SIGMA

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CROATIA

PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK

ASSESSMENT JUNE 2007

Introduction

Only limited progress has been achieved since the 2006 Sigma assessment with regard to depoliticising and enhancing the professionalism of the civil service and improving the human resources management system.

Since January 2006 the Croatian public service has been regulated by the new Civil Service Act (CSA, *Official Gazette* 92/05 of 27 July 2005); the Law on Civil Servants and Civil Service Employees (LCSE, *Official Gazette* 27/01) remains valid regarding salaries and other benefits until new salary legislation is adopted. Neither the salary law nor the classification decree (as a basis for the new job classification), which should have been adopted by March 2006, had been finalised and adopted by April 2007. The CSA, mainly as a result of international pressure, reduces the number of positions for political appointees (art. 74). However, according to the transitional provisions, the recruitment of civil servants for these positions is postponed until 60 days after the next general elections (art. 151), foreseen in November 2007, with the result that political appointees are still holding positions which the law defines as civil servant positions. Now several politicians have voiced their intention to keep the current status and are pondering changes to the CSA (art.74) in order to keep political appointments for all management positions.

The adoption and enforcement of the CSA on its own was a positive development. The staffing of the Central State Office for Administration (CSOA) has improved slightly since the last report. However, very few of the new staff are fully trained in modern human resources management, and in addition the general resistance to implement merit-based human resources management and career planning remains strong in the public administration. Despite the implementation of new procedures for recruitment, performance appraisal and promotion, the content of examinations and tests, etc. still only emphasises theoretical knowledge and basically neglects skills and abilities needed in the public service (e.g. analytical skills, negotiations skills, etc.); political and other influences on personnel decisions remain high. HRM units had already been created in most ministries and other administrative bodies at the date of the last report, but they are still not fully operational and their impact on HRM is – with very few exceptions – in general quite low. The overall staff turnover remains high, despite various efforts of individual ministries to make their working conditions more attractive. At the same time, staff turnover has also been created by the different levels of salary supplements, which in the Ministry of Finance, for example, leaves some units little chance of finding qualified staff, whereas other units have a more than sufficient number of applicants.

Since the last Sigma assessment report, there has been little to no change with regard to the limited delegation of tasks to the working level (civil servants). In general, civil servants still enjoy very restricted responsibilities, and any decisions are still taken only by the head of the institution, which is contrary to modern administration and slows down administrative work as well as policy preparation In fact, the political level remains very reluctant with regard to decision-making delegation. During the drafting of the general administrative procedures law (under preparation), it was argued that signing administrative acts is traditionally the task of the ministers and other heads of administrative bodies.

With regard to the general administrative legal framework, some progress may be underway. A new general administrative procedures law is being drafted, and a draft should be ready before the summer break. The draft should also include proposals aimed at abolishing/amending the numerous special administrative procedures. In addition, there is the HITROREZ initiative to review the existing legal framework, with the aim of abolishing and/or simplifying it (legislative guillotine); the HITROREZ report is expected to be submitted to the government by the end of June. However, given the fact that the elections will take place in autumn, it is unlikely that any new legislation will be submitted to parliament and adopted before the elections. For the time being, it remains therefore the case that no effective progress has been achieved since the last report, when one-stop shops had just been created to speed up the licensing process. At first glance the licensing process is faster now; however, as the underlying legal framework – i.e. the general administrative procedures law and approximately 80 special administrative procedures (including customs, land registry, etc.), as well as court procedures for the administrative court – has still not been changed, the real time before being able to open a business requiring imports/exports

and new premises has barely changed, and therefore a real impact on the investment climate has not yet occurred.

The quality of legislation has not really improved since the last report. Four different areas of impact assessment (fiscal, environmental, social, and protection of free-market competition) were already regulated at the time of the last report. Only fiscal impact assessment has been introduced, but with limited success as it was carried out in a rather formal way, and as it was lacking in quality it hardly ever triggered sanctions. Sufficient training in this area is very much missing. A Regulatory Impact Assessment Office may be created in the autumn as an independent office under the government; this office could possibly in the medium term improve the quality of legislation. If the new Office is created, it could be difficult to ensure synergy and efficiency, primarily between the Legislative Secretariat and the new Office, but also with the Government Secretariat, as all three have been set up as independent offices and directly subordinated to the Prime Minister. For the time being, the fact remains that there is in general little awareness of the need and/or insufficient capacity to review existing legislation when drafting new legislation, which has led to a rather considerable number of contradicting and overlapping pieces of legislation, as well as blurred responsibilities of administrative bodies. The Office for Legislation remains seriously understaffed and suffers from the fact that some of the staff are not sufficiently qualified. The co-ordination between ministries remains insufficient, and the overall capacity at the centre of government regarding policy-coordination is low. This situation is aggravated by the fact that the Government Office– *Stručna služba Vlade* – has basically only an administrative role.

It is unfortunate that public administration reform – including law-drafting, capacity-building and institution-building – seems to be solely governed by European accession, while other important topics are neglected.

Yet again, a new Strategy of Public Administration Reform was drafted by the Central State Office for Administration (CSOA). In spring 2007 the CSOA submitted this draft for comments to central administrative bodies. As Sigma did not receive the draft, an assessment was not possible.

Conclusions and Recommendations

A) Civil Service

Conclusions

1. ***Scope of the Civil Service***: The new Civil Service Act (CSA) provides a rather clear definition of the scope of the civil service; but other regulations have not been fully aligned with this new legislation, and as a result the boundaries of the civil service remain blurred with regard to both political appointees and labour contractees. So, for the time being, senior management positions within the civil service are regulated in various pieces of legislation, e.g. Law on the State Administration System, Law on Obligations and Duties of State Officials (last changes in NN no. 141/2007, 27 December 2006), Conflict of Interest Law (changes in NN no. 141/2007, 27 December 2006) and Law on the Power Transfer Procedure – *Zakon o primopredaji vlasti*, NN no. 17/2007, 12 February 2007). These laws define and regulate a number of positions as either political appointments or civil servant positions.

   In addition, regulation in the same law of both civil servants and public employees under labour law seems inappropriate, although this was the tradition in former Yugoslavia. The referral of issues not regulated by the Civil Service Act to regulations in the labour law is inadequate, as the labour law sets minimum standards which may be negotiated, whereas rights, obligations and responsibilities of civil servants are commonly set by law based on a unilateral relationship with the state, where negotiation is largely excluded.

   One can hope that this unclear situation will be remedied once the drafting of the new classification system has been finalised, adopted and implemented, and the senior management positions (art. 74) have been filled by civil servants following an open competition. However, at best this new arrangement will be in place in the late autumn 2007. A specific law regulating staff in local authorities has been envisaged for a few years, but the drafting of this law has not yet started. Staff in local authorities continue to be covered by the Law on State Servants and

Employees (LCSE, 27/01) as long as no specific legislation has been adopted. Whether or not the LCSE is applied in practice is not monitored. However, both the trade unions and the Association of Municipalities stated that the law is widely applied, although this depends on the political will of the mayor and the council. Still, implementation is not simple, because the LCSE is aimed at state servants and employees and gives no regard to specific issues related to the legal status of local staff. Despite claims of broad application of the law, it was reported that staff in local authorities are highly politicised and that salary levels differ greatly between local authorities and are often considerably higher than at state level.

2. ***Recruitment***: Also in 2006 politicised recruitment to senior positions continued to prevail, and furthermore other positions covered by the Civil Service Act were often filled on the basis of political affiliation. There seems to be only a limited commitment at the political level to implement the new Civil Service Act in an adequate way so as to enhance the professionalism and efficiency of the civil service.

   The new recruitment scheme based on the CSA and the decree governing recruitment (Decree on the Announcement of Vacancies and Implementation of Public Competition Procedures and Internal Announcements in the Civil Service, adopted 12 January 2006; amended by Decree in NN no. 8/2007, 22 January 2007) define the rules for open and merit-based competitive recruitment. The decree prescribes the priority of internal transfer and promotion over external recruitment. The CSOA, in particular the Department for Personnel Policy and Human Resources Management, is responsible – among other tasks – for the development of recruitment policy and for monitoring state bodies with regard to the adequate implementation of the prescribed recruitment rules and regulations. Staffing of this department is still not sufficient; and it is therefore not in a position to fulfil its role, i.e. to ensure that recruitment standards are homogenously applied throughout the administration and that the principle of equal access to the civil service is respected. The CSOA should be represented, for example, in all recruitment procedures for the state civil service to ensure the legality and comparability of the procedure, but given its staffing it may nominate a CSOA representative who is not a staff member; whether this solution will suffice to ensure equal standards remains to be seen.

   In addition, given the prevailing tradition, it remains a fact that formal qualifications play a predominant role in recruitment and promotion. Promotion in the civil service ranks has traditionally been based on seniority and – in ranks with more responsibility – on political affiliation. Despite the new legal framework and the creation of the HRM units in government bodies, hardly any change in the current practice could be observed. .

   3.***Politicisation***: All senior management positions in the Croatian civil service are still filled through direct appointment and to a very large extent on political grounds, with the result that there has been a considerable turnover in management positions after elections. The new CSA enumerates in article 74 a number of positions, which used to be positions of political appointees, as civil servant positions, namely: ministry secretary, director in a ministry (previously assistant minister), deputy secretary of the government, chief of staff of a government office, deputy state secretary of a central state administrative office, and deputy and assistant director of state administrative organisations. However the entry into force of this provision has been postponed until after the next general elections, foreseen in autumn 2007.

   It remains to be seen whether an amendment to the CSA – even before it enters into force – will reverse depoliticisation or whether the new government will respect and implement article 74 of the CSA. Reversing the standard set in article 74 would definitely be a step backwards in the process of creating a professional civil service. In particular, the directors/assistant ministers in a ministry, who are in reality the highest working level in ministries, should be civil servants as they should ensure continuity and professionalism.

4. ***Training***: The Civil Service Training Centre was officially opened in June 2005 and started its activities in the second half of 2005.

   The Centre now seems to be up and running, with 61 different existing programmes and 20 new programmes under development. However, the Centre remains seriously underfunded. The Centre requested 11 mn HRK (ca 8.2 HRK to 1 EUR) and was awarded 2 mn HRK. With the

funds provided by the budget, the Centre cannot even fulfil its mandatory training obligations. Additional funding was promised, however, if the 2 mn HRK were spent by summer. The Training Centre relies heavily on bilateral donor funding. With foreign assistance, the Centre has developed curricula and training modules for systematic initial and continuous training. However, there is still only limited political support for the Centre's objectives of centralising training management and training activities and motivating ministries to work with it on the development of sectoral training modules. In fact, ministries still tend to continue with their own training activities, which may well result in a waste of funds and in contradictory and overlapping training activities.

The Civil Service Training Centre makes efforts to ensure centralised training management, e.g. collection of training materials and checking their compatibility, and manages a complete registry of participants.

A new activity of the Training Centre is a one-year postgraduate specialist study in "Public Administration", in co-operation with the University of Zagreb (the Croatian Government has signed a contract with the university); the first group of students will graduate in summer 2007. Lectures are given on the premises of the CSOA's Centre for In-service Training.

5. ***Civil Service Management***: The Central State Office for Administration (CSOA) was already established in 2004. The CSOA has adequate premises, including those for the Training Centre, but it is still not adequately staffed and still not all of the laws and by-laws necessary for implementation of the CSA are in force. Consequently, in 2006 the CSOA could neither impose common standards of management across all administrative settings nor implement a unified civil service system. However, it needs to be stated that in recent months more serious efforts towards implementation of common standards and capacity-building in HRM units seem to be underway. A major remaining problem, which will need to be resolved quickly, is the new job classification for state civil servants. In April 2007 Sigma again observed the continued fragmented management of the civil service and serious difficulties in promoting professionalism in the civil service.

   Given the fact that the CSOA does not seem to have sufficient powers or political backing to implement the necessary changes in the civil service system (nor possibly in other areas for which it is responsible), one may need to question whether public administration reform has in fact sufficient backing and has really been set – as often stated – as a true government priority.

6. ***Rights and Obligations***: No changes have occurred. The CSA regulates the rights and obligations of civil servants in an adequate way. Nevertheless, a mentality change has not yet taken place and a secrecy-based culture still defines the Croatian administration. The regulations on discipline in the new law seem adequate, but it remains to be seen whether they will be implemented in an adequate way.

7. ***Conflict of Interest****:* No changes have occurred. Conflict of interest regarding state civil servants is adequately regulated in the new CSA, articles 32 to 37. It is, however, unclear whether in future the new civil servant positions, enumerated in article 74 CSA, will be subject to CSA regulations and will at the same time remain under the regulation of the Conflict of Interest Law (CoI), especially as the CoI in its enumeration includes all positions enumerated in article74 of the CSA. It seems necessary to review the CoI to make sure that the scope of the law is clear, that the respective oversight bodies in the CoI and the CSA have clear responsibilities, and that the two laws do not overlap or contradict each other.

   No adequate regulation exists for staff in local authorities and for government employees in public services, e.g. health and education.

8. ***Salaries***: No progress has been made with regard to comparability and transparency of salaries. Basic salaries of civil servants, defined according to the scope of the previous law, are generally low (given the cost of living), whereas the salaries of political appointees, including those mentioned in article 74 CSA, are considerably higher, although they are not fully competitive with the private sector. Due to the different classifications of similar jobs in the various

administrative bodies, differences in basic salaries for similar jobs are common. In addition, special salary schemes and special supplements exist for several groups of state civil servants.

The new salary law has still not been finalised. Whether it will achieve a more unified salary system and pay levels for the civil service – which would be highly desirable in terms of restructuring and mobility – remains unclear, given that there are many vested interests and that in the Ministry of Finance alone there are several different supplements for different groups of personnel. Problems in the introduction of the new scheme may still not occur immediately, as it is foreseen to respect the current salary levels by freezing them if they are higher than those envisaged in the new salary scheme. The new job classification system called for by the CSA has not been finalised either. The decree exists in a final draft, although the draft classification table showed major flaws (April 2007); if adopted in this form it would perpetuate the different classification of similar jobs.

9. ***Mobility and Redeployment***: No changes have occurred. The new CSA has regulated staff mobility in an adequate way (articles 76 to 81). In particular, it provides for the possibility of a permanent transfer for service reasons without the consent of the person concerned. These new provisions should ease the restructuring of the administration and the possible need to redeploy staff. These provisions are complemented with provisions (articles124 to 131) that allow the dismissal of a civil servant who does not accept a transfer in the event that the state body in which he/she is working is dissolved, restructured or dislocated. Transfers may now also be used to enrich an individual's professional career within the administration. Whether these new provisions will be applied remains to be seen. However, once the recently created HRM units have been sufficiently trained and are fully functioning, the management of the civil service should improve in the medium term.

10. ***Attractiveness of the Civil Service***: No changes have occurred. The new CSA provides the necessary base to make the civil service more attractive if career development and career planning are implemented and if they are coupled with a better salary scheme. For the time being, little has changed and qualified young professionals tend to remain in the civil service only for the minimal time necessary to acquire some working experience and professional or political connections. If reform implementation remains as scattered and slow as in the past, the development of a professional civil service in Croatia will remain problematic for some years to come.

11. ***Judicial Review of Civil Service Decisions***: Judicial review of administrative decisions concerning civil servants is legally guaranteed. However, the Administrative Court – as the only judicial review instance for administrative cases throughout Croatia – does not review facts but only legality based on the files submitted, despite a limited right to hold public hearings. The court has a considerable backlog of cases. The total number of judges of the Administrative Court is only 33, including the president and vice-president. This situation leads in practice to huge delays before a final judgment can be expected.

Recommendations

1. Implement the new CSA, in particular:
    a. Finalise the classification of job positions in the civil service according to generally accepted standards;
    b. Ensure comparability of job positions across the civil service and equal classification for similar positions;
2. Finalise the new salary law and the necessary by-laws;
3. In view of the new CSA and salary law, review, rationalise and unify all legal provisions pertaining to these issues;
4. Strengthen the position and capacity of the CSOA by increasing staff, providing the necessary training and considering possible organisational changes;

5. Enhance capacity and increase the responsibilities of HRM units in all state bodies so as to effectively implement the Civil Service Act.

B) Administrative Legal Framework

Conclusions

1. ***Organisation of the Administration***: No changes have occurred. Several laws (Law on the State Administration System, Law on Organisation and Scope of Affairs of Central State Administration Bodies, etc.) seem to overlap concerning the organisation of the administration, with at times duplication of articles or even contradictory articles. The Law on Government (*Official Gazette,* 199/03), for example, empowers the government to set up various bodies. However, the structural differences between these bodies are unclear, and it is not obvious whether the various structures are linked to different legal constructs and tasks. There seems to be a tendency to create agencies, i.e. central state offices, for "political priority" or strategic tasks, with the aim of removing these functions from the internal structures of ministries and thus avoiding established administrative or even parliamentary controls as well as clear political responsibility of ministers. Such agencies often have negative effects on transparency and accountability with regard to these "political priorities" as well as on the cohesiveness of government policy and action, especially as there is no clear regulation of either their legal status or procedures.

2. ***Administrative Procedures***: The General Administrative Procedures Law is not fully in line with common European standards and is not adapted to modern public administration. The existence of numerous special administrative procedures (approximately 70 to 80) leads to a lack of transparency and unnecessary difficulties for the citizen and for entreprises, and may even promote petty corruption and lack of accountability. In any event, this arrangement is detrimental to the principle of legal certainty. With the assistance of a CARDS project, a new general administrative procedures law is now being drafted, and at the same time the special procedures are under review and proposals for abolishing or integrating various procedures are being prepared. The draft law is foreseen to be ready for submission to parliament in summer 2007. However, as there seems to be limited political will to change the procedures (their importance for economic development – but also as a source of corruption – is greatly underestimated), it seems unlikely that the government will forward the draft to parliament before the general elections in autumn 2007.

3. ***Accountability Mechanisms***: No significant changes have occurred. Accountability mechanisms exist, but they are still not functioning in an adequate way. Generally speaking, units tasked with administrative supervision are still non-existent, understaffed or inadequately trained.

4. ***Ombudsman***: There are three independent ombudsman institutions in Croatia; namely a general ombudsman, an ombudsman for the protection of children, and a third ombudsman for the protection of gender equality; in spring 2007 a law regarding an additional ombudsman, in charge of disabled persons, was about to be submitted to parliament. The reputation and influence of the general ombudsman are positive. The ombudsman has no regional offices, but he travels to regional centres to allow citizens to meet directly with him and voice complaints. The budget funding provided to the ombudsman is insufficient and, for the time being, additional funding is provided by the OSCE. It remains unclear why Croatia needs four different ombudsmen with four separate offices and administrations instead of one office with four different departments.

5. ***Quality of Legislation***: No real changes have occurred, despite the HITROREZ activity. Over-regulation remains a problem in Croatia, which is aggravated by the fact that regulations are often adopted without sufficient consultation and existing legislation is not reviewed carefully enough when new legislation is passed. The resulting legal contradictions and conflicts of legal interpretation may lead to a situation where legislation is not applied or where new policies embedded in legislation are not implemented. This situation hampers overall reform and is highly detrimental to the principle of legal certainty, which may well have a negative impact on economic development. The situation is caused by a number of factors, in particular a lack of

policy capacities at the centre and in ministries, insufficient training in legal drafting, inadequate general legal and administrative education, and insufficient impact assessment. It remains to be seen whether the proposals for legislative and regulatory changes in the HITROREZ report, expected in June 2007, will lead to the adoption, amendment and abolition of laws and regulations and thus to real improvements in the existing legal framework.

In addition, it was reported that it is envisaged to create a central state office or service tasked with regulatory impact assessment. This office would advise and train in impact assessment and also ensure that the necessary impact assessments (financial, environmental, economic and social) are carried out. The creation of this office is envisaged for autumn 2007. It remains to be seen whether a special office will have the clout and sufficiently qualified staff to convince ministries to carry out good quality assessments and to provide the substantive knowledge required for checking the quality. An additional issue would be, on the one hand, the need to ensure close co-operation with the Legislative Office, and on the other, the need to change the current government procedures so that the office could really get involved in policy development and legal drafting at an early stage.

6. ***Transparency in the Administration***: There are some further improvements, although the administration in general is still not transparent and often remains governed by the old principle of secrecy, despite existing laws on the Right to Access Information and on Personal Data Protection. After the withdrawal of a draft law on State Secrets, a new draft is now being prepared. When the new draft is tabled, it will be necessary to assess its possible impact so that the law will not reverse the slow trend towards more transparency in the administration.

   However, it should be noted that judgments of the Administrative Court continue to support the full implementation of the Law on Access to Information, and so further progress can be expected, especially as NGOs are very active in this field.

7. ***Judicial Review of Administrative Decisions***: Judicial review exists but is insufficient and not in line with European standards. The backlog of cases is high and the duration of cases too long. The general ombudsman has received about 200 complaints on lengthy court procedures in 2006 and has asked the Minister of Justice to find a solution. The Administrative Court has 33 judges. In addition, judicial review consists of only one instance, which does not have full jurisdiction (i.e. obligation to fully review the case) and is not recognised as a court by the European Court of Human Rights (ECHR).

   Since the last assessment, the Administrative Court seems to have become more aware of the need to reform the system. A two-instance judicial review is now under consideration. A CARDS project for the Administrative Court may now finally be able to start.

Recommendations

1. The General Administrative Procedures Law needs to be finalised, adopted and implemented as soon as possible. Special administrative procedures need to be abolished insofar as possible. Training to support implementation needs to be provided at all levels of government.
2. Consideration should be given to reviewing the Law on Government and the Law on the State Administration System so as to clarify the legal provisions and simplify administrative structures.
3. Consideration should be given to reviewing and amending the Law on Administrative Disputes in view of the changes to the Law on General Administrative Procedures to ensure the complementarity of both laws and to reduce formalities in the procedures act and create instead a two-instance court procedure.
4. Accountability mechanisms need to be strengthened, and the responsible bodies have to be adequately staffed and trained. A more vigorous policy to enhance transparency in the administration is needed.

5. The administrative justice system needs a complete overhaul in order to meet common European standards. Consideration should be given to introducing a full two-instance administrative court system. It is advisable to endow the courts with full jurisdiction.

6. Further efforts are needed to improve the quality of legislation, ensuring its clarity and thus legal certainty and providing more reliable information on its future impact, which should improve implementability and increase compliance.

1. Legal Status of Public Servants

1.1 Does an appropriate legal basis exist, defining the status of public servants in a way that is compatible with prevailing standards in EU Member States?

Constitution

The Croatian Constitution devotes one short article to the state administration, state officials and state employees. Article 116 states that the status of state officials and of state employees is to be regulated by law and other regulations. It does not provide any constitutional model for the civil service beyond this general statement. Article 44 states that "every citizen of the Republic of Croatia has the right, under equal conditions, to take part in the conduct of public affairs, and have access to public services". This formulation does not clearly state the right of equal access to working in the public administration. However, linked with the stipulated basic freedoms, it can be interpreted as a guarantee of equal access to working in the public administration.

The general civil rights recognised by the Constitution are applicable to state officials and state employees. These rights are, among others: equal access to all jobs and duties (art. 54), freedom of association (art. 43), and the right to strike (art. 60). The Constitution allows restrictions by law to the right to strike for the armed forces, police, public administration and public services.

It needs to be pointed out that the Constitution only mentions the status of staff in state administration, despite the fact that it allows for entrusting "certain responsibilities … by law to the bodies of the local and regional self-government" (art. 116/2). Article 135 provides criteria for the organisation, structuring and jurisdiction of local and regional governments, but it does not give guidance with regard to the statute of their staff.

As decentralisation is high on the government agenda, a law to adequately regulate the status of staff in local and regional self-government may also need to be put on the agenda.

Ordinary Legislation

The basic legal act defining the status of civil servants and state employees is the Civil Service Act (CSA), passed by parliament in June 2005 (92/05) and in force since 1 January 2006.

Contrary to the Law on Civil Servants and Civil Service Employees (LCSE), the new CSA states in article 138 that the working relationship of public employees is regulated by general labour law, if not otherwise specifically regulated by the CSA (as, for example, in the case of personal files). As a result of this new regulation (art. 144/3, CSA), since January 2006 public employees in the state service are regulated by general labour law whereas all staff in local authorities are still regulated by the LCSE (27/01).

The LCSE also continues to apply to staff working in administrative departments and agencies of local and regional self-government units (art. 144/3, CSA), until specific legislation regarding rights, obligations and responsibilities of staff in local and regional self-governments enter into force. This rule is also stipulated in the transitional provisions of the Law on Local and Regional Self-Government.

There are several special laws regulating the status of public servants in special branches of the public service or in special positions, e.g. Law on Police, Law on the Foreign Affairs Service, Law on Defence, Law on Customs Service, Law on Tax Administration, and Law on Financial Police. In addition, management positions in the state administration are regulated in the Government of the Republic of Croatia Act, and in the Law on the State Administration System.

According to article 4/2 of the CSA, general labour regulations – signifying general labour law and/or collective agreements – apply in all matters that are not regulated by the CSA, special laws or government ordinances. In fact, collective agreements represent an important quasi-legal instrument regulating the working conditions of civil servants and employees in the state service. These general agreements for the public service include regulations on working time and on a number of special supplements for civil servants and public employees (see the section below on the Salary System and Pay Determination).

Scope and Implementation

The scope of the civil service and the regulatory objectives of the CSA are sufficiently defined in articles 1 to 3 of the CSA. Article 1 defines the regulatory content, article 2 the state institutions to which the law applies, and finally article 3 the functions that are executed respectively by civil servants and public

employees. Contrary to the previous law, the distinction between civil servants and public employees is now made according to functions and no longer according to level of education.

The entire state public sector staff funded from state budgets number about 210,000, excluding the armed forces. Of these, about 70,000 are part of the core civil service and are therefore covered by the CSA and supplementary special acts, e.g. 25,000 under the Ministry of the Interior and 12,000 under the Ministry of Justice (judicial police, penitentiary). In local and regional self-government units, about 11,500 persons are employed and in locally-financed public services about 19,600 persons.

Other staff paid from public budgets work in public services (about 150,000 employees). Public services, as defined in article 2 of the Public Services Wages Act (PSWA) dating from 2001, are public institutions and other public legal persons with financing for wages provided by the state budget, together with the Croatian Pension Institute, Croatian Employment Bureau and Croatian Institute for Health Insurance. The employment of all staff in public services is governed by general labour law. In addition, each specific public service is regulated by a special law, which usually also includes specific regulations concerning labour relations (e.g. teachers, professors and medical doctors).

As in the previous law, the CSA likewise states (in article 4) that "rights, obligations and responsibilities of civil servants and employees shall be governed by a law and pertaining regulations", despite the fact that these rights, obligations and responsibilities are already regulated in the CSA. This provision will unfortunately continue to foster a proliferation of special statutes and regulations. For example, the Law on Financial Police, instead of regulating only the specific aspects of a certain corps of civil servants (i.e. police), tends to regulate issues that do not really call for differentiation (e.g. classification, basic salaries and career development). This regulatory practice, not unique to Croatia, has led to a non-unified civil service, which has in turn created unnecessary problems, not only when restructuring the administration but also in day-to-day human resources management (see below). It remains to be seen whether the new job classification aimed at unification across the civil service, currently being developed, will really achieve its goal.

The CSA clarifies in article 74/3 that the civil service includes managerial civil servants, senior civil servants and junior civil servants. It enumerates in article 74/5 the job positions, namely management positions, which are now classified as civil service positions, i.e. they are now included in career development, the merit system and competition. In addition, article 11 includes the stipulation that political beliefs should not influence civil service careers. These legal provisions make it possible to have a clear separation between political positions and civil service positions; unfortunately, since the last assessment it has become even less certain that these provisions will actually be implemented as foreseen by the CSA after the next election in autumn 2007, as some politicians have voiced a reluctance to implement article 74.

In addition, other administrative legislation, including staffing and recruitment provisions, have neither been abolished nor changed to harmonise them fully with the new civil service legislation. These laws regulate, inter alia, the organisation of the state administration and the appointment of heads of various agencies or offices. They do not clearly address the separation of political and professional positions. However, they do refer to the civil servants' status and state that the holders of these positions are to be civil servants, despite the fact that many of these positions are filled directly by government decision without competition and from outside the civil service. In fact there are still at least three different laws that enumerate the positions of political appointees, which are not necessarily identical: Law on the State Administration System, Law on Transferring of Power (94/2004 and 17/2007), and Law on the Duties and Rights of State Functionaries.

The Government of the Republic of Croatia Act (1998), for example, specifies in article 26 that: "(2) Offices, agencies, directorates and government services are directed by office heads, agency directors, heads of directorates and heads of services respectively, all appointed by the government, at the proposal of the prime minister. (3) Office, service and directorate heads and agency directors are civil servants, who with respect to the civil servants and state employees of the office, agency, directorate and other services, have the rights and authorisations of a head of a state administration body". This law is complemented by the Decree on Principles for the Internal Organisation of State Administration Bodies, published on 10 May 2001 (and NN no. 8/2004), which describes the principles of organisation and subdivision of administrative units as well as the duties of the various heads of these administrative units. The positions

mentioned in the law have never been regulated by the LCSE nor have they been included in its classification, which constitutes the base for civil service salaries; they are regulated in the Government Decree on Job Titles and Coefficients. However, most of these positions are now covered by article 74 of the new CSA. It remains to be seen whether these positions will in the end be included in the new classification.

In summary, it can be stated that the scope of the civil service is clearly defined by the CSA. However, regarding management positions, enumerated in article 74 of the CSA, other laws defining staffing and appointments blur this clear definition, and a harmonisation of these laws is necessary. The problem of regulating in the same law civil servants and public employees is only partly resolved by the new law. The problem of regulating the working conditions of civil servants according to general labour law, if not otherwise prescribed, remains. In addition, the scattered regulation of civil service issues in a rather large number of laws has not been addressed by the new CSA, and this situation continues to adversely affect clarity and ultimately legal certainty.

The separation between civil servants' positions and political positions will remain unclear until the existing administrative legislation is aligned with the CSA and articles 74 and 151 of the CSA are implemented. This continuing lack of clarity hampers the development of civil service professionalism.

To create a civil service that is apt to meet the challenges of EU accession and membership, professionalism and efficiency are major requirements. The civil service in Croatia remains highly politicised, as political appointments, according to the LCSE, include middle managers. It remains to be seen whether this situation will change and article 74 of the CSA will be fully implemented.

These management positions have more often than not been used to parachute young professionals with party affiliations into the civil service, but exceptionally also to recruit young specialists into the public service, while avoiding the seniority restrictions of the LCSE. The new CSA reduces the seniority requirements and includes more management positions in the scope of the CSA so that one can hope that in the future promotions and appointments to management positions will be based on merit and not on political affiliations.

The new law does provide the means to develop a professional, impartial and politically neutral civil service. However, the long transition period, as well as the slowness of the preparation of by-laws to the CSA and of recruitment drives, fosters some doubts regarding the determination at political level to resolutely support the development of a professional civil service as a priority goal. The impact of a professional and efficient administration on economic development seems to be underestimated, despite the fact that the business community, as well as academia, has already voiced concerns regarding public administration reform.

Public administration reform drafts have been prepared for several years; in spring 2007 yet another new draft was sent for consultation to administrative bodies. Sigma may be consulted on this draft .

2. Professionalism of the Civil Service

2.1 Are civil servants' recruitment, rights and obligations defined, regulated and enforced in such a way as to ensure their commitment to constitutional and public law values, such as legality, impartiality, political neutrality and integrity?

Recruitment

The Constitution preserves the principle of equal access to public office. Article 7 of the Law on the State Administration System stipulates that activities of state administration are performed by civil servants and that civil servants are appointed by open competition unless otherwise prescribed by law. Admission to the civil service is regulated in part 4 of the CSA (articles 45-55). According to article 45 of the CSA, internal transfer or promotion has priority over the external filling of a vacancy. The CSOA is to monitor compliance with this rule. The selection of candidates is to be made on the basis of their academic qualifications, skills, professional experience, performance in previous work and demonstrated examination results (art. 45). Recruitment procedures are further elaborated in the Government Decree based on article 45/6 of the CSA, published in the *Official Gazette* 8/06. The competitive recruitment principle is also stated in article 7 of the Law on the State Administration System for positions regulated by this law.

The principle of competitive and merit-based recruitment is usually respected concerning entry positions into the civil service. Special regulations exist for special corps in the civil service, e.g. police or foreign service, and they also regulate exceptions to the competition principle.

The CSA (art. 47) states that regular recruitment drives should be carried out periodically for new entrants and for a larger number of entry posts to be filled. It is also required that a representative from the CSOA be present for all recruitment procedures (art. 51, CSA; art. 7, of the Government Decree) to ensure the legality and impartiality of the procedure.

The main exception in the CSA to the competition principle is regulated in article 61. This exception involves admittance on a temporary basis for a maximum of six months, with a possible extension for another six months only. It is clearly forbidden to transform such a temporary contract into a permanent civil service contract.

The CSA (art. 52/6) stipulates that if a person appointed to the civil service does not take up his/her duties on the specified date without any valid reason, the appointment may be cancelled. In that event, according to the CSA a new recruitment procedure has to be started, whereas according to the respective Government Decree (art. 18) there are two possibilities: either one of the other candidates may be appointed or a new vacancy procedure may be carried out. When implementing the new legislation, this contradiction/omission could lead to application problems, as it seems unlikely that the obligation, according to the law, of starting a new selection procedure can be overruled by the Government Decree.

Although the appointment of civil servants remains decentralised, all civil servants covered by the CSA nevertheless form a unified corps as civil servants of the state. According to article 52 of the CSA, admission to the civil service is effected by administrative act, issued by the head of the state body concerned; this right can be delegated (art. 63).

The decision on admittance to the civil service is based on a procedure that includes a public announcement of the competition (art. 45), clear conditions and selection criteria, examinations and a psychological test and assessment of applicants' credentials against these criteria, and final selection.

The CSA has introduced a "civil service admission plan". Individual plans are drafted by the personnel units of all state bodies and require approval by the Ministry of Finance before being submitted to the CSOA. They are prepared for one calendar year, but may also be prepared for medium and long terms (art. 43/4). For the entire state administration, an overall civil service admission plan is compiled by the CSOA, which is to be published in the *Official Gazette* and posted on the CSOA website after adoption. This plan establishes the actual status of posts filled, including posts filled by individuals from national minorities and posts that must be filled by persons from these minority groups in order to meet the requirements set by the constitutional Law on National Minorities.

First-time recruitment in the civil service is linked to a probationary period (art. 53) and also – as a condition for final recruitment – to the requirement to pass the civil service examination (art. 56ff). An applicant who has passed the bar examination is not required to take the civil service examination (art. 56). According to the law, applicants admitted to the civil service in the standard procedure for a non-fixed term are obliged to undergo a 12-month probationary period (art. 53). At the end of this period, the civil servant on probation who has not satisfied the requirements during the probationary period is to be dismissed from the civil service; this decision must be taken at the latest eight days before the probationary period expires. In the event that no decision on termination is made within this time frame, the applicant civil servant is deemed to have satisfied the requirements and is normally definitely admitted (art. 55).

The Ministry of Finance has been implementing for several years now a specific trainee scheme for its own recruits. Selected trainees are hired for a 16-month period. During this period they are posted as interns in various administrative units in order to test their aptitudes for various jobs before a final appointment decision is taken. The trainee period ends with a competitive examination; only after passing this examination may an indefinite appointment be offered.

The CSOA is tasked with overseeing the implementation of the CSA (art. 38). The Administrative Inspection (articles 142 and 143) is tasked with controlling the lawfulness of decisions on admittance to the civil service, job placement, transfer, disposal, and civil service termination. If the case concerns civil servants in judicial and penal bodies, this supervision is carried out by the Ministry of Justice. The

Administrative Inspection is to submit a report on illegalities to the head of the respective institution. In case these illegalities are not eliminated, the Administrative Inspection submits the case to the Civil Service Board. The Civil Service Board may annul or rescind the administrative enactment within five years after the decision in question becomes final.

According to article 52/3 of the CSA, an applicant who has not been admitted to the civil service may file a complaint against this decision to the Civil Service Board within 15 days of its receipt. This complaint defers the implementation of the decision. The Civil Service Board must then decide within 30 days (art. 67). It is possible to initiate administrative proceedings against the decision of the Civil Service Board (art. 67/3).

The principle of recruitment by open competition and based on merit remains excluded for top management positions. Besides state secretaries, these positions still include also heads of central state offices and state offices as well as heads of state administrative organisations and state administrative offices. The Government of the Republic of Croatia Act stipulates in article 26 that the government may establish by decree offices, agencies, directorates and government services and that the heads of these bodies are to be appointed by the government upon the proposal of the prime minister. A new act on the state administration system is currently being drafted. This draft extends the need for open competition to managerial positions. Whether the draft will be finalised and adopted in 2007 is unclear.

Promotion

According to the CSA, internal horizontal and vertical promotion should be based on merit. The scope for horizontal mobility has been enlarged by the new law; legally it can now be organised as part of a career development plan. According to the new legislation and supplementing decrees, the promotion system should be less open to politically or patronage-motivated decisions. However, the drafting of the directive based on article 90/4 of the CSA, which is to further regulate the methods and criteria for advancement, has not yet started (April 2007). It can therefore not be assessed whether the decree will in effect foster merit-based promotion and reduce the strong emphasis on seniority and/or political affiliation. However, a new Rulebook on the Contents of the Report about Civil Servants' Performance Appraisal (NN no. 78/2006) was adopted on 14 July 2006. If and when fully implemented, the Rulebook can be an important tool for strengthening the position of civil servants and for ensuring fair performance appraisals.

Considering the scarce opportunities for promotion and horizontal mobility, young and ambitious civil servants know perfectly well from experience that political affiliation may facilitate a rapid career evolution to higher positions and responsibilities. This situation may change when article 74 of the CSA will really be implemented, integrating the majority of managerial positions into the civil service and thus allowing the organisation of clear professional and merit-based career paths.

Political influence on staffing remains strong and is particularly visible in local governments.

The legal provisions in the CSA provide for an open and merit-based competitive recruitment. The necessary secondary legislation has been passed, and monitoring and oversight responsibilities have been assigned. However, in practice implementation has still barely started and may not be smooth regarding management positions. The capacity of the CSOA is still insufficient for it to fulfil its monitoring role. Despite its creation in 2004, the CSOA is still inadequately staffed and it does not have sufficient political clout or possibly willingness to promote and implement PAR. In addition, existing staff are often inexperienced and not sufficiently trained to fulfil their assigned responsibilities. The CSA has assigned a wide range of control tasks to the Administrative Inspection, but as this body is staffed with only six persons it is highly questionable that it will be able to cover up for the lack of capacity in the CSOA. Therefore, given the fact that monitoring and oversight are rather weak and that previous practices did not foster recruitment on merit, it remains doubtful that the law will be adequately implemented.

As concerns promotion, the necessary by-law has still not been adopted. The decree regulating the performance appraisal has advanced a small step forward, but this is far from sufficient to implement the merit system. In any case, promotion on merit to management positions will be effective – if at all – only after the next elections, foreseen in late autumn 2007.

Classification of the Civil Service

According to article 74 of the CSA, civil service posts, which now include managerial posts, will be classified according to common standards for all state bodies, namely professional qualifications, complexity of tasks, independence of work, degree of co-operation with other state bodies and communication with clients, degree of responsibility and influence on decision-making. Article 75 then stipulates that the head of the CSOA is to set uniform standards and criteria for job titles and to describe civil service posts in a rulebook.

Neither the classification decree nor the rulebook has been finalised. The draft classification decree (in April 2007) was generally in line with good practice. However, the decree was complemented by an annex, listing job positions and linking them to classifications /grades. This listing was not linked to any kind of job description or to classification criteria. The listing of job positions under a given grade seemed rather arbitrary and not transparent. It remains to be seen whether benchmark positions will be described so as to assist the various institutions in preparing a fair classification and the CSOA in monitoring the comparability of classifications. For the time being, it is still uncertain if the new classification system will bring about some progress towards a unified civil service.

For the time being, the valid classification of individual positions remains based on the previous practice, namely that each administrative body prepares its own systematisation without any co-ordination with other administrative bodies. Binding organisational guidelines for implementing classification under the previous law apparently did not exist. As a result, basically the same jobs have been classified differently in different state administrative bodies. Although the CSOA was given a co-ordinating and monitoring role to ensure that positions were homogeneously classified in all administrative bodies, it did not have the capacity to carry out this role. Given the current capacity of the CSOA, it does not seem very likely that the CSOA will be able to assume the role that the CSA has assigned to it and to ensure homogeneous classification of civil service positions.

Obligations, Rights and Duties, with special reference to Impartiality

The principle of impartiality is now clearly stated in article 6 of the CSA. The obligations, rights and duties of civil servants are defined in articles 5 to 37 of the CSA; they are clearly stated and are in line with general standards. For example, civil servants have the right to equal and fair treatment. They have the duty to refuse an order that would run contrary to the rules of the profession or the code of ethics. The right to object to an order is complemented by the right to initiate an administrative lawsuit against an administrative decision that violates the rights of the civil servant. The right to lodge a complaint against a sanction is provided in the chapter on disciplinary regulations.

Civil servants have the right to carry out some external remunerated activities, provided they do not entail a conflict of interest. Prior authorisation is required for any activity other than occasional lecturing or publication of technical articles. Finally, the civil servant has the right to be protected against any threats or other risks resulting from the performance of his/her functions.

The duties of the civil servant as stated in the CSA are, inter alia, to fulfil his/her tasks conscientiously while respecting the Constitution and the law and in accordance with his/her superior's instructions, to respect the working hours, and to maintain secrecy regarding any classified information for a period that extends to five years after the termination of service. The obligation to maintain secrecy has in the past often led to unfair withholding of information. This prevailing attitude of the civil service, favouring opaqueness, will hopefully change with the strict implementation of the Right to Access Information Act. However, a new Law on Data Secrecy is currently under preparation (a first draft was withdrawn by the government in April 2006); while drafting and reviewing the new proposal it should be ensured that the new legislation cannot be abused in such a way as to hamper the hesitant trend towards more transparency in the administration. There are some concrete concerns regarding the accessibility of state archives but also of other documents. It seems that again the current draft on state secrecy extends secrecy too far, so that, for example, the draft does not respect European standards regarding the accessibility of archived documentation.

Apart from these general duties, the CSA (articles 116 to 123), as well as the Law on the State Administration System, sets down obligations of civil servants with regard to the quality of service delivery to citizens and other public service users, including information and technical help, together with

the possibility of personal liability for the consequences of their actions. Some of these duties are repeated in the special legislation on the protection of personal data and access to information.

The disciplinary provisions in the CSA (articles 96 to 115) describe the accountability of civil servants for breaches of official duties. The CSA provides in articles 98 and 99 a detailed list of minor breaches (e.g. frequently arriving late to work and unjustified absences) and serious breaches (ranging from failure to properly perform official duties, illegal work, providing incorrect information and unauthorised use of the administration's resources to disclose official secrets, intentional misuse of documents, damaging behaviour, repeated absence without official leave, etc.). The law now contains a general clause for minor and serious breaches to capture any violations that are not enumerated in the text (further elaborated in the Decree on Minor Disciplinary Offences, NN no. 109/2006).

Disciplinary sanctions are indicated in detail in article 110 of the CSA, and are separated into two categories corresponding to the violation categories: minor and serious. There are several minor sanctions: various reprimands and a fine for an amount equivalent to 10% of the civil servant's monthly salary (as paid in the month in which the penalty is pronounced). As for serious sanctions, there are six: a fine – for a period of one to six months – not exceeding 20% of the total salary paid in the month in which the penalty is pronounced; suspension of advancement for a duration of two to four years; prohibition of promotion for a duration of two to four years; transfer to another less demanding post; conditional dismissal and finally dismissal from the civil service.

The civil servant may be suspended from the civil service by a decision of the head of the state body if a criminal procedure or a procedure for serious breach of official duty has been lodged against the civil servant and if the presence of the civil servant in the office would harm the interests of the service (art. 112). A complaint against this decision is possible, but it does not defer the execution of the decision (art. 113). During the suspension from civil service the civil servant is entitled to receive 60% of his salary or 80% if he/she has to support a family (art. 114).

The statute of limitations for the application of disciplinary sanctions for a serious breach of official duty is one year after the breach and its perpetrator have been ascertained, but no longer than two years after the deed.

The disciplinary procedure is regulated in the CSA (articles 102 to 109), whereby article 102 prescribes that the general administrative procedures have to be applied unless otherwise regulated in the CSA and other legislation. For minor breaches of official duties, the heads of state bodies are to decide, unless otherwise determined by *lex specialis* (art. 100). The Civil Service Tribunal as the first instance and the Higher Civil Service Tribunal as the second instance are to decide in cases of serious violations. Both tribunals are to be appointed by the government and to have a president and no less than 10 members, one of whom (for the Civil Service Tribunal – two for the Higher Civil Service Tribunal) is to be appointed from among the judges. Individual cases are to be decided by three-member panels, which are always chaired by one of the appointed judges. No data is available on whether, and how often, this disciplinary procedure is used in practice.

The catalogue of rights and duties is now in line with common European standards. Another more practical problem is that the obligation to secrecy has often led in the past to withholding information. This prevailing attitude of the civil service is slowly changing, thanks also to several judgments of the Administrative Court. The law on state secrets, now under preparation, should nevertheless be monitored to ensure that it does not reverse this positive trend.

The disciplinary regulations in the CSA are mainly in line with common standards. The statute of limitations of a maximum of only two years after committing a serious violation remains insufficient, as it may result in serious breaches of duty going unpunished. The provision should be changed so that the statute of limitations is linked to the discovery of the breach.

The practical problem remains that not only administrative capacity but also monitoring and control capacity remain insufficient and, as a result, that breaches of official duties may not be detected.

Grievances

According to article 63 of the CSA, decisions regarding recruitment, assignment to posts, other rights and obligations of civil servants, and termination of service are made through administrative acts. Complaints against such decisions can be filed with the Civil Service Board (art. 64). The Civil Service Board is an independent body seated within the CSOA. The Board has to decide on a case within 30 days (art. 67). State bodies as well as civil servants have the right to initiate an administrative dispute against the decision of the Board (art. 67). In addition to the Board, the law also foresees a mediation procedure carried out by elected mediators (art. 68 ff).

The new regulation in the CSA has eliminated the previous flaws of the procedure, in particular the arrangement whereby the head of the administrative body took the initial decision as well as the decision on the complaint.

Secondary legislation regarding the Civil Service Board was adopted in January 2006. It remains to be seen whether the new independent Civil Service Board and the mediation procedure will in fact alleviate the burden of the Administrative Court and at the same time shorten the appeals procedure.

Professional Independence from Politics

The new CSA has introduced the obligation of civil servants to be impartial (art. 6), which is coupled with the right (already stated in the LCSE) to equal treatment and the obligation of superiors to not discriminate because of political views (art. 11). To support this principle, the civil servant has an obligation to refuse illicit orders and is protected against negative consequences for doing so. Some special laws (police, defence) have specific regulations on this matter. Although politically motivated decisions are legally prohibited, in practice politically influenced decisions still exist in a considerable number of cases. This is not surprising, given the fact that all senior positions in the civil service are still filled through direct appointment by the government upon the proposal of the prime minister. It remains to be seen whether this situation will change under the new CSA.

Integrity

Article 32ff of the CSA regulates quite comprehensively possible conflicts of interest of civil servants. These regulations include restrictions on the involvement of civil servants in economic activities as well as notification obligations, e.g. if a family member has economic activities in the same area of work as the administrative body. In addition, article 33 sets the conditions under which a civil servant – with prior approval of his superior – may carry out other activities besides his work as a civil servant. Some special laws (customs, police and defence) have additional regulations on this issue.

The new CSA still does not regulate conflict of interest situations of civil servants after they have left the service. Only the disclosure of official secrets is prohibited for five years after termination of service.

To prevent corrupt activities of civil servants, the disciplinary regulations of the CSA apply. Management staff are – according to the new CSA – civil servants, but in practice they are still political appointees and thus still fall under the rules of the Law on Conflict of Interest (CoIL), which addresses politicians and political appointees. The CoIL includes the obligation to disclose assets; such an obligation does not exist for civil servants. For the time being, i.e. until the next elections, it seems that the incumbents of the senior civil servant positions mentioned in article 74 of the CSA have to be treated as political appointees, i.e. the disciplinary rules do not apply to them. As the conflict of interest legislation enumerates the positions falling under the scope of the law, the incumbents of these positions will be subject to both laws – CSA and CoIL – once the CSA is implemented for these positions. This may lead to serious responsibility conflicts, and adequate amendments should therefore be considered.

Other general tools to support integrity in the public administration are the inspection units in all administrative bodies and the general Administrative Inspection in the CSOA. However, the capacity and staffing of these units varies considerably. It should also be mentioned that the Penal Code now describes in great detail special criminal offences regarding corruption and fraud.

On 31 March 2006 parliament adopted, based on the government strategy to fight corruption, a National Programme for Fighting Corruption for 2006-2008. This programme includes some rather unrealistic

deadlines regarding new legislation and in fact does not extend beyond the mandate of the current government, i.e. 2007.

On 30 March 2006 the government adopted a Code of Conduct for the Civil Service, as required by the CSA.

Conflict-of-interest regulations as well as incompatibilities seem to be regulated in an adequate way, although a regulation on behaviour after leaving the civil service is needed.

As indicated above, two different integrity regimes will apply to the incumbents of senior management positions after they have been selected according to the CSA and obtained the status of civil servants. This conflict of responsibilities has still not been resolved, which could indicate that there is little political will to change the current political status of management positions to a civil servant's status, with recruitment based on merit.

If the scope of the civil service is extended in late-autumn 2007, consideration will finally have to be given to introducing disclosure provisions for at least some of the top positions. Keeping integrity issues regarding senior civil service positions within the framework of the CoIL, with basically parliamentary control, would be inadequate.

Salary System and Pay Determination

2.2 Does the law fix the salary scheme, and is the determination of individual pay transparent and predictable?

A new law on civil service salaries had already been developed at the time of the last assessment, but it has still not been finalised. According to article 91 of the CSA, the new system will include pay steps that will be awarded on the basis of performance. The Ministry of Finance seemed confident that the adoption and implementation of the new salary system would take place in 2007 and confirmed that funds had been set aside to implement the salary reform and that no lower individual salaries would occur due to that reform.

Therefore, according to article 144 of the CSA, the LCSE regulations regarding remuneration of civil servants and public employees still govern civil service salaries. The general regulations for the salary scheme are set down in chapter 13 of the LCSE, articles 108-112, and in the Government Decree of 2001 on Job Systematisation and Pay Coefficients ("*titles of work posts and coefficients according to the complexity of tasks for each post in the civil service*"). Apparently special laws and decrees define specific or additional elements for numerous public service groups (police, customs, USKOK, financial police, internal audit, etc.). The Public Services Wages Act of March 2001 defines the wage principles for public employees who are working in the public service but are not civil servants in the sense of the LCSE. This law is based on the same principles and processes as those set down in the LCSE. In addition, some salary components, in particular special supplements, are regulated in the collective agreements.

The basic article for civil servants' pay is article 108 of the LCSE, which defines their salary as "the multiplication product of the task complexity coefficient of the workplace" and "the salary calculation basis, increased by 0.5% for each completed year of service". The salary calculation basis is established and then adjusted every year by collective agreement between the government and the trade unions. The basis for 2006 was HRK 4,566.85; this has been increased to 4,819.66 for the year 2007. For a given job class, a range of coefficients is set. These coefficients are listed as follows in article 109, paragraph 4: first-class jobs from 1.05 to 3.50; second-class jobs from 0.90 to 1.20; third-class jobs from 0.65 to 1.10; and fourth-class jobs from 0.50 to 0.75.

The actual coefficient for an individual workplace depends on its complexity. The task complexity-related coefficients of the various workplaces are fixed by government regulation, after consultation. The bodies to be consulted, which include the trade unions, are listed in article 109 of the LCSE. However, the complexity multipliers are basically predefined by the systematisation and the rulebook, which – as indicated above – are flawed by the fact that there is no cross-checking and balancing of classifications across ministries and throughout the administration.

In addition to the normal take-home pay, a work efficiency bonus may be granted, according to article 111 of the LCSE. Based on performance appraisal, civil servants may receive this bonus, which cannot exceed

an amount equivalent to three monthly salaries and cannot be considered in any way as a permanent *acquis*. However, the government decree specifying these jobs was in fact never issued, and so in practice these bonuses do not exist. Article 112 of the LCSE allows the granting of special bonuses to civil servants working in jobs with special working conditions. These jobs – which sometimes comprise whole services, such as the financial police or USKOK prosecutors – as well as the bonus level are determined by government decree. Some additional allowances are usually regulated in the collective agreement, e.g. a holiday cash allowance and retirement severance pay. In the past a number of allowances agreed in the collective agreement were not honoured by the government. The trade unions had therefore initiated court cases, some of which are still pending.

The proportion between fixed salary and variable remuneration in the total take-home pay varies considerably, depending on the classification group of the civil servant. For most central state bodies and all county offices, fixed salary equals take-home salary; in other services, e.g. police and customs, the take-home pay may consist of up to 50% of the fixed salary, with 50% variable remuneration.

New recruits, who are in a "trainee" position during their internship period, are to receive 85% of the salary at the lowest task complexity rate of the class corresponding to their position.

In agreement with the trade unions, salaries increased by 6% in 2007. Basic salaries in 2007 were e.g. for an assistant minister HRK 20,531.75 (2,804€) gross, 11,624.11 (1587€) net; for a head of division HRK 10,678 (1,458€) gross, HRK 7,438 (1,016€) net; for a trainee with university degree HRK 4,711 (636€) gross, HRK 3,385 (462€) net.

The rather large difference between the salary of a head of division and that of an assistant minister is the result of an "advanced" salary reform for managers that was introduced about four years ago to attract highly qualified staff into the civil service. The full-scale salary reform envisaged at the time never started due to budget constraints.

Scattered salary increases in recent years for some profession in the public services (e.g. health service and education) have led to considerable pay disparities in the public sector in recent years, with the result that now entry-level positions for university graduates with basically the same requirements are allocated multipliers ranging from 1.06 in some state administrations and 1.15 in others to 1.45 in higher education. In some other special administrations, such as tax and customs administration, multipliers may be even higher. Better salary schemes also exist for the supreme audit institution and the judiciary. These existing disparities and group interests may considerably hamper the introduction of a new salary system and job classification system aimed at unifying the civil service.

"Wealthy" local authorities – such as Zagreb, Rijeka, Dubrovnik and Split – pay considerably higher salaries than the state administration.

Pensions in the public service are paid according to the general pension scheme and are still extremely low.

Salaries of politicians are not linked to civil service salaries and are considerably higher; however ministers earn less than mayors of cities. Full pension rights are offered to MPs after only two years, at a pension rate that is higher than normal, active civil service salaries.

Given the cost of living in Croatia, civil service salaries – especially those below the level of director in a ministry (assistant minister under the old law) – are still quite low and are not fully competitive. They need to be increased, especially for the entry and early promotion positions of university graduates, so as to attract and retain qualified young staff and to develop and ensure professionalism and mobility in the civil service.

The still valid classification of civil service positions carried out by individual institutions, without adequate co-ordination and monitoring, has led in some ministries to a proliferation of higher positions. The result is that very similar tasks are classified differently among institutions, and consequently the salaries for similar work differ even more than demonstrated above by the different coefficients for entry positions. To remedy this situation, the CSOA will have to strengthen its capacity to assume its monitoring role, involve job analysts and finally provide a classification decree, with job descriptions for benchmark positions, to provide guidance for state administration bodies.

Different levels of salary for various groups of the civil service hamper the creation of a unified professional civil service as well as mobility and transfers within the service and restructuring of the public administration. At the same time, these differentiations may result in superfluous staff turnover, e.g. in the Ministry of Finance. The new salary system should be used as the vehicle for implementing a unified system and abolishing unjustified pay differentiations.

Performance and Career Development

2.3 Do sufficient and reasonable mechanisms (basically mobility, training and motivation) exist for good performance and career development within the civil service so as to make it attractive?

Mobility

Transfers of civil servants are now regulated in articles 76 to 81 of the CSA. Provisions are made for temporary and permanent transfers, which also include, for example, the possibility to work for international organisations without losing the status of a civil servant. The new law recognises transfers as a career development instrument, i.e. as a way of broadening or deepening the skills of a civil servant.

The transfer regulations in article 76 of the CSA now require only that the new post be "within the same category and involving the same or similar complexity of tasks". Transfers are also possible to a post with less complexity, but only with the consent of the civil servant. With regard to the transfer to another location, the law excludes such a transfer without the consent of a civil servant with more than 20 years of service. A transfer to another location is coupled with some social benefits, e.g. compensation for additional expenses and removal.

The new CSA has introduced the necessary changes in the transfer/mobility rules; if adequately applied, the transfer rules – coupled with the dismissal regulation – should allow for a smooth adaptation of the public administration to a changing environment and in particular to the envisaged decentralisation. As administrative restructuring, in particular decentralisation, has not really started – although the respective law was adopted one and a half years ago – the impact of these provisions remains unclear.

It remains to be seen whether transfers for the purpose of career development will actually take place.

The CSOA will have to strengthen its capacity and status in relation to ministries and other administrative bodies in order to play an active role in co-ordinating and monitoring staff mobility. Such a role is in fact foreseen for the CSOA in connection with the training strategy. Given the limited staff in the HRM department, it seems unlikely that implementation will start in the near future.

Job Description and Performance Appraisal

The new CSA introduces a new performance appraisal scheme in articles 82 to 89. This new system, as laid out in the CSA, represents a modern performance appraisal system. It includes three stages, namely development of a work plan and agreement on goals, monitoring of performance and efficiency – including possible adjustment of the work plan, and finally assessment of performance based on results achieved (art. 84). The performance appraisal is closely linked to advancement and promotion (art. 90). It will include a performance-related award of steps while remaining in the same job position (horizontal promotion/advancement). The decree on performance appraisal (R*ulebook on the Tenor of Special Reports on Performance and Efficiency Assessments of Civil Servants*) was published in July 2006. Performance appraisals have been carried out in the past, but performance appraisals following the new format will start in summer 2007 in the Ministry of Finance, which has a special agreement with the Dutch Government for support in HRM. In general, the new performance appraisal system is still being tested; indicators still need to be developed. Performance bonuses continue to be allocated, but are more arbitrary than based on clear and transparent indicators.

Whether or not the new appraisal system will change appraisals from a routine exercise to a career-development instrument is not yet clear. The Ministry of Finance expects that the performance related pay component will result in more motivation and better performance. Whether the new system will really

have an impact on performance and career planning will depend to a great extent on the capacities of the HRM units in ministries and other state bodies and on the capacity of the CSOA.

Training

The CSA states that the continuous improvement of professional skills through in-house training is an obligation of civil servants. In addition, the law provides the possibility of attending training outside the civil service, if relevant for improving professional skills. General training should be delivered centrally, and specific training may be carried out by departmental administrative bodies. A Training Centre for the state civil service was created in June 2005, and the necessary by-laws have now finally been adopted (latest by-law is the Decree on the Forms, Ways and Conditions of Civil Servants' Training, NN no. 10/2007, 29 January 2007). The Training Centre has adequate premises and equipment; as a result of international pressure, Centre staff were recruited in spring/summer 2006 and so the Centre was finally fully staffed by March 2007. These staff are still inexperienced and need further training. According to the training strategy, 3% of the budget devoted to civil servants' salaries is to be allocated for training; for the time being this component has still not been implemented. On the contrary, the Ministry of Finance cut the proposed training budget to such an extent that even obligatory training was not ensured. The Prime Minister promised additional funding in summer 2007, if necessary. In reality the Training Centre relies almost completely on a bilateral project and on the considerable funding for training which that project makes available.

The number of training courses provided by the Centre have increased, so it is slowly becoming more a civil service training institute rather than a public conference centre, despite the fact that again in 2006 it received less than 50% of the projected number of participants. For the first half of 2007 it is envisaged to carry out about 60 programmes for an expected 3000 participants.

Some mandatory inception training is organised as preparation for the professional examination, which is a prerequisite for civil servants' tenure. A new decree was adopted to regulate the procedure and content of this examination in order to adapt it to modern requirements (Decree on the Procedure, Examination Process, and the Programme of the State Examination, NN no. 61/2006, 31 May 2006). Despite this new decree, the examination and the training remain too limited and too focused on legal issues, although the training content was said to have changed to include some soft skills.

Some ministries and other administrative bodies have an elaborate programme of initial and continuous training, e.g. the Ministry of Finance and the Ministry of Foreign Affairs and European Integration, but others do not. A considerable amount of training is delivered by international and bilateral assistance programmes.

A training strategy for European integration (EI) matters was prepared a few years ago, and a considerable amount of training has been carried out by the Ministry for European Integration (now the Ministry of Foreign Affairs and European Integration), targeting all ministries and other concerned administrative authorities.

State County Offices have prepared a training plan, which should be implemented by the CSOA Training Centre; however, given the budget allocations, this may not be possible.

Postgraduate studies in public administration (one-year programme) for 20 civil servants, based on an agreement between the government and Zagreb University, were delivered in 2006/2007 for the first time. The experience of this programme was very good and enrolment for the new course took place in April 2007.

In March 2006 an Academy for Local Self-Government Democracy was created by government decree 33/2006). The aim of the Academy is to organise training for all staff employed by local self-government and for local councillors. The state budget is funding the Academy for an amount of 1 mln HRK (ca 140,000 EUR) per year. The curricula of this academy will be developed in co-operation with the Union of Associations of Towns and Municipalities; about 60% of towns and municipalities are members of this union. . Unfortunately, no organisation exists in which all local authorities are members, so in fact the training may not reach the staff in all towns and municipalities. Since the last assessment report, not much progress has been made in setting up the training institute; for the time being, there is still only an office.

The CARDS project on decentralisation has assisted the Academy in developing curricula, but no real activity seems to have started.

In addition, Croatia has secondary schools with education in public administration, as well as three-year studies of public administration with a B.A. degree (e.g. Zagreb, Osijek, Vukovar, Požega, Split, Rijeka, Otočac and Zapresic), postgraduate studies – but for the time being without an M.A. degree (Zagreb), and doctoral studies (Zagreb, Rijeka). The University of Zagreb intends to develop an M.A. degree, possibly in co-ordination with a Slovenian university, but no significant progress has been made since the last assessment report.

Training in European integration issues is well developed, and the same evaluation seems to hold for some special branches of the administration, such as customs or finance. General training under the leadership of the CSOA has not met expectations. Most of the training activities in 2006 were organised with technical assistance support. As the Training Centre did not carry out sufficient own training (with or without donor support), its premises continued to be rented out and used as a conference centre. For 2007 more training is foreseen; however, as the budget provided seems very limited, the training delivery will again depend on donor support. Curricula development is still underway; however, according to some sources the quality control is insufficient.

A positive development mentioned in the last assessment report was the creation of an academy for local authorities, but there is still no indication as to when this academy will start operations. Whether or not this slow development is linked to the even slower implementation of the government's policy on decentralisation may need further exploration. It is nevertheless a fact that the Law on Decentralisation was adopted nearly two years ago and for the time being the necessary by-laws have not been adopted. For the moment 91% of the budget remains at the state level, while 4.5% goes to the city of Zagreb and 4.5% to the counties.

Overall, the attractiveness of the civil service remains insufficient. Salary levels are low compared to the private sector, at least for all staff below assistant minister/director-general level. Due to high politicisation, career perspectives remain limited. Qualified young civil servants still tend to remain in the civil service only the minimum time needed to acquire the experience and practice that will allow them to move to the private sector. The full implementation of the Civil Service Act and the new salary law should change this situation; however, given the delay in classification and in adoption of the salary law, first results may only be visible in 2008.

3. Management of the Civil Service

3.1 Have systems for personnel management and a cross-government structure been established so as to ensure the application of homogeneous standards across the administration?

Central Management Capacity

The central management function of the state civil service lies with the Central State Office for Administration (CSOA), which is headed by a state secretary. Since the adoption and enforcement of the new CSA, the main general tasks of the CSOA regarding the management of the civil service are prescribed in article 38 of the CSA. According to article 38, the CSOA is responsible for the implementation of the CSA; it has to monitor the status and propose measures for the development of the civil service and oversee the enforcement of the CSA. For state bodies with less than 50 staff, it is in addition responsible for direct human resources management, which includes, for example, the preparation of civil service admission plans, development of educational strategies, maintenance of personal records and conducting recruitment. Further specific tasks are stated under the specific chapters of this law, e.g. presence at all recruitment procedures and review of classifications and staffing plans. According to the new legislation, the CSOA has all of the necessary powers to ensure the unified development of the civil service.

Human resources management departments have been created in each ministry and in most other administrative authorities, but very few of them are fully operational. A TA project is still assisting the CSOA in strengthening the capacity of some pilot HRM units in ministries. Still, not all HRM units are fully staffed, and not all staff in these units have been trained in human resources management. In most

cases, decisions regarding personnel management are still taken by the secretary of the ministry or even by the minister. As the secretary of the ministry is a political appointee (at least until autumn 2007) and is therefore still outside the CSA, depoliticisation of the civil service may well encounter some difficulties.

The HR Management and Development Department in the CSOA has 10 staff: 5 staff in charge of HR planning and 4 in the unit for HR development. With only 10 staff the HRMD department in the CSOA has insufficient capacity to fulfil all its task; this maybe the reason why the government passed a very interesting Decision (NN no. 90, 9 August 2006) that allows the possibility of contracting-out services regarding the centralised salary system as well as human resources management for all state administrative bodies. Following this Decision, it seems that the government signed a contract with the Financial Agency[1] (FINA). Further information regarding the concrete tasks transferred to FINA was not available at the time of the Sigma mission.

The CSOA does legally have all of the necessary powers to assume the role of a central management capacity. However, the office remains understaffed and not all existing staff (given the staff turnover) have received specific training. The political will to create a professional, non-politicised civil service does not appear to be very strong. In addition, the CSOA has not yet been able to gain full acceptance by ministries and to thereby be in a position to impose the measures that are required to improve the civil service.

Strengthening the capacity of the CSOA will be necessary to ensure that homogeneous human resources management (HRM) standards are applied throughout the administration. It will be necessary to improve overall HRM and thereby open clear and predictable career perspectives for civil servants, combining performance appraisal, training needs assessment, and various forms of training to accompany and support horizontal and vertical career evolution.

3.2 Are staff numbers and personnel costs controlled and published?

Staffing and Control

The Law on the State Administration System, in articles 59 and 60, empowers the government to establish by regulation the internal organisation of state administration bodies. Article 59, paragraph 3, states that "on the basis of the Regulation on internal organisation of State Administration Bodies, the Ordinance on Internal Order establishes the number of civil service employees needed as well as their main tasks and activities and the professional requirements necessary for their performance…". This ordinance, the "rulebook", is issued for a ministry by the minister and for state administration bodies by the head of the respective body. A new systematisation/rulebook has to be prepared whenever changes are to be introduced or simply occur, e.g. structural changes after a government change. However, its preparation is sometimes delayed, as it seems that some administrative bodies function without an updated rulebook for more than a year if an incoming government has carried out some reorganisation measures. The rulebook sets the upper staffing limits.

These regulations regarding the rulebook are now complemented by regulations in the CSA (articles 42 to 44), namely the obligation to prepare a civil service admission plan. The civil service admission plans have to be approved by the Ministry of Finance and must be presented within 30 days of the entry into force of the state budget. They are published in the *Official Gazette*. The plan has to include information about posts that are filled by individuals from national minority groups. Recruitment can only take place to fill the vacancies that are included in the plan.

According to the annual Budget Law, all administrative bodies have the obligation to submit their staffing needs for the budget year. Proposals from the various state bodies and ministries are negotiated with the Ministry of Finance (MoF) and the CSOA, with reference to the staffing limits set in the rulebooks and to the operative margin provided by budgetary prospects. The annual budget may nevertheless include posts for which no funding is available. In case a ministry wants to recruit to a position not included in the civil service admission plan, it will need to have a special approval of the MoF; without such approval, the recruitment can be annulled.

[1] FINA offers its services to the private and public sectors and is, *inter alia*, in charge of one-stop shops.

The budget clearly sets personnel expenditure limits. Compliance with personnel expenditure limits is monitored by the MoF and by the internal audit, but the MoF has very limited capacities to fulfil this role, and the internal audit function is still not fully operational. The supreme audit institution, the State Revision Office, is to audit personnel expenditure once a year. Its audit activities are mainly oriented to regularity audit and do not yet address needs or performance aspects.

Data on staffing at any given point in time is not fully reliable. There is still no fully operational central personnel registry. According to article 140 of the Law on the State Administration System, such a registry should be kept by the CSOA; a decree regulating this issue was adopted in October 2006 (NN no. 113, 18 October 2006). A CARDS project will support the development of the registry.

Unlike the central personnel registry, a compatible computerised payroll system is in place and is basically reliable. However, the latter system is insufficient as control instrument, given that neither agency under the parliament nor local government units and their agencies are included in the system.

3.3 Do staff representatives participate in decision-making and control concerning personnel management matters?

Staff Representation

As mentioned above, the law respects the right to form and join professional associations aimed at defending civil servants' and public employees' interests. Trade unions are powerful in Croatia; they are involved in policy-making and they are consulted on legal drafts if issues of relevance to their members are at stake. Evidence of this influential role can be found in the very comprehensive multi-annual collective agreements, which extend the rights of civil servants. In the previous agreement (valid until December 2006), the government had committed itself to paying certain special bonuses, e.g. special workload and Christmas bonuses, which subsequently were not distributed, given the budget constraints. Trade unions have sued the government, demanding fulfilment of its contractual obligation; the cases are still pending.

It was reported that of the ca 65,000 staff of the core civil service, 40,000 are unionised, of which about 60% to 80% are employees with secondary education (depending on the union); the intention of the unions is to attract more university graduates.

Given the membership distribution in the unions, it seems obvious that they have little interest in supporting management reforms in the civil service – e.g. fast-stream schemes or other initiatives to improve salaries and career prospects for young university graduates – aimed at reducing turnover and improving professionalism.

Trade unions covering public services, e.g. health services, are said to be stronger than those for staff in core public administration. All trade unions in the public sector seem to support only their individual constituencies; a joint strategy covering all staff in the public service apparently does not exist. The strong position and individualistic approach of trade unions has slowed down the preparation of the new salary law; nevertheless, despite some counter-productive proposals, positive co-operation has occurred. More serious problems could be encountered when carrying out the new classification and the new salary system, both of which are still in preparation.

In this context, it should be stated that the trade unions have reported that with the civil service reform of 2001 the staff with secondary education lost about 20% to 40% of their salary. The trade unions expect that the new salary reform will compensate for this loss.

Staff representation in individual administrative bodies does not exist, which may be the reason why trade unions are not involved in individual personnel decisions; such representation is foreseen, however, in the new law.

4. Legality and Accountability

4.1 Do administrative practices and the general legal administrative framework guarantee the principle of legality in administrative decision-making, and are they sufficient and appropriate to guide civil servants and make them accountable for their performance?

Constitution and Constitutional Institutions

The principle of legality is clearly established by the Constitution and the derived legal system. The rule of law is formally stated in the Constitution, article 3, as one of the "highest values that the Republic of Croatia intends to abide by". It is complemented by article 4 (separation of powers) and article 5, which establishes the hierarchy of legal acts under reference of the Constitution. Article 107 specifies that the government "shall exercise executive powers in conformity with the Constitution and law". This article is complemented by article 113 ("The organisation, mode of operation and decision-making of the government shall be regulated by law and the rules of procedure") and by article 116, which refers more specifically to the state administration, regional and local self-government, and the civil service.

The principle of accountability – as well as personal liability – is recognised and also formally set down, for example in the Decree on Principles for the Internal Organisation of State Administration Bodies (art. 24), which stipulates that "*heads of internal organisational units within ministries and within the state administration organisations direct the work of internal organisational units and are accountable for their work"*, while the CSA (art. 8) states that civil servants are answerable for their actions and work performance. Article 96 of the CSA postulates that civil servants are to be held accountable for breaches of official duty if they fail to perform the duties entrusted to them and if they fail to uphold the Constitution, laws and regulations. Finally, article 116ff of the CSA then regulates personal liability for damages.

Equality before the law as a fundamental principle is set down in several constitutional articles under chapter three of the Constitution, devoted to the Protection of Human Rights and Fundamental Freedoms, but it is more specifically mentioned in articles 14 and 15. Article 118, which designates the Supreme Court as the highest court of justice, specifies that it "shall secure uniform application of laws and equal justice to all".

Several key institutions have a constitutional character for protecting the rule of law and ensuring the accountability of the public administration.

The Constitutional Court (articles 125-131) is the highest of these bodies and consists of 13 judges elected by parliament for an eight-year term from among jurists, lawyers, judges, public prosecutors and university law professors. One judge is currently missing, due to an unsuccessful election procedure in early spring of this year; the election of most judges is expected in early autumn 2007. The court elects its president for a four-year term. Among other traditional competences for such a court (conformity of laws to the Constitution), the Constitutional Court is to: "decide on constitutional complaints against the individual decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia."

The People's Ombudsman (art. 92), appointed by parliament for a term of eight years, is vested with the protection of citizens' constitutional and legal rights before all public bodies, central or local (i.e. local and regional self-government). According to the Law on the Ombudsman, article 12, the Ombudsman is empowered to examine individual violations of constitutional and legal rights of citizens as well as other irregularities committed in the exercise of state administrative power, either on his/her own initiative or upon the request of a citizen. Every citizen has the right to submit petitions to the Ombudsman, regardless of whether the petitioner has suffered direct personal injury. The Office of the Ombudsman is still understaffed but it should have 32 staff by 2008. In 2006 it had to deal with 1650 written complaints and a large number of oral complaints, 266 of which concerned courts. As the courts are outside the remit of the Ombudsman, these complaints were transmitted to the Minister of Justice; however, at the same time the Ombudsman informed and discussed the complaints with the Administrative Court. As the Ombudsman's Office disposes of a very limited budget, it still depends on Norwegian bilateral and OSCE support to enable visits to municipalities to inform citizens and hear complaints. Regional or county offices of the Ombudsman do not exist.

The Office of Public Prosecutions – of which the Chief Public Prosecutor (art. 124) is appointed by parliament for a four-year term on the proposal of the government – has been created as an autonomous and independent judicial body responsible for proceeding against criminal and other punishable offences, undertaking legal measures or providing legal remedies for the protection of the Constitution and the law.

The role, organisation and operational mode of the Public Prosecutions Office are regulated by law. Recruitment of prosecutors and disciplinary measures are under the authority of the Prosecution Council.

The judiciary (articles 117-123) is independent. It is controlled, in terms of its administration and disciplinary system, by the National Judicial Council, which consists of 11 members elected by parliament from among judges, attorneys and university law professors. The Supreme Court is the highest court and ensures the uniform application of laws and equal treatment of all citizens before the law. Judicial review of decisions taken by administrative agencies and by all bodies vested with public authority is guaranteed by article 19 of the Constitution, which also requires all individual administrative decisions to be based on law.

In addition, the supreme audit institution, the State Office for Revision, which is not anchored in the Constitution, reviews the regularity of administrative activities and reports directly to parliament.

These constitutional institutions have in principle sufficient authority and powers to guarantee acceptable accountability standards and mechanisms. However, despite an overall sufficient number of staff in the institutions (except for the Office of the General Ombudsman, i.e. the People's Ombudsman) capacity is still seriously lacking in most of these institutions. One of the reasons could be too large volume of new legislation of often poor quality, coupled with insufficient training. In addition, the reputation of the judiciary has seriously suffered in recent years and, despite a number of efforts, further serious efforts will be necessary to reinstate a positive image.

Organisation of the Administration

The distribution of administrative competencies among the various public authorities is regulated by law and by decree. The structure and organisation of the state administration are regulated by three basic laws: the Law on the State Administration System (September 2003); the Law on the Structure and Scope of the Central State Administrative Bodies (2003, last amended in 2006); and the Government of the Republic of Croatia Act (July 1998, last amended in 2003. Several other laws include provisions on state administration, but they address specific areas.

The general law on the organisation of the administration is the Law on the State Administration System, which prescribes in a generic way the powers and responsibilities of governmental and administrative bodies at all hierarchical levels of authority. This act also defines the organisation and functioning of inspection control within the public administration. In practice, frequent reorganisation and restructuring of the administration, including the creation of new bodies, have created overlaps as well as unclear and blurred responsibilities of several administrative bodies, calling for a high amount of co-ordination and co-operation, which unfortunately has not yet become the general routine of Croatian civil servants. In addition, some special offices/public agencies have been created by law for specific tasks that – at least in some cases – should have been carried out by the responsible ministries. These public agencies are usually directly responsible to the Prime Minister or to the government. This tendency to create agencies for "political priority" tasks of the government in power disconnects these functions from their normal substantive context and removes them from ministerial responsibility, usually with disruptive effects. It can adversely affect accountability and cohesive government policy, and easily lead to high politicisation and lack of professionalism.

For the time being, there are 13 ministries, nine state administration organisations, 13 offices, four central state offices, and one office of state administration in each county (20 counties) that serves as a first-instance state administration body independent from county bodies in terms of both organisation and personnel. Almost all central state bodies have their own branch offices across the entire territory of Croatia.

Quality of Legislation

To improve the cohesiveness and quality of the legal framework, Croatia has introduced a general obligation to carry out impact assessment. However, in 2005 the government could only agree on the implementation of fiscal impact assessment; the rules of procedures have been changed accordingly. Fiscal impact assessment is carried out by line ministries, but the quality of these assessments still varies considerably and is often seen as a formality. In a considerable number of cases the Ministry of Finance – when reviewing them – has to complement and correct these assessments. For the time being, fiscal

impact assessments cover only impacts on the state budget. Given the fact that own revenues at local or regional levels are still insignificant, this limitation is acceptable, but it will have to be reconsidered when and if decentralisation is further advanced. According to the Ministry of Finance, some improvements regarding the quality of legislation have been made.

Other impact assessments – regarding environmental, economic and social impacts – were not implemented by the end of 2006. It was reported that it is envisaged to create a central state office or service tasked with regulatory impact assessment. This office should advise and train in impact assessment and also ensure that the necessary impact assessments are carried out. The creation of this office is envisaged for autumn 2007. It remains to be seen whether a special office will have the clout and sufficiently qualified staff to convince the ministries to carry out good quality assessments as well as to provide the substantive knowledge required for checking the quality. An additional issue would be the need to change current government procedures so that the office could really get involved in policy development and legal drafting at an early stage.

Since the last assessment report, the government – with the support of USAID – created on 28 September 2006 a specific body, HITROREZ, to review the existing "business-relevant" legislative framework. HITROREZ was by mid-October staffed with 14 permanent and eight temporary staff. It checked legislation from 67 regulators and identified 1482 business-relevant regulations, all of which are being reviewed.. The final report of HITROREZ is expected to be submitted to the government by 15 June 2007. The report will include proposals for changes to be submitted to parliament as well as proposals for changes to be made by the government and by individual agencies.

Despite these efforts, the problem of over-regulation remains, coupled with the failure to carefully review old legislation and explicitly abolish it when new legislation is adopted. As a result, interpretation and applicability problems occur due to overlaps, contradictory or unclear legislation and legal gaps, which often could have been avoided. This situation is detrimental to the principle of legality and to the rule of law, which should provide for legal certainty. In addition, it hampers economic activities and may invite corrupt behaviour.

The time frame for the review of laws by the Legislative Office is usually only seven days, sometimes less, and only for systematic laws is the period a little longer. The Office's mandate includes legality and constitutionality, but not really efficiency and implementability, although the Office may comment on these topics.

The Ombudsman mentioned that there were 15,000 complaints related to a new law on the restitution of property, and it is assumed that the law lacked clarity and legal certainty or was otherwise not well prepared.

Administrative Procedures

The current Law on General Administrative Procedures (LGAP) originates from former Yugoslavia, and in fact the first administrative procedures law was introduced in this part of former Yugoslavia in 1930. It is based on the Austrian law of 1925 and corresponds to a strong normative tradition. The current law dates from 1991 and is an amended version of the Yugoslav General Administrative Procedures Law of 1986.

The law regulates the form of an administrative act, i.e. an act must be motivated and must include information for interested parties on their rights to appeal against administrative decisions (articles 206 and 210 of the LGAP). The law also recognises some rights of third parties. It sets down the principle of proportionality of administrative actions as one of the basic principles of administrative procedure. According to article 80 of the LGAP, interested parties have the right of access to all files when they are engaged in a concrete administrative procedure, and they also have the right to copy them, but at their own expense. The same right is recognised for any other person who can prove his/her justified interest in that concrete procedure. Article 292 of the LGAP regulates the interim suspension of the execution of administrative acts. An appeal to a higher administrative authority is usually possible, but can be excluded in certain cases by special laws (which is often the case). Appeal to the Administrative Court is constitutionally guaranteed. As a full judicial review does not exist (see below), the administrative procedures are very formal in an attempt to replace adequate judicial review. They also do not regulate

issues linked to electronic tools used in modern administration nor do they address legal constructs, such as public law contracts or space planning.

Overall the law is not fully in line with common European standards, and this is recognised by the Croatian authorities.

Since the last assessment report, significant progress has finally been made in drafting a new general administrative procedures law. The new draft respects general standards and should include all necessary changes. It is expected to submit the final draft to the government by July 2007, although whether the draft will be submitted to parliament before the autumn 2007 elections is now doubtful.

A remaining problem for the proper functioning and transparency of the public administration in Croatia is that over the years a considerable number of special administrative procedures – between 70 and 80 laws – have been adopted. The drafters of the new general administrative procedures law are continuing serious efforts to initiate the abolition of most of these special procedures (similar efforts may well be visible in the HITROREZ report). However, it remains to be seen whether the streamlining of administrative procedures will be successful.

For the time being, it continues to be difficult for citizens, including legal experts, to determine in a given situation whether the general procedure applies or if a special procedure is preferred. This situation, coupled with the fact that judicial review of administrative decisions is inadequate, severely weakens administrative accountability. It also diminishes guarantees to citizens, legal persons, etc. of adequate and just administrative decisions that respect basic European principles. This problem becomes even greater in view of the considerable room for discretion in substantive legislation. Together with unclear procedures and limited possibilities for appeal, this wide discretionary scope in legislation can easily lead to arbitrary decision-making in the administration, legal uncertainty and proliferation of corruption.

Transparency in Public Administration

The Law on the State Administration System, in article 82, sets down a rather wide obligation of state authorities to inform citizens and the public, but it does not give any individual rights to the citizen.

In chapter V on "Relations between State Administration Bodies and Members of the Public", articles 73-75, the law regulates the relations between state administration bodies and members of the general public, which in principle "shall be based on mutual co-operation and trust and the respect for human dignity. The state administration bodies shall provide members of the public and legal persons with information, notifications, instructions and professional assistance concerning those activities about which these persons have contacted them. The state administration bodies shall inform the public about the activities within the sphere of their competence, and report on their work via the mass media or in some other appropriate manner. Certain reports may be refused only if such communication would result in a breach of the duty to keep official secrets, or if it would be contrary to other protected interests of members of the public and legal persons*."*

Ministers, directors of state administration organisations, state secretaries of central state offices, and heads of state administration offices in regional self-government units may report to the public on the performance of their activities and may authorise individual civil servants to do so. They may hold conferences with representatives of the mass media on important issues related to carrying out state administration activities. More precisely, they may decide that the drafts of regulations under preparation that could be of particular interest to the public are to be published in the mass media, and they may invite all interested parties to give their comments on these draft regulations.

The Law on the Right to Access Information was adopted in October 2003. Croatia was one of the last countries in South East Europe to adopt such a law, which now enables citizens to exercise the right of access to public information, as stipulated in the Constitution and mentioned in the Law on the State Administration System. This relatively short law of 33 articles establishes the right of access to (public) information as a principle, and rigorously regulates the exceptional denial of access. It provides for the application of sanctions for public authorities who unduly deny such access. According to Article 3, the "beneficiary of the right to [information] is every domestic or foreign, natural or legal person, as well as an entity that may have special rights and obligations (e.g. a building, settlement, group of citizens without legal personality, and similar)". Public information covers numerous areas, including information on

obligations and authority, activities and decisions; it applies equally to government bodies and institutions, community councils and local government institutions. In practice this law has not always been respected by state bodies and even to a lesser extent by local authorities and other public bodies (for example, pension, health and other funds, schools and hospitals). This behaviour has prompted several administrative disputes before the Administrative Court. The Court has confirmed the rigorous application of the law on access to public information and confirmed the requests of several NGOs. The compliance of the administration with this legislation has since then been slowly but continuously improving.

The current Law on Protection of the Secrecy of Data dates from 1996; it creates broad rules for the protection of five categories of information: national secrets, military secrets, official secrets, business secrets, and professional secrets. The government considers that this law does not meet NATO and EU standards. A first draft law regulating state secrets, which included large discretion regarding classifying information as secret, was proposed by the government in early 2006 and then withdrawn in April 2006; this withdrawal was mainly due to protests from NGOs, who stated that the regulations on the classification of information as secret had too few criteria and were basically arbitrary. Currently a new draft is in preparation; it remains to be seen whether this draft will be in line with general standards or will again tend to reverse the trend of growing transparency in the Croatian administration.

A Law on Personal Data Protection was also adopted in 2003 (amendments in NN no. 118/2006). Pursuant to article 37 of the Constitution, this law protects the privacy of individuals, as well as other human rights and fundamental freedoms in the collection, processing and use of personal data. The supervisory body, the Personal Data Protection Agency, has been created as an autonomous legal person, which reports to parliament

Protection of Legality by Civil Servants

The main control mechanism over the civil service is hierarchical subordination (art.7, CSA). However, the CSA now obliges the civil servant to reject an unlawful order (art. 27, CSA). If the order is repeated in writing, the civil servant has to notify the person who is immediately superior to the ordering officer; if the order does not constitute a criminal offence, the civil servant then has to execute the order. However, he/she is not accountable for the possible negative impact of his/her action. Confronted with an order that would result in a criminal offence, the civil servant must not execute the order; if he/she does, he/she is held accountable along with his/her immediate superior who issued the order.

As most management positions are still staffed by political appointees who do not enjoy job security, it is questionable whether for the time being the implementation of this provision is really possible regarding the positions mentioned in article 74. For lower grades benefitting from job security, implementation of the provision should theoretically not pose a problem.

The general liability of the public administration is regulated in article 13 of the Law on the State Administration System. It prescribes the full and institutional liability of the state, as it stipulates: "The damage suffered by a citizen, a legal person or another party due to illegal or irregular operations of state administration bodies, bodies of local and regional self-government units or legal persons vested with public authority in state administration activities transferred to them shall be compensated by the Republic of Croatia."

Citizens and legal persons are vested with the right to file formal appeals, objections and complaints about the work of the public administration. To this effect, article 15 of the Law on the State Administration System states that "an appeal may be filed against individual acts, actions or measures of state administration bodies, bodies of local and regional self-government units and legal persons vested with public authority in state administration activities transferred to them, passed by them in the first instance; in cases when an appeal is not permitted, court protection may be requested". Citizens and legal persons – in the exercise of their rights, pursuit of their interests or performance of their civic duties – also have the right to complain about the attitude of civil servants who address them in an improper manner.

The personal liability of civil servants is regulated in article 116 ff of the CSA, devoted to "Liability for Damages". A civil servant must compensate for any damage inflicted on the government body when in service or pertaining to the service, either wilfully or as a result of gross negligence (art. 116). When the damage or loss suffered by the government body is linked to the compensation to physical and legal persons for damage inflicted on them due to the civil servant's personal fault, the civil servant is equally

obliged to compensate for this loss. In the case of damage inflicted on property, the civil servant may request permission to have this property restored to its former state at his/her expense and within an appropriate time frame (art. 121).

The civil servant who caused the damage must be heard by the head of the state body (art. 117) before a decision on damage compensation is issued. Upon request, the payment of compensation may be made in instalments (art. 120). The civil servant has the right to lodge a complaint against the decision on damage compensation and to initiate an administrative dispute in the administrative court. The complaint should be lodged with the Civil Service Board (art. 65), which is competent to decide as a second-instance body in all civil service cases in state administration. The Board is an independent body, whose structure and manner of functioning are regulated by decree (Decree on the Structure and Manner of Functioning of the Civil Service Board – NN no. 8/2006).

The CSA includes, as a protection of legality in decision-making, adequate provisions regarding conflict of interest (articles 33 to 37), as well as rights and duties of civil servants and disciplinary measures (Rulebook on Minor Disciplinary Offences – NN no. 109/2006, 6 October 2006). A code of ethics was adopted in March 2006; in addition, some specific guidelines exist in special administrations.

Furthermore, besides the general supervision of lower administrative bodies by higher administrative bodies (institutional hierarchy), the Croatian administration disposes of a number of inspectorates and is now developing an internal audit system. The role of internal inspectorates is set out in detail in several pieces of legislation, particularly in the Law on the State Administration System. In the implementation of administrative control, inspectors are to supervise in particular: the lawfulness of operations and actions; decisions taken in administrative matters; the efficiency, cost-effectiveness and purposefulness of administrative bodies' activities; the effectiveness of the internal organisation and competence of civil servants and employees in executing state administration activities; and the attitude of civil servants and employees towards the public and other users. The central administration authorities in charge of controlling local self-governments may annul illegal decisions (concerning delegated state tasks) taken at this level. Administrative decisions within the remit of local self-government can be reviewed by the respective county office (regional self-government) or, if decided by such county offices in the first instance, by the responsible central state administration body.

In addition, special units in the police, customs and tax services are tasked with preventing and fighting corruption in their respective services.

In view of the envisaged decentralisation, a serious problem remaining is the accountability – but also the protection – of staff working at lower levels of government, given the politicisation, limited job security and weakness of existing accountability structures and control mechanisms.

Ombudsman

The Croatian Constitution provides (art. 92) for an Ombudsman (People's Ombudsman), as a commissioner of parliament for an eight-year term, who protects the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public authority; he/she also protects the rights of local self-governments. The Ombudsman's authority and working methods are regulated by the Ombudsman Act of 1992 (and the Rules of Procedure of the Ombudsman of 1997 – NN no. 71/1997). Apart from considering individual cases, the Ombudsman also studies other matters relevant to the protection of constitutional and legal rights, the existence of which the Ombudsman learns from various sources (including NGOs and the media). These matters involve irregularities in the work of administrative bodies or bodies vested with public authority.

Two new specialised ombudsmen institutions were introduced in Croatia in 2003: the Children's Ombudsman, a supervisory body with the task of protecting, monitoring and promoting the rights and interests of children; and the Gender Equality Ombudsman, an institution dealing with cases of violation of gender equality principles, cases of discrimination against individuals or groups of individuals on the part of state administration bodies, bodies of local and regional self-government units and other bodies vested with public authority, the employees of these bodies, as well as other legal and natural persons. A new law is currently being drafted to create an Ombudsman for Disabled Persons.

All ombudsmen may examine anonymous complaints and may also act on their own initiative.

The General Ombudsman (People's Ombudsman) is legally bound to submit a yearly report to parliament, and can also submit special reports to parliament, the government and competent ministries if he/she establishes that the constitutional or legal rights of a large number of citizens have been violated or have been seriously threatened by illegalities or irregularities in the work of – or by the actions of – state administration bodies and bodies vested with public authority.

The reports of the Ombudsman to parliament are public; they have been available on the Internet since the creation of the Ombudsman website in 2004.

As for the Ombudman's recommendations regarding individual cases, most ministries and other central administration bodies have reacted positively and acted in accordance with these recommendations.

Although the reports of the Ombudsman to parliament have been positively received by parliament every year, the government has still not followed the Ombudsman's proposal to propose adequate financing and the parliament has not adopted a sufficient budget envelope for the Ombudsman institution. The Ombudsman has nevertheless found additional financing through international donors.

Although the Ombudsman is expected to be independent, sometimes attempts are made to exert "discreet influence" on the Ombudsman's actions.

As the Ombudsman has no regional offices, the Ombudsman and his deputies travel to regional centres to maintain contact with the citizen and to hear complaints directly. Nearly all complaints concern the state administration. He intervenes, usually through mediation, before the cases are finally decided by the court. The Ombudsman also receives complaints regarding the judiciary, of which about 80% concern the slowness of court procedures. He also reports on those cases, which – according to other sources – has caused some miscontent in the judiciary.

The Ombudsman Office has engaged four more staff members since the last report. The reputation of the office seems to be generally good; however, other sources state that the Ombudman more often than not clashes with the current government, to the detriment of defending citizens' interests.

The existence of three different Ombudsmen institutions (possibly soon four) should be reconsidered, given the unnecessary administrative costs of running several officies as well as the fact that the special ombudsmen seem to be encountering some credibility problems.

Administrative Control and Review of Administrative Decisions

The Law on the State Administration System, Law on the Local and Regional Self-Government and Law on Civil Procedure permit individuals to challenge the legality of a public official's action by lodging a complaint or by filing a lawsuit with the Administrative Court or with a civil court. More specifically, article 15 of the Law on the State Administration System stipulates that complaints may be made against individual actions or decisions of state government bodies and legal persons vested with public authority in specific affairs of state administration and that court protection may be requested in the event that the complaint is not received by this administrative authority. Similar provisions are contained in the Law on Local and Regional Self-Government with regard to individual acts of administrative bodies of local and regional self-government units (NN nos. 33/2001, 60/2001 and 129/2005). Court protection against all individual acts of local bodies is ensured before the Administrative Court.

When an administrative decision is taken, the person who intends to lodge a complaint against this decision must first request a revision at the decision-making level. If no answer – or no satisfactory answer – is given at this level, the person may then appeal to the upper hierarchical level or – under certain conditions – appeal immediately to the Administrative Court. The court reviews the legality (legal and formal aspects) of the administrative decision. For the time being, the law foresees a direct hearing before the court only under exceptional circumstances.

The Administrative Court is part of the judiciary (until 1987 it was a department in the Supreme Court), and in principle it is an important institution in charge of protecting citizens and legal persons as well as civil servants in their employment relation with the state against illegal and damaging administrative decisions. It is the only instance for judicial review of administrative decisions but, according to a Constitutional Court ruling of November 2000, it is not considered to be a full jurisdictional court, as the Administrative Court is neither obliged to independently establish the facts of the cases submitted for its

appraisal nor to have public sessions[2]. Consequently, the European Court of Human Rights does not recognise its powers as being fully jurisdictional, which signifies that the Croatian administrative judicial system is not in line with European standards. The Administrative Court usually reviews only the legality of administrative decisions. An appeal against its decision to the Supreme Court and/or the Constitutional Court is exceptionally possible.

There are some indications that the Administrative Court has started to accept that reforms in the administrative justice system are urgently needed to meet European standards. A CARDS project waiting to assist in these reforms may therefore finally find a beneficiary.

The Administrative Court consists of 33 judges and about 18 law clerks, who assist in the preparation of decisions. The Court has two chambers. When cases are registered with the Court, a judge is assigned to prepare a *votum* for the case; the assigned judge then reports to the panel, comprised of three judges (one president and two assessors). The Court reviews the legality (legal and formal aspects) of the administrative decision. For the moment, no direct hearings have been carried out. At least 50% of the cases are sent back to the administration for a new decision that takes into account the Court's opinion.

The Court continues to have a considerable backlog of cases; some date back six years. According to some sources, about 40% of the cases are won by citizens. The duration of the administrative procedure leads to enormous delays in judgments, which in turn – coupled with the fact that the administration often loses the case – may entail avoidable rather high compensations to be paid by the state budget.

With regard to the scope of the Administrative Court, it should be noted that the Court usually does not use its powers – albeit limited – of full jurisdiction, i.e. its common feature is that it asks the administration to review its decision, taking into account the Court's opinions. This attitude often results in the same case coming several times to the Court for decision, thus increasing the workload even further.

However, the Court could, according to the law, hold hearings and take a final decision on a case based on legal grounds, if there is no room for administrative discretion.

Implementation of the judgments of the Court, which is not vested with the power to directly intervene and ensure the actual enforcement of its decisions, remains dependent on the compliance of the respective administrative authority, which unfortunately is not always the case.

The Croatian administrative legal framework does guarantee in general the principles of legality and predictability of administrative decisions. Accountability is well regulated, and oversight and control mechanisms also exist. The legal framework constitutes a good workable basis, although certain crucial amendments will be necessary to adapt it to common European standards, in particular concerning the judicial review of administrative decisions. Likewise, more clarity is required concerning administrative procedures.

A serious problem remaining is the current implementation gap. Laws are often not implemented, and for a variety of reasons, whether it be ignorance, lack of secondary legislation, or deliberate inaction. In some cases, the abundant legislation – which has been adopted too quickly – adds to the implementation gap, as legislation has subsequently to be amended several times and, as a result, knowledge of the newly passed legislation becomes rapidly obsolete.

Institutions exist to carry out audit and control, but enforcement and control mechanisms remain weak due to understaffing of these units and/or lack of adequately trained personnel (most units/institutions seem incapable of following up on complaints/requests within an acceptable delay), coupled with high staff turnover.

[2] Article 34, paragraph 1, of the Law on Administrative Disputes, provides that: "In administrative disputes the Administrative Court decides in closed session."