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First Evaluation Round

Compliance Report on Croatia

Adopted by GRECO
at its 21st Plenary Meeting
(Strasbourg, 29 November - 2 December 2004)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Croatia at its 9th Plenary Meeting (13-17 May 2002). This Report (Greco Eval I Rep (2002) 4E) was made public by GRECO, following authorisation by the authorities of Croatia on 3 July 2002.
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 follow the recommendations on 30 December 2003.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Albania and Spain to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Ardian DVORANI on behalf of Albania and Mr Antonio VERCHER NOGUERA on behalf of Spain. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 21st Plenary Meeting (29 November - 2 December 2004).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Croatia and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 16 recommendations to Croatia. Compliance with these recommendations is dealt with below.

Recommendations i. and ii.

7. *(i) GRECO recommended to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption related offences in all spheres of the Police, Public Prosecutor's Offices, and the Courts on the basis of harmonised methodology, which would enable comparisons among institutions.*
8. *(ii) GRECO recommended to seek to obtain more precise information about the scale of corruption in the country, by conducting relevant research in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and customs services, education and health system.*
9. The authorities of Croatia have reported that the State Attorney's Office in 2001 carried out an analysis concerning statistics on criminal offences of corruption covering the period of 1996 to 2000, as the basis for the mandate of the "Office for the Suppression of Corruption and Organised Crime (USKOK)"¹. The statistics indicate for example the number of corruption offences reported, number of persons charged and number of convictions and sanctions. There are cases concerning corruption pending with regard to police officers, prosecutors, judges, civil servants of the customs, etc. The data has been compared with statistics from 2001 and 2002, and several conclusions have been drawn, for example, that there has been an increase in the

¹ This body is named "the Office for the Prevention of Corruption and Organised Crime (USKOK)" in the Evaluation report.

number of reported corruption offences in general and an increase in reports filed by the wider public. The authorities have added that it is foreseen to make the statistical and analytical systems of the police compatible with those of the Prosecution service through a co-ordinated methodology.

10. GRECO took note of the information provided and it is of the opinion that a fully harmonised methodology between the Police and the Prosecutors Office has not been achieved, although progress has been made. Moreover, the authorities have delivered statistics which provide information for research about the scale of corruption in the country. Even if GRECO is of the opinion that further improvements in this area would be needed, it appears that substantial progress has been made with regard to both these recommendations.
11. GRECO concludes that recommendations i and ii have been implemented satisfactorily.

Recommendation iii.

12. *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.*
13. The authorities of Croatia have reported that no specific body to ensure the implementation of the National Programme against Corruption (adopted in March 2002), has been established, but that the Action Plan has been followed and the Programme implemented. Moreover, the authorities have reported that a new National strategy will be elaborated at the beginning of 2005 by representatives of the legislative and executive authorities, the judiciary and civil society. In this context it is also planned to establish an anti-corruption body, including representatives of the State as well as civil society.
14. GRECO considers that the main objective of this recommendation is to establish a structure for a continuous monitoring of the implementation of anti-corruption measures. This has not yet been achieved. Such a body is planned to be established within the framework of a new National strategy against corruption in 2005.
15. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

16. *GRECO recommended to increase prescribed punishments (and also extend the statute of limitations) for serious types of corruption and corruption-related offences.*
17. The authorities of Croatia have reported that the Criminal Code has been amended (No 105/04) to cover active and passive bribery in the private sector (Articles 294a and 294b).
18. GRECO welcomes that active and passive bribery in the private sector is now criminalised in Croatia. However, it has not been substantiated that punishments for serious types of (public) corruption are available, nor that the rules on statutes of limitations have been amended.

19. GRECO concludes that recommendation iv has not been implemented.

Recommendation v.

20. *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.*
21. The authorities of Croatia have reported that the Law on Conflicts of Interests in Performance of Public Duties has been amended (No 94/04) in order to broaden the range of officials covered and to establish a limit for the value of acceptable gifts (500 kunas). Moreover, a Regulation on Acceptance of Gifts by Public Officials has been adopted (No 141/04). In September 2004, the Government adopted a strategy for the education and training of State public officials. A new law on Public Officials (containing anti-corruption measures and disciplinary regulation, etc) is being drafted.
22. It has also been reported that a Parliamentary Commission for the prevention of conflicts of interest within Parliament has adopted its rules of procedure and that the State Attorneys Office and the Association of Croatian Judges have adopted codes of conduct.
23. GRECO notes that a variety of positive measures have been reported. However, in the absence of a general code of conduct for public officials and a mechanism for its follow-up, it could not conclude full compliance with this recommendation. It notes that the on-going drafting of a new law on public officials may contain such elements.
24. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

25. *GRECO recommended:*
- *that particular efforts be undertaken in the following months to implement the Law on 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).*
26. The authorities of Croatia have in essence replied that the USKOK (Office for the Prevention of Corruption and Organised Crime) is not yet fully operational. The Act on USKOK is about to be amended as it has not been possible to combine the law enforcement side of this body with the initially foreseen preventive and monitoring functions. USKOK will strengthen its role as a special law enforcement body within the Public Prosecutors Office. The Office has its own premises since July 2003, in Zagreb, Osijek and Rijeka. The Head of USKOK has been appointed as well as most of the staff, except for two Investigation Departments (4 vacancies). USKOK will start a project by the end of 2004 to develop its administration, organisation and staff to be better

prepared for its tasks ("Cards Project 2002"). With regard to the monitoring of USKOK's use of investigative powers, the authorities have referred to the ordinary system of legal supervision by investigating judges.

27. GRECO notes that progress has been reported with regard to the logistics and staffing of USKOK, but that it is still not fully operational. GRECO is concerned that this body – two years after its establishment – has not received a final mandate and that it appears that USKOK will be limited to the law enforcement side of the fight against corruption, and not with regard to the initially foreseen prevention and monitoring functions.
28. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

29. *GRECO recommended to strengthen the general competencies of the public prosecutors to direct and supervise the work of the police in preliminary investigation stages and to undertake particular efforts to increase general cooperation between the police and prosecutors, e.g. by adapting the Code of Criminal Procedure or adopting a special internal regulation (such as the agreement between the Director General of the Police and the Public Prosecutor General) addressing this area.*
30. The authorities of Croatia have reported that the Criminal Code has been amended (No 58/02) in order to strengthen the competence of the public prosecutor to direct and supervise the work of the police (Articles 42 and 174). To this new legislation have been added two Directives of the Public Prosecutor (No's 0-8/02 and 0-13/03) on the involvement of the public prosecutor in pre-investigatory proceedings and on the duties and powers of the prosecution over the police in the pre-investigative phase.
31. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

32. *GRECO recommended to consider setting up special departments or sectors exclusively responsible for tackling corruption related crime.*
33. The authorities of Croatia have reported that instead of setting up a special department exclusively dealing with corruption, the Department for Corporate Crimes and Corruption (DCCC) of the Police has this special task. The DCCC has two inspectors who specialise in corruption cases. At the regional level there are twenty corporate crime units staffed with between four and 80 persons, with eight corruption specialists and in the police there are 253 inspectors who cover all types of corporate crime and corruption. The authorities have added that all officials dealing with crime committed by legal persons also receive training concerning corruption.
34. GRECO understands that the described structure of the police would be operating in close co-operation with the USKOK at the prosecution level.
35. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation ix.

36. *GRECO recommended that declaration of assets and background security checks 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.*
37. *The authorities of Croatia have reported that there is legislation in place concerning the declaration of assets and background security checks in respect of investigative judges dealing with “USKOK-cases” and that, with regard to adjudicating judges dealing with “USKOK-cases”, draft legislation is currently before Parliament.. The authorities have added that this recommendation will also be considered with regard to judges in general when amendments to the Act on Courts shall be discussed and with regard to prosecutors when the State Attorneys Act will be amended.*
38. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

39. *GRECO recommended to improve the system for supervision of Court management and judicial disciplinary proceedings with due regard to the need of independence of the Judiciary; and in particular to design and implement a national plan in cooperation with all the stakeholders to address the problem of the overburdening of courts.*
40. *The authorities of Croatia have reported that the Government adopted on 9 November 2002 “the Reform of the Judiciary” and on the 3 July 2003 the “Operative Plan” for its implementation, the overall objective being to improve the efficiency of the judiciary, in particular with regard to the pace of individual cases. To this end, the Government has increased the number of judges and transferred to other authorities some non-judicial functions from the courts. Moreover, the State Judiciary Council has monitored individual judges and disciplinary sanctions have been used.*
41. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

42. *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.*
43. *The authorities of Croatia have replied that as a result of Croatia having ratified the Civil Law Convention on Corruption (5 June 2003), the Employment Law was amended (14 July 2003), with a provision that there are no justified reasons for the termination of an employment agreement with an employee who has, due to well founded suspicions on corruption or in good faith, filed a report to the responsible persons or competent state authorities (Article 108).*
44. *GRECO welcomes the reported change in the Croatian legislation. It noted that termination of employment may be one among other examples of unjustified sanctions against “whistleblowers”. The authorities have not reported any measures with regard to awareness raising of protection of whistleblowers in the civil service.*

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

Recommendation xii.

46. *GRECO recommended that the police should in the future obtain the technical means and expertise which would ensure that interception of telecommunications for the purposes of criminal investigation is fully conducted by a public law enforcement agency.*
47. The authorities of Croatia have reported that the procedure for the use of interception of telecommunications has been changed; that according to the Criminal Procedure Act, such measures shall be ordered by the investigating judge. The Act on Security Services prescribes that such measures can also be used by the Counter Intelligence Agency with the approval of the Supreme Court.
48. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

49. *GRECO recommended that the legal possibilities for the use of relevant special investigative means is extended to all serious corruption and corruption related offences.*
50. The authorities of Croatia have reported that draft legislation, which is currently before Parliament, will make all special investigative means of the Code of Criminal Procedure available for use in all serious corruption cases.
51. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

52. *GRECO recommended to strengthen the internal control mechanisms and capacities within ministerial structures (especially within the Ministry of the Interior and the Ministry of Finance with all its departments, in particular the Tax and Custom Administrations) by finalising the reorganisation of Internal Control Departments, providing them with proper independence and competencies to investigate corruption practices inside their organisations, adopting preventive measures and programs against internal corruption, adopting Codes of Ethics for particular services and by ensuring that those departments have open channels of communication and cooperation with the USKOK.*
53. The authorities of Croatia have reported that the provisions of the Internal Structure of the Ministry of Finance have been amended (No 71/03) in order to increase the independence and competence of the Department of Internal Control of the Customs Administration. This Department as well as the Tax Administration have developed co-operation with the Prosecution Service and USKOK. For example, the Tax Administration delivers, within 10 days, information concerning detected criminal cases directly to the Prosecution Service. Moreover, it has been reported that the Tax Administration has developed a Code of Conduct for its civil servants and that the Custom Administration is in the process of elaborating such a Code (within the framework of the "Cards Project"). A Code of Ethics of the police (Ministry of the Interior) was adopted in 2001.

54. GRECO took note of the information provided, which indicates progress in order to strengthen some crucial internal control mechanisms highlighted in the recommendation.
55. GRECO concludes that recommendation xiv has been dealt with in a satisfactory manner.

Recommendation xv.

56. *GRECO recommended to provide proper and continuous training on corruption for police officers, employees of other law enforcement institutions (such as tax, custom and inspection services), public prosecutors and judges.*
57. The authorities of Croatia have replied that guidelines for the training of police, prosecutors and judges are in place. Corruption is part of the training at the Police Academy as well as at the Law Faculty, where inspectors specialised in the fight against corruption give lectures. There are regular courses on corporate crime and corruption. Specialist training for prosecutors is provided within the State Attorneys Office. Judges and also to some extent prosecutors are trained at the Centre for Expert Training of Judges and other Judicial Officials. The training aims at enhancing the skills of these officials, *inter alia* with regard to the fight against corruption. In 2003, the Independent Department for the Internal Control of the Ministry of Finance sent inspectors for training at the Central Office of the Tax Administration.
58. GRECO welcomes that the fight against corruption is part of the curriculum of the training of the police, prosecutors and judges and that, in addition, special training at regular interval deal with this issue. GRECO encourages further improvements of the training in this regard.
59. GRECO concludes that recommendation xv has been implemented satisfactorily.

Recommendation xvi.

60. *GRECO recommended to adopt clear and transparent rules for the lifting of immunity, especially with regard to Members of Parliament and Government.*
61. The authorities of Croatia have reported that the Croatian Parliament, following a proposal of the State Attorney, has abolished the immunity in practice. This would allow for prosecution in all criminal offences (including corruption).
62. GRECO concludes that recommendation xvi has been partly implemented.

III. CONCLUSIONS

63. **In view of the above, GRECO concludes that Croatia has implemented satisfactorily or dealt with in a satisfactory manner half of the recommendations contained in the First Round Evaluation Report.** Recommendations i, ii, vii, x, xii and xv have been implemented satisfactorily. Recommendations viii and xiv have been dealt with in a satisfactory manner. Recommendations v, vi, ix, xi, xiii and xvi have been partly implemented and recommendations iii and iv have not been implemented.
64. GRECO invites the Head of the delegation of Croatia to submit additional information regarding the implementation of recommendations iii, iv, v, vi, ix, xi, xiii and xvi by 31 May 2006.