



Strasbourg, 8 December 2006

Public
Greco RC-I (2004) 4E
Addendum

First Evaluation Round

Addendum to the Compliance Report on Croatia

Adopted by GRECO
at its 31st Plenary Meeting
(Strasbourg, 4-8 December 2006)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Croatia at its 9th Plenary Meeting (13-17 May 2002). The report (Greco Eval I Rep (2002) 4E), which contains 16 recommendations addressed to Croatia, was made public on 3 July 2002.
2. Croatia submitted the Situation Report required by GRECO's compliance procedure on 30 December 2003. On the basis of this report and a Plenary debate, GRECO adopted the First Round Compliance Report (RC-report) on Croatia at its 21st Plenary Meeting (2 December 2004) which was made public on 20 December 2004. The Compliance Report (Greco RC-I (2004) 4E) concluded that recommendations i, ii, vii, viii, x, xii, xiv and xv had been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations v, vi, ix, xi, xiii and xvi had been partly implemented and recommendations iii and iv had not been implemented; GRECO requested additional information on their implementation. The additional information requested was submitted on 8 November 2006.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure the objective of the present Addendum to the First Round Compliance Report is to appraise the implementation of recommendations iii, iv, v, vi, ix, xi, xiii and xvi in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iii.

4. *GRECO recommended to take further steps to ensure the implementation of the Programme and Action Plan and the continuous monitoring of the implementation of existing legislation in the anti-corruption area. For these purposes, one of the possibilities could be to establish a cross-cutting monitoring Commission (possibly linked to the Parliament, and comprising representatives of the various governmental bodies – including USKOK, civil society and the business community). This commission could also be in charge of the continuous adaptation of the Programme and Action Plan to the progress achieved and/or new problems arising in Croatia.*
5. GRECO recalls that in the RC-report it concluded that, in the absence of a structure for a continuous monitoring of the implementation of anti-corruption measures, recommendation iii had not been implemented.
6. The Croatian authorities report that a new National Anti-Corruption Programme, for the period 2006-2008, was adopted on 31 March 2006. On 13 October 2006, the Croatian Parliament appointed a National Council, which is composed of eleven members (5 members of Parliament and 6 other members representing employers, trade unions, NGOs dealing with the issue of corruption, academics and media), to monitor development and effective implementation of the National Anti-Corruption Programme.
7. The National Anti-Corruption Programme includes a wide range of sectorial action plans (e.g. the judiciary, health services, local self-government and public administration, political parties, the economy, science, education and sport), institutions responsible for their implementation and deadlines. The Ministry of Justice has been appointed as coordinator in charge of reviewing progress in implementation on a quarterly basis, and reporting to the National Council thereof.

8. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

9. *GRECO recommended to increase prescribed punishments (and also extend the statute of limitations) for serious types of corruption and corruption-related offences.*
10. The recommendation was not implemented, in particular because it was not substantiated in the reply of the Croatian authorities that punishments for serious types of corruption and corruption-related offences had been increased, nor that the rules on statutes of limitations had been amended.
11. The Croatian authorities now state that, pursuant to the amendments of the Criminal Code, which came into force on 1 October 2006, the prescribed punishments for certain corruption offences have been increased. In particular, the minimum sentence for active bribery (Articles 348(1) and 294b(1), Criminal Code) has been raised from three to six months' imprisonment; the maximum sentence remains three years' imprisonment. In two forms of passive bribery (Articles 348 and 294(a), Criminal Code), both minimum and maximum sentences have been raised and now range from: (1) one to eight years' imprisonment (as compared to the previous prescribed punishment consisting of a prison sentence from six months to five years); and (2) six months to five years' imprisonment (as compared to the previous prescribed punishment consisting of a prison sentence from three months to three years). In addition, in three forms of the criminal offence of abuse of office and authority (Article 337, Criminal Code) the minimum sentences have been raised. For the most serious form of the offence of abuse of office and authority, i.e., when considerable pecuniary gain was acquired or extensive damaged was caused by the commission of the offence (Article 337(4), Criminal Code), imprisonment ranges from one to ten years. Finally, the statute of limitations has been extended for the mildest forms of criminal offence from four to six years after the offence was committed. For passive bribery, the absolute statute of limitations is twenty years.
12. In the light of the foregoing, GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

13. *GRECO recommended that the adoption of the Law on the Prevention of Conflicts of Interest in Public Service as well as the adoption of a General Code of Conduct for Public Officials should be of a high priority for Croatia, and that a special body (or bodies) should be designated to ensure the efficient implementation of obligations prescribed by those documents.*
14. GRECO recalls that in the RC-report it acknowledged that a variety of positive measures, including adoption of the Law on the Prevention of Conflicts of Interest in Public Service and the establishment of the Commission for the Resolution of Conflicts of Interest, had been introduced. However, in the absence of a general code of conduct for public officials and a mechanism for its follow-up, GRECO concluded that the recommendation had only been partly implemented.
15. The Croatian authorities have now informed GRECO that the Parliament adopted the Code of Ethics for Civil Servants on 28 April 2006; it came into force on 11 May 2006. The Code of Ethics comprises rules of ethical behaviour, which are to guide the conduct of civil servants in-service as

well as vis-à-vis private citizens. In this context, the Code of Ethics is meant to serve as a tool to inform the public on what it should expect of civil servants when developing their public duties. The Central Administrative Office for Public Administration is responsible for overseeing implementation of the Code of Ethics.

16. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

17. *GRECO recommended*

- *that particular efforts be undertaken in the following months to implement the Law on Office for the Suppression of Corruption and Organised Crime (USKOK),*
- *that the USKOK's strategic, preventive, coordinating and monitoring functions should not be sidelined in the interest of its primarily law enforcement and prosecutorial activities,*
- *that the relevant state bodies as well as the civil society should make particular efforts to ensure its implementation with due respect of human rights (given the relatively broad powers of law enforcement bodies and public prosecutors together with the specialised court proceedings newly introduced by the Law on USKOK).*

18. GRECO recalls that this recommendation was considered partly implemented as USKOK was not fully operational at the time of adoption of the RC-report. Moreover, GRECO was concerned that the scope of activity of USKOK risked being limited to the law enforcement side of the fight against corruption instead of, as initially foreseen, its preventive and monitoring functions.

19. The Croatian authorities report that the Act on Amendments to the Law on the Office for the Suppression of Corruption and Organised Crime (USKOK), which entered into force on 22 March 2005, introduced significant changes to the USKOK's scope of work, structure, competence as prosecuting authority and relationships with other State and private bodies, in particular with banks. By virtue of the aforementioned amendments, USKOK has become a body for criminal prosecution, prevention and international cooperation; it has lost its unfulfilled coordinating and monitoring functions with respect to the National Anti-Corruption Programme, which are now under the responsibility of other bodies (see paragraphs 6 and 7).

20. Concerning effective staffing, Regulations on Internal Organisation of USKOK were adopted on 9 December 2005; recruitment was launched thereafter. USKOK is to be provided with 53 staff members (Head, 16 special prosecutors, 1 secretary, 9 advisors, 6 professional associates, 2 criminal analysis experts, 3 Public Relations (PR) experts, 1 interpreter, 3 Information Technology (IT) experts, 12 office administrators, 3 typists, and 3 additional employees carrying out auxiliary tasks). As of 1 September 2006, USKOK had a total staff of 35 (15 prosecutors, 1 IT expert, 6 advisors, 1 PR expert, 1 criminal analysis expert, 1 interpreter, 1 expert for relations with NGOs, 5 typists, 3 office administrators, and 1 employee). The USKOK's budget has increased progressively since 2002, when the resources allocated amounted to 480,000€ until 2006 when USKOK was provided with 1,250,000€. These figures do not include money for capital assets, which are financed directly from the budget of the Ministry of Justice.

21. In addition, USKOK has received technical assistance via an EC CARDS 2002 project to the amount of 1,000,000€, to improve its human and technical capacity. In particular, the project served to finance IT upgrades (including the development of e-registers and e-case files) and to provide joint training programmes for USKOK prosecutors as well as other law enforcement

bodies (e.g. police officers, tax authorities, FIU officials, etc.). The topics included in this training concerned the fight against corruption, money laundering and international cooperation in criminal matters.

22. USKOK has developed and is in the process of developing a number of cooperation agreements with other State bodies (e.g. Anti Money Laundering Department, Tax Directorate) to structure systematic inter-institutional collaboration. For example, through the Cooperation Agreement established between USKOK and the Tax Directorate on 4 September 2006, a tax official will be placed on the USKOK premises to provide relevant expertise in connection with financial investigations. Moreover, the Cooperation Agreement also foresees that direct access to tax databases will be granted to USKOK.
23. Finally, USKOK is said to have taken a proactive approach in the preventive side of the fight against corruption while raising public awareness on the anti-corruption policy and legislation, adopted to date, and the role of USKOK itself. In this connection, numerous workshop events (e.g. with media representatives, NGOs, secondary school teachers, etc) and information materials were developed in 2006. A Council of Europe project (PACO Impact) has financed a wide set of promotion tools (posters, leaflets and CDs) to inform the public on the new National Anti-Corruption Programme 2006-2008 and to enhance citizens' obligations to report suspicions of corruption to law enforcement bodies. A conference to introduce the promotional materials was held in Zagreb on 7 July 2006, and was attended by representatives of State authorities, the judiciary, NGOs and the media. Further distribution of these materials is to take place in the coming months.
24. GRECO welcomes the ongoing progress reported and particularly commends the steps undertaken by USKOK to tackle corruption in a proactive and multidisciplinary manner. In light of the preventive and repressive functions with which USKOK is vested, GRECO encourages the Croatian authorities to ensure that it reaches the required staff level as soon as possible. Finally, GRECO notes that, following recent amendments to the Law on USKOK, its previous monitoring and coordinating functions concerning implementation of the National Anti-Corruption Programme have now been entrusted to other bodies, notably the National Council (monitoring) and the Ministry of Justice (coordination). Based on the information supplied, GRECO considers that the concerns expressed in its First Round Evaluation have been adequately addressed.
25. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

Recommendation ix.

26. *GRECO recommended that similar measures (declaration of assets and background security checks), under clear rules, be extended to all judges investigating and adjudicating USKOK cases and that the introduction of a requirement for the declaration of assets for all prosecutors and all judges be considered.*
27. In the RC-report, GRECO concluded that pending adoption of draft legislation concerning declaration of assets and background security checks in respect of judges adjudicating USKOK cases, the recommendation was partly implemented. The Croatian authorities had added that the introduction of a legal obligation for the declaration of assets for all prosecutors and judges was being considered.

28. The Croatian authorities indicate that, following amendments to the Act on Courts, all judges are now required to file declarations of assets pursuant to Article 97(4) of the Courts Act and its corresponding implementing Regulations, which were adopted on 7 March 2006. The introduction of a requirement for the declaration of assets and the carrying out of security checks with regard to all prosecutors is being considered in the context of the Strategy of the Reform of the Judicial System, which envisages future amendments to the State Attorneys Act in this respect.
29. The Croatian authorities stress that the requirement to carry out background security checks with respect to adjudicating judges dealing with USKOK cases was discussed at length and subsequently dropped at the time of the introduction of the amendments to the Act on Courts. The reason for this is that it would have entailed increasing the number of judges likely to be covered by security checks to an unnecessary extent (i.e. all adjudicating judges at county level – Zagreb, Osijek, Rijeka and Split –, as well as some municipal judges, could be USKOK trial judges according to Articles 24 to 27 of the Law on USKOK) and this could be to the detriment of a timely adjudication of USKOK cases. Moreover, the reasoning lying behind the stringent requirement to carry out security checks with respect to USKOK investigative judges is closely connected to their faculty to order the use of special investigative techniques; adjudicating judges are only empowered to decide on the legality of the use of such techniques.
30. GRECO takes note of the detailed information provided. It would appear that the Croatian authorities have paid due attention to the possible ways of fulfilling the core aim of recommendation ix, i.e. to provide for measures, which would ultimately prevent instances of corruption and enhance the credibility of the judiciary, while ensuring a swift and effective response when dealing with corruption cases. In this context, GRECO welcomes the introduction of a requirement for the declaration of assets for all judges and the plans underway to subject public prosecutors to a similar obligation.
31. For all of the above reasons, GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation xi.

32. *GRECO recommended that the Government undertake measures for the protection of employees in State institutions and other legal entities against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting legislation or regulations on the protection of “whistleblowers” and to launch an appropriate campaign to raise the awareness of those measures among civil servants.*
33. GRECO recalls that in the RC-report it considered that the legal measures listed by the Croatian authorities to protect civil servants, who report suspicions of corruption in good faith (so-called whistleblowers), from an unjustified termination of their employment agreement did not fully cover the concerns addressed by this recommendation. Therefore, it concluded that the recommendation was partly implemented and that further steps had to be taken with regard to awareness raising of protection of whistleblowers in the civil service.
34. The Croatian authorities have now informed GRECO that the new National Anti-Corruption Programme 2006-2008 foresees the creation of a Department of Ethics, within the Central State Office for Administration. This Department, together with the Centre for Professional Education and Training of Department Staff, would be responsible for developing educational programmes of professional ethics in public administration. Moreover, the Department of Ethics would be given

a specific mandate to raise the awareness among civil servants concerning the reporting of suspicions of corruption and to establish a system to protect whistleblowers from adverse consequences.

35. GRECO takes note of the information provided by the Croatian authorities and welcomes the progress reported; however, it cannot change its previous conclusion until the Department of Ethics becomes operational and establishes a system to protect whistleblowers. GRECO notes that this issue will continue to be reviewed in the context of the follow-up procedure to the recommendations adopted in the Second Evaluation Round.
36. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xiii.

37. *GRECO recommended that the legal possibilities for the use of relevant special investigative means is extended to all serious corruption and corruption related offences.*
38. GRECO recalls that it concluded in the RC-report that the recommendation was partly implemented as draft legislation in this respect was still under consideration in Parliament at the time.
39. The Croatian authorities state that, according to the amendments of the Criminal Procedure Act, which came into force on 21 October 2006, it is now possible to use special investigative techniques in relation to the offences of abuse of official position and authority (Article 337, Criminal Code) and trading in influence (Article 343, Criminal Code). Therefore, with these amendments, the application of special investigative techniques has been extended to all serious corruption and corruption-related offences.
40. GRECO concludes that recommendation xiii has been implemented satisfactorily.

Recommendation xvi.

41. *GRECO recommended to adopt clear and transparent rules for the lifting of immunity, especially with regard to Members of Parliament and Government.*
42. In the RC-report, GRECO indicated that although steps had been taken by the Croatian Parliament to abolish the immunity in practice, with a view to allowing for prosecution in all criminal offences (including corruption), the recommendation had only been partly implemented.
43. The Croatian authorities report that the Mandates and Immunity Commission of the Croatian Parliament and the Croatian Parliament itself have acted in several cases according to the accepted principle by which procedural immunity is lifted whenever the criminal prosecution is instituted *ex officio*. For criminal prosecution on a private initiative (a private complaint for libel and slander), the Croatian Parliament, in principle, does not lift immunity.
44. GRECO notes that no concrete action or activities have been undertaken to address the concern expressed in the recommendation xvi, i.e. the lack of clear and transparent rules regarding the lifting of immunity of Members of Parliament and Government. The examples referred to above do not indicate that the need for such rules no longer exists.

45. GRECO concludes that recommendation xvi has been partly implemented.

III. CONCLUSION

46. In addition to the conclusions contained in the First Round Compliance Report on Croatia and in view of the above, GRECO concludes that recommendations iii, iv, v, and xii have been implemented satisfactorily and recommendations vi and ix have been dealt with in a satisfactory manner. Recommendations xi and xvi remain partly implemented. GRECO commends the Croatian authorities for the steps undertaken to address the recommendations under consideration and thereby to tackle corruption in a comprehensive and multifaceted manner. It encourages Croatia to pursue its efforts to fully implement the new National Anti-Corruption Programme 2006-2008, and to raise awareness on the behavioural rules introduced by the Code of Ethics for Civil Servants, including the system of reporting suspicions of corruption in public administration. Finally, GRECO hopes that clear and transparent rules regarding the lifting of immunity of Members of Parliament and Government will be introduced in the near future.
47. The adoption of the present Addendum to the Compliance Report terminates the First Evaluation Round compliance procedure in respect of Croatia.