



Strasbourg, 7 December 2007

Public
Greco RC-II (2007) 13E

Second Evaluation Round

Compliance Report on Croatia

Adopted by GRECO
at its 35th Plenary Meeting
(Strasbourg, 3-7 December 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Croatia at its 26th Plenary Meeting (9 December 2005). This report (Greco Eval II Rep (2005) 4E) was made public by GRECO, following authorisation by the authorities of Croatia, on 13 December 2005.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Croatia submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 17 September 2007.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Iceland and Slovenia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ragna ARNADOTTIR on behalf of Iceland and Sandra BLAGOJEVIC on behalf of Slovenia. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Croatia, to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its evaluation report addressed eleven recommendations to Croatia. Compliance with these recommendations is dealt with below.

Recommendations i. and ii.

6. *GRECO recommended to review the application of the existing provisions on confiscation of corruption proceeds and, where appropriate, to continue providing training to the law enforcement authorities on the application of the relevant legal provisions. (i)*
7. *GRECO recommended that cooperation on a regular basis and at appropriate levels be established between the Office for the Suppression of Corruption and Organised Crime (USKOK) and bodies specifically involved in the detection of corruption offences; and that guidelines and adequate training be developed for police, prosecutors and investigating judges concerning the tracking down of offenders' assets. (ii)*
8. The authorities of Croatia indicate that amendments¹ have been made in 2006 to Article 82 of the Criminal Code to introduce a new paragraph 2 on extended confiscation and the apportionment of the burden of proof in those cases where the perpetrator is part of a criminal organisation.
9. As far as statistics on the use of seizure/confiscation are concerned, the Zagreb County Court (which is the largest court administration within the country) reported that, since the adoption of the Second Round Evaluation Report in December 2005, 25 corruption cases have been investigated and assets have been confiscated up to a value of 75,000 EUR; a total of 200,000 EUR were confiscated in connection with 5 cases of abuse of office. In the last quarter of 2007, the Office for the Suppression of Corruption and Organised Crime (USKOK) and the police have frozen a total of 7 million EUR in relation to a corruption case.

¹ Act on Amendments to the Criminal Code, which entered into force on 1 October 2006.

10. The authorities further report on the implementation of the Council of Europe CARPO project on organised crime (CARDS Regional Police Project), during the period 2004 - 2007, including, *inter alia*, the elaboration of a handbook on financial investigations and confiscation of the proceeds from crime in September 2006, which was distributed to the law enforcement bodies. A second edition of the aforementioned handbook was published in June 2007; it has been supplemented with examples from practice and guidance in respect of the newly introduced provisions on extended confiscation. In addition, the Ministry of the Interior organised three training activities dealing with confiscation and financial investigations, which were attended by a total of 40 law enforcement officials (police officers, deputy public prosecutors and investigating judges) with responsibilities in the area of corruption from all over Croatia. Further training activities on corruption-related matters (including, but not limited to, the topics of financial investigations, procedures for securing the attachment of criminal proceeds from the very early stages of the investigation, case studies on money laundering and organised crime, etc) were organised by the Judicial Academy of the Ministry of Justice and the USKOK: a total of 9 training events were attended by 126 judges and State prosecutors.
11. Furthermore, the Commission for Monitoring the Implementation of the Programme of Special Action Measures against Organised Crime, together with the European Commission, have prepared a revised National Plan for the Fight against Organised Crime, which foresees that by the end of 2008 a special unit will be established to track down, execute and manage seizure and confiscation orders of the proceeds from crime.
12. Finally, inter-institutional cooperation has been and is in the process of being developed. In this context, USKOK signed a Cooperation Agreement with the Tax Directorate on 4 September 2006, which provides USKOK with direct access to tax databases. Further channels for cooperation exist with the Police Headquarters and the Anti Money Laundering Department. In addition, USKOK has prepared a project proposal under the EU pre-accession assistance IPA fund, which aims at strengthening the capacities of USKOK by further structuring its cooperation with other State and international bodies involved in the fight against corruption (e.g. through joint investigation teams; joint training sessions for USKOK prosecutors, crime investigation police, the Office for the Prevention of Money Laundering, and tax and customs authorities to share common knowledge and understanding on how to deal with corruption offences; co-operation between USKOK prosecutors and EUROJUST as well as OLAF officials, etc).
13. GRECO notes the efforts undertaken to promote the use of confiscation and financial investigations in connection with corruption offences. It welcomes the introduction of extended confiscation and the plans underway to confer to a specialised body the management and recovery of all seized/confiscated proceeds. It further acknowledges the measures reported with regard to training of the officials concerned and the issuing of a handbook on the practicalities of both financial investigations and confiscation of the proceeds from crime. With respect to inter-institutional cooperation in corruption cases, GRECO welcomes the steps taken to enhance mutual cooperation between USKOK and the Tax Directorate, the Police Headquarters and the Anti Money Laundering Directorate, respectively. It also takes note of USKOK's application for EU financial assistance with a view to further developing the joint work of the relevant bodies specifically involved in the detection of corruption offences.
14. In view of the above, GRECO considers that the overall objective of recommendations i and ii has been met. It is confident that the combination of the measures reported will have a positive impact on the detection and confiscation of corruption proceeds, as appears to be the case in the light of the statistics provided which point at an increasing number of corruption investigations and

seizure/confiscation orders. That said, GRECO is hopeful that the authorities of Croatia will continue to keep under review the application of the legal provisions on confiscation in order to ensure their full use in practice.

15. GRECO concludes that recommendations i and ii have been implemented satisfactorily.

Recommendation iii.

16. *GRECO recommended that the effectiveness of the provisions of the Law on the Right of Access to Information and its implementation be assessed and that training on the provisions of the law be provided to all information officers and to public officials who manage programmes that are subject to significant requests for information.*
17. The authorities of Croatia reiterate that all public authorities are required to submit to the Central State Office for Public Administration, on an annual basis, a report on the implementation of the Law on the Right of Access to Information, including details on the appointment of information officers and the corresponding catalogues of information held by the institution concerned. The Central State Office for Public Administration compiles the information received by the different authorities and prepares a consolidated report, which is initially sent to the Government and subsequently passed to the Parliament for its formal adoption and publication. The Croatian Parliament adopted the 2006 Report at its 24th session in March 2007; it contains data on the overall number of information requests filed, responded and denied, with particular examples.
18. With respect to the second part of the recommendation, a two-day seminar was organised for 36 information officers at the Centre for Professional Education and Training of Civil Servants of the Central State Office for Public Administration, in cooperation with the Croatian Helsinki Committee for Human Rights.
19. GRECO takes note of the details provided on the practical functioning of the mechanism developed to monitor, on a regular (annual) basis, the implementation of the Law on the Right of Access to Information. However, GRECO would have appreciated more concrete information regarding the effectiveness of the relevant legislation in order to be able to form a clear view on how the right of access to information is being implemented in practice and to confirm that the concern expressed in the Second Round Evaluation Report, i.e. that the denials of requests for information were more frequent than desirable, is no longer valid. Moreover, GRECO is of the opinion that the organisation of a single training seminar for some information officers falls short of the objective pursued by the second part of the recommendation. Consequently, the authorities are encouraged to step up their efforts and to provide further training activities for both information officers and public officials who manage programmes that are subject to significant requests for information.
20. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

21. *GRECO recommended that as it develops its new Administrative Procedure Act, Croatia considers specifically including alternatives to an appeal to the Administrative Court, such as alternative dispute resolution procedures.*

22. The authorities of Croatia indicate that the Arbitration Act and the Mediation Act set forth the legal framework applicable in this area; provisions on alternative resolution are also contained in the Civil Obligations Act, the Family Act, the Trades and Crafts Act, the Criminal Procedure Act and the Juvenile Courts Act. In addition, a range of organisations for mediation are already in place, such as the Centre for Mediation at the Croatian Chamber of Commerce, the Permanent Arbitration Court at the Croatian Chamber of Commerce, the Centre for Mediation at the Croatian Association of Employers, the Office for Social Partnership, etc.
23. The Strategy of the Reform of the Judicial System defines the development of alternative dispute resolution schemes (mediation, conciliation, arbitration) as one of the priorities of the reform of the justice system. In this context, the following short and medium term measures are planned: public promotion of the available instruments, education/training of mediators, establishment of regional centres for mediation, etc. In addition, a Commission for Alternative Dispute Resolution is to be set up at the Ministry of Justice, which will monitor the development of dispute resolution mechanisms and propose measures for improvement, as necessary. The Ministry of Justice is responsible for offering administrative support to the aforementioned Commission by *inter alia* keeping a register of mediators, organising educational programmes at the Judicial Academy, establishing IT support for the management of mediation proceedings, organising information and media activities to inform citizens about mediation proceedings and adopting a Code of Ethics for Mediators. Annual reports on the state-of-play concerning dispute resolution schemes are to be submitted to the Government of the Republic of Croatia. Finally, the High Commercial Court and commercial courts have already started to introduce alternative dispute resolution mechanisms.
24. In addition, on 25 January 2007, the Government adopted the Guidelines for the Elaboration of a new Law on General Administrative Procedure, which provides for two new types of contract, i.e. “co-ordinated administrative contracts” (partnerships between public authorities to overcome specific budgetary/technical/other type of constraints, e.g. contracts between two municipalities for the joint maintenance of a road) and “subordinated administrative contracts” (between public administration and private citizens/entities, e.g. contracts under the Kyoto Protocol emission trading scheme signed between a private company and a public authority) aimed at setting in place a more flexible framework for contractual relations with/within public administration.
25. GRECO is pleased to note that the authorities have gone beyond the recommendation, as they did not only consider the introduction of alternative dispute mechanisms in legislation, but they are also paying significant attention to the implementation measures required to strengthen and promote the use of dispute resolution in practice. GRECO very much hopes that efforts in this area will be maintained, as intended in the Strategy of the Reform of the Judicial System, as this should help to alleviate the backlog in the Administrative Court.
26. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

27. *GRECO recommended the consideration of including in any new civil service law the following tools that will help to combat corruption: the general legal authority to develop a rotational system if necessary; a requirement to screen potential civil servants and employees for previous convictions; a requirement to report suspected corruption or other crimes; and protection from reprisal for reporting and, thereafter for those tools included, establishing a process by which the fairness, efficiency and effectiveness of their implementation can be evaluated.*

28. The authorities of Croatia state that a new Law on Civil Servants entered into force on 1 January 2006. It sets in place a merit-based recruitment process which is further developed by the Decree on the Issuance and Implementation of Public Vacancy Competitions and Internal Vacancy Announcements in the Civil Service². This Decree also establishes the obligation for candidates to submit proof in their application of a clean criminal record. The Law on Civil Servants introduces an evaluation procedure with respect to the performance and efficiency of civil servants. The Law on Civil Servants does not include any provision on rotation for positions which are most vulnerable to corruption; nevertheless, the authorities are of the opinion that this issue merits further internal debate.
29. A Code of Ethics for civil servants was adopted on 28 April 2006; it came into force on 11 May 2006. Moreover, in the context of the National Anti-corruption Programme 2006-2008, a Department of Ethics, within the Central State Office for Public Administration, has been operating since the end of 2006. It is responsible *inter alia* for providing training programmes on professional ethics (in cooperation with the Centre for Professional Education and Training of Civil Servants), serving as a public service ethics watchdog (e.g. through the establishment of telephone hot-lines for citizens' complaints), overseeing general implementation of the Code of Ethics and analysing the reports on the efficiency and performance of civil servants, which are submitted by the relevant Heads of State bodies on an annual basis. The 2006 report did not list any instances of possible corruptive behaviour of civil servants.
30. The Central State Office for Public Administration instructed the ministries, State administration, central and county State offices, administrative and professional services of the Parliament, the Government, the Constitutional Court, the Office of the President, Ombudsman offices, the State Audit Office, and judicial bodies, to suspend any civil servant against whom criminal proceedings had been instituted for the criminal offence of corruption.
31. As far as reporting of corruption and protection of whistleblowers are concerned, the Labour Act provides in its Article 115, paragraph 3, that the worker's turning to responsible persons or competent State administration bodies or filing a *bona fide* application with these persons or bodies, regarding a reasonable suspicion of corruption, is not considered to be a justified reason for dismissal. The Labour Act is applicable to civil servants as provided for in Article 4, paragraph 2 of the Law on Civil Servants.
32. GRECO welcomes the entry into force of both the new Law on Civil Service and the Code of Ethics for civil servants in 2006. GRECO also welcomes the creation of a Department of Ethics, which is entrusted *inter alia* with the promotion of professional ethics throughout public administration. It considers that, in the framework of the ongoing public administration reform, Croatia has entered into an important process which will contribute to a more articulated overall anti-corruption strategy.
33. GRECO is pleased to note that the authorities are of the opinion that the introduction of a rotational system for areas, which are most vulnerable to corruption, still merits further discussion. It therefore urges Croatia to consider this issue, in line with recommendation v.
34. Furthermore, with regard to the requirement to report suspicions of corruption and protection from reprisal for reporting, GRECO notes that nothing new has been added to the information already available at the time of the adoption of the Second Round Evaluation Report, namely that whistleblowers cannot be dismissed. Moreover, in paragraph 34 of the Addendum to the First

² Official Gazette No. 8/06.

Evaluation Compliance Report (Greco RC-I (2004) 4E), the authorities referred to the envisaged mandate of the Department of Ethics 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. GRECO would have welcomed further clarifications concerning the role and action of the Department of Ethics in this field, if any.

35. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

36. *GRECO recommended that Croatia reconsiders the gift exception (gifts valued less than one third of the average monthly salary) to lower the value and frequency of any gifts that may be accepted by civil servants, employees or officials to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage.*
37. The authorities of Croatia indicate that Article 17 of the new Law on Civil Servants prohibits them from accepting gifts for their personal gain, or for the gain of their family or an organisation, or for favourable settlement of an administrative or other proceeding. The Law on Preventing Conflicts of Interest in Public Office, as amended in December 2006, allows high ranking officials to accept gifts of a symbolic value, i.e. gifts valued under HRK 500 (70 EUR) received from the same donor in a given year.
38. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

39. *GRECO recommended that the appropriate authorities develop public, written interpretative guidance of the current prohibitions for public officials and the relationship of those prohibitions to the relevant corruption-related provisions under criminal law, and that the Commission for the Resolution of Conflicts of Interest include a similar discussion in its informational materials.*
40. The authorities of Croatia report on the work of the Commission for the Resolution of Conflicts of Interest, in particular, the opinions provided by the Commission on individual cases (35 opinions issued out of 137 reports on financial interests; 6 decisions in which the Commission determined that a conflict of interest existed; 1 case possibly involving a criminal offence was referred to the competent public prosecution service) and the cooperation channels in place with other domestic and international bodies to share expertise and good practice in this area.
41. GRECO takes note of the information provided, but considers that it does not reflect the issues raised by the recommendation, i.e. the need to develop public, written interpretative guidance of the prohibitions for public officials and the relationship of those prohibitions to the relevant corruption-related provisions under criminal law. Moreover, there is no evidence from the information supplied that the Commission for the Resolution of Conflicts of Interest has included a similar discussion in its informational materials, in accordance with the recommendation.
42. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

43. *GRECO recommended to ensure that persons establishing companies are screened in respect of security measures involving limitations of rights to which they might be subjected (e.g., prohibition to engage in a profession, activity or specific duty); and to establish a system to timely notify the commercial courts whenever a leading person in a corporation has been banned from business activity by a criminal court.*
44. The authorities of Croatia state that the Companies Act provides for certain safeguards to prevent that persons who have been convicted for economic offences (e.g. accounting offences, fraud, unauthorised disclosure of business secrets, misconduct in bankruptcy proceedings, etc), or subject to professional bans, become members of management boards; similar provisions are included in the Auditing Act, the Accounting Act, tax laws, etc. The Criminal Code establishes that criminal records may only be provided to the courts and prosecution services when criminal proceedings are conducted against the person whose records are being sought (Article 86). In order to comply with GRECO's recommendation, draft amendments to the Criminal Code have been drawn up intended to require the Ministry of Justice to inform the commercial courts *ex officio* about security measures involving limitation of rights of leading persons in corporations.
45. GRECO welcomes the ongoing progress reported and encourages the authorities to pursue the adoption of the envisaged amendments to the Criminal Code, which would enable commercial courts to perform an *ex-ante* control of the criminal records, including possible security measures imposed on the persons involved in the establishment of a company. However, as the draft amendments have not yet been adopted, GRECO cannot anticipate the final result at this stage.
46. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

47. *GRECO recommended to take appropriate measures to ensure that the public's right of access to information on legal persons contained in commercial registers can be exercised in an effective manner.*
48. The authorities of Croatia reiterate that the information contained in the commercial registers is public; any individual is entitled to request a certified copy of registration data without having to prove a legitimate interest. The new Act on Amendments to the Companies Register Act, which was adopted in March 2006, provides the basis for quick and secure communication between courts and public notaries, who are further expected to play a key role in relation to the establishment of companies and their entry into the court register. Likewise, the aforementioned Act foresees the establishment of an electronic register of documents, which is to be fully operational by 1 January 2008 and which is meant to enable a simpler, more expeditious and transparent use of the information recorded in commercial registers. Furthermore, the Strategy of the Reform of the Judicial System prioritises the development of IT support to commercial courts – and therefore the deployment of financial allocations to this end - in order to achieve full and timely accessibility of data from commercial registers. Finally, a “one-stop-shop” system (integrated business registration system) was introduced in the last quarter of 2007.
49. GRECO takes note of the information provided, in particular, the ongoing transition from paper-based registration records to a centralised and computerised commercial register, and the simplification of the registration process through the introduction of the “one-stop-shop” system.

GRECO considers that although the electronic register of commercial courts is not yet fully operational, the measures reported already comply to a large extent with the aim of the recommendation, namely to facilitate an easier and more effective access to information on legal persons. GRECO encourages Croatia to continue its efforts in this respect.

50. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Recommendation x.

51. *GRECO recommended to develop training to raise the awareness among police officers, prosecutors, judges, tax inspectors and State auditors of the possibilities for applying the Law on Liability of Legal Entities for Criminal Offences, and of problems of corruption linked with legal persons.*
52. The authorities of Croatia report a vast number of training activities on corruption, including specific chapters on criminal liability of legal persons, which have been organised by different national authorities (Ministry of the Interior, Judicial Academy of the Ministry of Justice), bilateral donors (USAID) and international organisations (CARPO programme of the Council of Europe, TAIX and twinning programmes of the European Commission). The aforementioned activities have targeted a broad audience of practitioners, including members of the police, prosecutors, judges, tax authorities, internal and State auditors, from all over the country.
53. Moreover, in 2007, amendments were introduced to the Public Prosecution Service Act³ and the Courts Act⁴ to establish the obligation for prosecutors and judges, respectively, to undertake continuous professional training and to attend in an active manner (whether as participants or lecturers) any awareness-raising programme organised in their field of competence. The attendance of prosecutors and judges at such training is positively assessed in their professional appraisals and therefore plays a role in career advancement. Similar obligations are provided for other categories of officials, e.g. tax inspectors and State auditors, according to Article 92 of the Law on Civil Servants.
54. GRECO takes note of the numerous training sessions held since the adoption of its Second Round Evaluation Report to further familiarise the officials involved in combating corruption with corporate criminal liability, as well as the introduction of a clear obligation for preventing/investigating/prosecuting authorities to follow continuous training, as appropriate.
55. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

56. *GRECO recommended that the Croatian authorities encourage the private accountants' and auditors' representative bodies to issue guidelines and organise training on the detection and reporting of corruption.*
57. The authorities of Croatia indicate that the State Audit Office issued in July 2006 a set of Guidelines for the Conduct of Audits in the Event of Suspected Fraud or Corruption. Training has been organised for State auditors on the aforementioned Guidelines (including practical cases on recurrent irregularities which may be faced in the course of audits) and ethics in public service.

³ Official Gazette No. 16/07, 9 February 2007.

⁴ Official Gazette No. 150/05, 16 July 2007.

58. GRECO takes note of the guidance and training provided to the State auditors. It stresses, however, that the information supplied by the authorities does not make any reference to the core aim of the recommendation, i.e. the provision of guidance and training to private accountants and auditors with a view to encouraging the reporting of corruption instances by these categories of professionals.
59. On the basis of the information at its disposal, GRECO concludes that recommendation xi has not been implemented.

III. CONCLUSIONS

60. **In view of the above, GRECO concludes that Croatia has implemented satisfactorily or dealt with in a satisfactory manner over half of the recommendations contained in the Second Round Evaluation Report.** Recommendations i, ii, iv, vi and x have been implemented satisfactorily and recommendation ix has been dealt with in a satisfactory manner. Recommendations iii, v and viii have been partly implemented and recommendations vii and xi have not been implemented.
61. Croatia has made credible efforts to comply with a number of GRECO recommendations, e.g. through the development of inter-institutional cooperation, targeted guidance and training aimed at improving the effectiveness of the legal framework concerning financial investigations and confiscation of the proceeds of corruption, the promotion of alternative dispute resolution mechanisms to tackle the backlogs in the administrative courts, the modernisation of the system of registration of legal persons, etc. Likewise, the reported measures to strengthen professional ethics in the public service (e.g. merit-based recruitment system, adoption of a Code of Ethics, creation of a Department of Ethics) should be commended. Nevertheless, additional measures to prevent corruption in public administration need to be introduced, for instance, by considering a rotational system for those positions which are most vulnerable to corruption, by ensuring adequate protection from reprisal to whistleblowers and by further developing written interpretative guidance of the criminal and disciplinary standards in the public function. Further steps are also required to improve the level of awareness of private accountants and auditors on the detection and reporting of corruption. GRECO encourages the authorities to deal with the outstanding recommendations as soon as possible.
62. GRECO invites the Head of the Croatian delegation to submit additional information regarding the implementation of recommendations iii, v, vii, viii and xi by 30 June 2009 at the latest.
63. Finally, GRECO invites the authorities of Croatia to translate the report into the national language and to make this translation public.