements;
2. where the undertaking provides evidence that the infringement has been committed as a result of negligence;
3. where the undertaking provides evidence that its involvement in the infringement is substantially limited and thus demonstrates that, during the period in which it was party to the offending agreement, it actually avoided applying it by adopting competitive conduct in the market;
4. where the undertaking concerned has effectively cooperated with the Agency outside the scope of the criteria for granting immunity from and reduction of fines.

Aggravating circumstances shall be considered in particular:

1. where an undertaking continues the same actions or repeats the same or a similar infringement within the provisions of Competition Act, after the Agency has made a finding that it infringed the provisions of Competition Act. In such cases the basic amount shall be increased by up to 100 % for each such infringement established;
2. refusal to cooperate with or obstruction of the Agency in carrying out its investigations;
3. role of leader in, or instigator of the infringement and all other steps taken to coerce other undertakings to participate in the infringement of Competition Act.

The Agency may also increase the fine in order to exceed the amount of gains improperly made as a result of the infringement of Competition Act, where it is possible to

	<p>estimate that amount.</p> <p>By way of derogation, the Agency may, upon request and evidence furnished by the undertaking concerned grant a further reduction of the fine. A further reduction could be granted solely on the basis of objective evidence that imposition of the fine as provided for in Competition Act would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value, given its unfavourable financial position before the fine for the infringement of competition rules has been imposed by the Agency.</p> <p>In the case mentioned under paragraph (7) of this Article and in similar cases where no significant impediment of competition has been established or where the infringement did not have negative effects on competition, the Agency may, in such cases, impose a symbolic fine. Yet, the justification for imposing such a fine should be given in its decision.</p>
<p>E. Are there maximum and / or minimum sanctions / fines?</p>	<p>The final amount of the fine which may be imposed for procedural breaches under Competition Act shall not exceed 1 % of the total turnover in the last year for which financial statements have been completed.</p>

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Administrative fines determined by the Agency.</p> <p>A fine not exceeding 10 % of the total turnover of the undertaking realized in the last year for which financial statements have been completed shall be imposed on the undertaking who concludes a prohibited agreement or participates in any other way in the agreement that resulted in distortion of competition in the sense of Article 8 of the Competition Act or Article 101 of the TFEU.</p> <p>Fines can be imposed on undertakings and associations of undertakings. Representatives of undertakings cannot be fined.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation, benefit gained from the violation]</p>	<p>See above under 13 D.</p>
<p>C. Are there maximum and / or minimum sanctions / fines?</p>	<p>Yes. Maximum fine is set at 10 % of the total turnover of the undertaking realized in the last year for which financial statements have been completed.</p>
<p>D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in</p>	<p>Regulation on the method of setting fines (OG 129/10), Regulation on immunity from fines and reduction of fines (OG 129/10)</p> <p>Available both in Croatian and English languages at Agency's website: http://www.aztn.hr/en/antitrust-and-mergers/legal-</p>

which these materials are available]	framework/
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	The claim against the decision of the Agency shall not postpone the enforcement of the decision, save for the part of the decision which relates to the imposed fine.

15. Possibilities of appeal

A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?	<p>Yes. Against the decisions of the Agency which establish the infringements of Competition Act or Article 101 of the TFEU and impose fines, and against the decisions by which the proceeding is terminated on the account of dealing with the preliminary issue, no appeal is allowed but the injured party may bring a claim before the High Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision. The claim shall be decided over by a panel of 3 judges concerning the following points of the decision concerned:</p> <ol style="list-style-type: none"> 1. misapplication or erroneous application of substantive provisions of competition law; 2. manifest errors in application of procedural provisions; 3. incorrect or incomplete facts of the case; 4. inappropriate fine and other issues contained in the decisions of the Agency. <p>Against the decision of the Agency establishing an infringement of Competition Act or Article 101 of the TFEU and imposing a fine for the committed infringement a claim may be filed by the injured party to the proceedings, whereas against the decision of the Agency establishing that no infringement of competition rules within the meaning of Competition Act has been committed a claim may be filed also by a person who filed the initiative and the person who has been granted the same procedural rights which are enjoyed by the person who filed the initiative.</p>
B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]	Before the High Administrative Court of Croatia.