



SIGMA

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CROATIA

PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK

ASSESSMENT MAY 2008

Introduction

The “Council Decision on the principles, priorities and conditions contained in the Accession Partnership with Croatia”¹ contained some key priorities for Croatia to achieve in order to fulfil the political criteria for accession to the European Union. These were to “fully implement public administration reform measures on administrative procedures and on recruitment, promotion, training and depoliticisation” and to “improve human resource management in areas of public administration”.

Following these stated political guidelines, this assessment report updates Sigma’s 2007 assessment report,² mainly based on information gathered before mid-March 2008.

We can report a small amount of progress since the 2007 Sigma assessment, although there is little change on the ground. New legislation has been adopted or drafted, but implementation is still a key issue. For the time being, the depoliticisation of the civil service is a hope more than a reality. And stronger commitment and resources will be required if the professionalism of the civil service is to be enhanced and the human resources management system improved.

General elections were held on 25 November 2007 and a new government took office in January 2008. The new government now includes four deputy prime ministers, one of whom it to co-ordinate home affairs, including public administration reform.

The Croatian public service is regulated by the Civil Service Act (CSA, *Official Gazette* 92/05 of 27 July 2005). However, the Law on Civil Servants and Civil Service Employees (LCSE, *Official Gazette* 27/01) will continue to govern salaries and other benefits until new salary legislation is adopted. A salary law is currently being prepared and a decree on job classification was adopted in July 2007 (OG 77/07) and amended in February 2008 (OG 13/08).

The recruitment of civil servants for newly depoliticised managerial positions has started, but doubts remain about the effectiveness of depoliticisation as recruitment procedures remain rather informal and politicians still play a decisive role in recruitment. Moreover, a large number of political positions have been created, replacing the positions that were supposed to be depoliticised; in January 2008, 34 state secretaries were appointed while 60 were appointed after the new government was formed. Therefore, although the depoliticisation envisaged in the CSA is a positive step, its implementation could be disappointing.

The enforcement of the CSA is an ongoing process and the capacity of the Central State Office for Administration (CSOA) has slightly improved. However, more and better trained staff are needed, as are some key tools for human resources management (the central register, for instance). Training capacity is still too weak given training’s vital role in implementing the CSA, its secondary regulations and other relevant legislation (such as the law on salaries and the law on general administrative procedures). The required cultural change in public administration will not occur without a clear and strong commitment and enough investment in training. HRM units have been created in most ministries and other administrative bodies, but

¹ COM (2007) 658 of 6 November 2007.

² <http://www.sigmaweb.org/dataoecd/30/6/39671133.pdf>.

their impact is, in general, rather low. They are mainly doing “administrative” tasks rather than human resources management. Due to the absence of a unified and well-balanced salary system, staff turnover remains high in some sectors.

Decision-making continues to be highly centralised (even concentrated at the political level); thus civil servants tend to be reactive, rather than taking the pro-active stance required by a modern public administration system.

There are high expectations for the new law on general administrative procedures. According to a draft emerging from a CARDS project, it may speed up decisions in public administration, improve protection of citizens’ rights, help to change administrative culture, improve participation in decision-making, and simplify the legal administrative framework. A working group for the final preparation of the draft law has been established, but some concerns were reported about possible fundamental changes to the draft. Abolishing or amending the numerous special administrative procedures will be the next step in clarifying the legal administrative framework.

To ensure the quality of legislation, the Office for Coordination of the System of Regulatory Impact Assessment (RIA Office) has been created.³ This office consists of two internal organisational units: the unit for system development and HITROREZ (created previously for cutting red tape and improving the legal environment for business). Some progress was reported on screening legislation and a report has been delivered to the government. However, for the time being it is not possible to assess the impact of the proposed measures, especially on improving the investment climate. The capacity of the new RIA Office to fulfil its responsibilities also needs to be demonstrated. Close co-ordination among the ministries and the Legislative Office will be necessary.

A new Strategy for Public Administration Reform was adopted by the government in March 2008. This strategy is only for state administration reform (not the public administration as a whole because it does not include local administration). The English version of the Strategy has just recently been received and therefore only some general comments can be provided.

The Strategy aims to establish a vision of the future for the state administration in Croatia and the main directions for guiding action. It is a rather comprehensive document, highlighting the main areas of reform, which are largely assumed as the continuation and reinforcement of ongoing reforms.

However, even taking into consideration some of the positive achievements of the ongoing reforms and the fact that, in a certain way, continuity could also be a constructive approach, it must be stressed that this would not be enough to resolve the main problems. Key changes in the approach to some of the remaining resilient problems are needed (selective radicalism).

Actually, the Strategy follows the same approach – i.e. adopting new laws or amending current laws, improving the organisation of the state administration and its institutions, increasing the skills of employees, reinforcing planning and co-ordination mechanisms, etc. These actions are, of course, important means for reforming the public administration, but they have revealed the insufficient capacity of the administration to meet the expectations of citizens and other stakeholders: concrete and immediate results in terms of the quality of services delivered. Therefore, it seems that a complementary approach is missing, one that would use the concrete needs of stakeholders as the basis for reforms. It will be important to empower stakeholders to establish their own priorities and to define the quality standards that they expect (and not the standards assumed by the administration) and to make good use of effective participation in the decision-making process, and not only during the consultation phase. This is the way to build alliances, create trust, encourage reformers and engage the whole society (including public employees) in the reform process.

Moreover, the Strategy seems on the one hand to be too ambitious (in terms of deadlines, areas of reform, and objectives) and, on the other, too generic (objectives are rather general, priorities are not prioritised, indicators are just barely qualitative, and budget commitment is missing or too vague). As a result, implementation would not reach the level of real needs. Furthermore, the strategy could remain just another interesting document creating a virtual reality.

European accession seems to be the main driver for public administration reform. Even considering that external pressure is usually an important stimulus for reform, ownership and clear understanding of its fundamental need and objectives are crucial to ensure its sustainability. Without a strong sense of ownership,

³ OG 68/07 of 1 July.

reforms will only be apparent, on the surface, and will vanish once the external pressure related to EU accession fades away. Much still needs to be done in this regard in Croatia.

Conclusions and Recommendations

A) *Civil Service*

Conclusions

1. ***Scope of the civil service:*** the Civil Service Act (CSA)⁴ clearly defines the scope of the civil service. However, some clarification is still needed, mainly over management positions, because its regulation is spread across various pieces of legislation⁵ in which a number of positions are regulated as either political appointments or civil servant positions. The fact that implementation of Article 151 of the CSA has begun (which includes several senior managerial positions within the scope of the civil service) must be seen as a positive step even if its implementation could not be described as fully satisfactory.

A specific law regulating staff in local authorities is about to begin the drafting process. At the same time, a SIDA-financed project is expected to propose guidelines for the salary and classification systems for local civil servants. In the meantime, staff in local authorities continues to be covered by the Law on State Servants and Employees (LCSE, 27/01). Currently, implementation of this law is not monitored and there is legal chaos at the local level over this. In fact, although the LCSE stipulates that it will be *adequately* implemented, no-one knows what this means exactly. Thus, some local units apply certain provisions of the LCSE, while others do not. High politicisation and vastly differing salary levels are widely reported.

2. ***Recruitment:*** the new recruitment scheme is being implemented. The CSA and the decree governing recruitment⁶ define the rules for open and merit-based competitive recruitment. The CSOA, in particular the Department for Personnel Policy and Human Resources Management, is responsible (among other tasks) for developing recruitment policy and for monitoring the adequate implementation by state bodies of recruitment rules and regulations. However, staffing of this department remains inadequate, preventing it from fulfilling its role. For instance, staffing shortages mean that instead of participating in all state civil service recruitment procedures to ensure their legality and consistency (a requirement which in some ways could be considered excessive given its overall monitoring role), it may nominate a CSOA representative who is not a staff member. Consequently, CSOA involvement is only a formality as these representatives are neither well-motivated, nor trained to act in a comprehensive manner in the recruitment procedure. And, of course, they cannot effectively influence final recruitment decisions. In addition, formal qualifications play a predominant role in recruitment and promotion (Decree on the Ways and Preconditions for the Promotion of State Servants, OG 77/2007, in force since 2 August, 2007) and consequently the merit principle is not fully respected.

Recruitment procedures have started appointing “depoliticised” new managerial positions (which were previously considered as political appointments, but are now part of the civil service); in the medium term these may improve professionalism in the civil service. For the time being political influence seems to still dominate current recruitment procedures.⁷

Promotion up the civil service ranks is still mainly based on seniority and — for more responsible levels — on political affiliation.

3. ***Politicisation:*** as noted above, steps are being taken to reverse politicisation in management positions. However, given the simplified recruitment procedure being pursued and the decisive participation of politicians, it remains to be seen if these steps are real or merely a formality.⁸

⁴ Adopted in 2005 and already amended four times during 2006-2008 (last amendments in 2008 — OG 27/2008, March 2008).

⁵ For example, the Law on the State Administration System, Law on Obligations and Duties of State Officials (last changes in OG no. 107/2007, October 2007), Conflict of Interest Law (changes in OG no. 141/2006, 27 December 2006) and Law on the Power Transfer Procedure (OG no. 17/2007, 12 February 2007).

⁶ 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 OG no. 8/2007, 22 January 2007 and by decree in OG 13/2008, 1 February 2008.

⁷ These amendments introduce a rather simplified recruitment procedure for “depoliticised” posts. The minister or other state administrative body head, or person authorised by them, interviews candidates and this interview is decisive for the final recruitment decision. However, the recruitment procedure is much more complex and demanding for professional civil servant positions.

⁸ It was reported that political leaders from different parties in the government announced publicly in the media at the end of 2007 that they would gain a certain number of “depoliticised” positions.

4. **Training:** The Civil Service Training Centre is now running and delivered more than 60 programmes for 3 675 civil servants in 2007. However, the centre remains seriously underfunded: of the requested (and, in principle, agreed) HRK 5.8 million for training activities in 2008, only 1.73 million was allocated. With such a low budget the centre cannot even fulfil its mandatory training obligations and thus relies heavily on bilateral donor funding. The situation is becoming unsustainable and major donors are even considering making substantial cuts. High staff turnover in the training centre is also reducing its capacity.

Co-ordination and integration of training activities is very weak and ministries still tend to pursue their own training activities. This may well result in wasted funds and in contradictory and overlapping training activities.

5. **Civil Service Management:** The Central State Office for Administration (CSOA) is slightly improving its capacity but is still not adequately staffed. Neither are all the laws and by-laws necessary for implementing the CSA yet in force.⁹

Improving the competence of HRM units (through staffing and training) will be necessary for implementing common standards and integrated HRM across the whole public administration.

Given the structure of the current government and the vague roles of the deputy prime ministers, clear lines of accountability should establish who is doing what in terms of public administration and civil service reforms. As these reforms concern horizontal policies and constitute a conditionality for the success of other reforms, it is of the most relevance to ensure that strong political support, negotiation ability, accurate co-ordination and enough administrative capacity are in place.

6. **Rights and Obligations:** No major changes have occurred in this area. The CSA regulates the rights and obligations of civil servants adequately. Nevertheless, amendments to the CSA in 2008 (OG 27/2008, March 2008) introduced certain provisions for “depoliticised” posts. The government is authorised to remove civil servants from these posts if they do not manage their respective administration well, if a disciplinary procedure for serious offences is opened against them, or if they receive an assessment mark lower than “good”. Even considering that grounds should be provided to support such administrative acts, it seems that such vague provision opens space for further politicisation and implementation. Therefore, dismissals should be closely monitored.

The March 2008 CSA amendments are aimed at protecting whistle-blowers in the state administration, whilst also bearing in mind the potential for abusing whistle-blowing. It also reinforces sanctions against corruption of civil servants.

Judicial review of administrative decisions concerning civil servants is legally guaranteed. However, the Administrative Court is the only judicial review option for administrative cases throughout Croatia. Rather than reviewing facts, it only reviews legality based on files submitted and then returns these files to the entity that has decided the case. The court has a considerable backlog of cases, even though some improvements have been made. There are only 28 judges in the Administrative Court in total, including the president and vice-president. This leads to huge delays before a final judgement can be made. It is expected that this situation will be improved by proposed legal and organisational reforms to the administrative justice system.

7. **Conflict of Interest:** conflict of interest for state civil servants is adequately regulated by the CSA and no changes have occurred. It is, however, unclear whether the new depoliticised managerial civil servant positions will be subject to CSA regulations while at the same time remaining regulated by the Conflict of Interest Law (CoI), especially as the CoI includes all positions enumerated in Article 74 of the CSA. Unless it has been amended later, the draft prepared in March amending the CoI Law was not solving this problem and so confusion and contradictions could remain.

There is no adequate regulation for staff in local authorities and for government employees in public services (e.g. health and education) in this regard.

8. **Salaries and Attractiveness of the Civil Service:** No progress has been made to improve the comparability and transparency of salaries; a poorly unified and unbalanced salary scheme remains in place. Salaries for basic civil servants, defined according to the scope of the previous law, are generally low (given the cost of living). The salaries of political appointees and of the civil servant positions mentioned in Article 74 of the CSA are considerably higher, although they are not fully competitive with the private sector. Due

⁹ Only two new pieces of secondary legislation have been adopted: the Rulebook on Minor Disciplinary Offences, OG 86/2007; and the Rulebook on Harmonised Standards and Criteria for Determining Titles and Descriptions of Working Places in State Administration, OG 116/07, November 2007.

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

Therefore, despite the potential of the CSA for creating better conditions for career development, the attractiveness of the civil service will not see sustainable improvements.

A new salary law is now being prepared, with the Ministry of Finance in the lead role instead of the CSOA. It will be a complex task to incorporate the different salary schemes into a unified system, but this will be crucial to improve internal fairness and external competitiveness. Whilst the new job classification system could help, it has some major flaws¹⁰ and so additional efforts are needed to improve the fairness of the salary scheme.

9. ***Mobility and Redeployment:*** The CSA has adequately regulated staff mobility. In particular, it allows for 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. Transfers may now also be used to enrich an individual's professional career within the administration. Full implementation of these measures largely depends on the capacity of the HRM units which, as already mentioned, needs to be improved.

Recommendations

1. Continue and further strengthen full implementation of the CSA. It should be closely monitored if the CSA is to succeed in creating a professional, depoliticised civil service, able to fully respect the rule of law and with enough capacity to deliver quality services to citizens and the economy according to accepted standards.
2. Prioritise the adoption of a law on civil service for local self-government. Responsibility for monitoring its implementation should also be established to avoid the current lack of co-ordination.
3. Introduce a new classification of civil service job positions: this must be seen as a golden opportunity to ensure comparability across the civil service and equality among similar positions. Strong political support and clear guidance by the CSOA are fundamental for this process.
4. Ensure that the new law on salaries improves external competitiveness (thereby providing the conditions to recruit, maintain and motivate the qualified staff needed for preparing and implementing public policies). At the same time, the law should create a unified system to progressively solve current distortions and improve internal equity and fairness.
5. Strengthen the position and capacity of the CSOA by increasing staff, providing the necessary training and improving its effectiveness (in recruitment procedures, for instance). Increase clarity of political accountability and support.
6. Enhance capacity and increase the responsibilities of HRM units in all state bodies so as to effectively implement the Civil Service Act. Intense training and networking with the CSOA should be developed.
7. Increase the training budget, and ensure this budget becomes the main responsibility of the national budget. Without a comprehensive training programme supported by adequate funds and good co-ordination among the different training providers (including from the international community), the implementation of the CSA and other fundamental laws will not bring about the required cultural change or quality of human resources and their management.

B) Administrative Legal Framework

Conclusions

1. ***Organisation of the Administration:*** No changes have occurred and therefore the problems reported in previous assessments remain valid. Several laws are involved and the number of different types of bodies and complex lines of accountability lines are blurring the system, creating some confusion and opaqueness and reducing political control. The tendency to create agencies, *i.e.* central state offices, often has negative effects on transparency and accountability, as well as on the cohesiveness of government policy and action.

¹⁰ Rather than offering a coherent and integrated classification system, it mainly lists the existing positions.

2. **Administrative Procedures:** The existence of numerous special administrative procedures (approximately 70 or 80) and a General Administrative Procedures Law that is not in line with the needs of a modern public administration, lead to a lack of transparency and unnecessary difficulties for the citizens and for businesses. These factors may even promote petty corruption and poor accountability. A new draft general administrative procedures law has been proposed to the government as an output of a CARDS project. The draft is now being reviewed by a working group within the CSOA and is supposed to be sent to the parliament before summer break. If the final draft closely follows the initial draft, and if adequate training is provided to support its implementation, this new law could decisively improve public administration operation and even the prevailing administrative culture.

3. **Accountability Mechanisms:** No significant changes have occurred. Accountability mechanisms exist, but still do not function adequately. Furthermore, the creation of new political posts in the government (vice prime ministers) to co-ordinate public policies and bodies is still causing some misunderstandings that need to be clarified.

4. **Ombudsmen:** There are four independent ombudsman institutions in Croatia: (1) a general ombudsman (also in charge of protecting local and regional self-government); (2) an ombudsman for the protection of children; (3) an ombudsman for protecting gender equality; and (4) an ombudsman introduced by the Law on Ombudsman for Disabled Persons (OG 107/07, in force since 1st January 2008). The reputation and influence of the general ombudsman are positive, but the judiciary, although one of its main concerns, is beyond its scope. It remains unclear why Croatia needs four different ombudsmen with four separate offices and administrations instead of one office with four different departments. This question becomes even more valid if a fifth ombudsman (for immigrant issues) is created.

5. **Quality of Legislation:** Overregulation, inadequate and improper consultation, and insufficient review of old regulations are common problems in Croatia and affect the overall quality of the legal administrative framework. HITROREZ was an interesting activity, launched to review the legal framework for business activity. The creation of an RIA office is another positive step (HITROREZ is now part of this office). It remains to be seen if this office and the activities proposed by the HITROREZ report can make effective changes to the legal framework and if they change the traditional way regulations are drafted and adopted in Croatia.

6. **Transparency in the Administration:** No major changes since the last assessment can be reported. With the new Law on Secrecy of Data (OG 79/2007, in force since July 2007) the legal framework is almost complete (the other relevant laws are the laws on the Right to Access Information and on Personal Data Protection). However, additional training and public campaigns are needed in order to ensure proper and general implementation of the regulations. The new law on general administrative procedures could also have a very positive impact on improving transparency in the administration. The role of the Administrative Court in supporting the Law on Access to Information is having a positive impact as well.

7. **Judicial Review of Administrative Decisions:** the situation is almost the same as in the last assessment report. A one instance review, without full jurisdiction, is provided by the Administrative Court. The performance of the court has slightly improved but the backlog of cases is still high and the duration of cases too long. Therefore, judicial review is still not in line with European Standards.

However, the situation could start to be reversed during 2008. A Twinning project is being developed aimed at reviewing both the legal framework for administrative justice and its organisation. Training and IT are other components of this project.

Recommendations

1. Finalise, adopt and implement the draft law on General Administrative Procedures as soon as possible. This is a high priority given the reforms in administrative justice (administrative courts system, Law on Administrative Disputes, etc.) depend on this law. Next, special administrative procedures need to be reviewed and abolished as much as possible. Provide intense training to support implementation needs at all levels of government.
2. Clarify and simplify laws regulating the organisation of the administration.
3. Support and possibly extend the ongoing project at the Administrative Court to ensure that its outputs are completely in line with the related substantive law (the law on General Administrative Procedures).

4. Clarify and strengthen accountability mechanisms. Enhancing transparency in the administration requires more commitment and training.
5. Ensure that participation in decision-making and in the preparation of legislation is effective at both political and administrative levels. The current practice of adopting continuous amendments clearly shows that participation is not being seriously implemented. Furthermore, regulatory impact assessment must be seen as an important part of the legislative procedure in order to improve the overall quality of the legislation and to ensure that proper conditions for its implementation are in place or are clearly foreseen.

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

Article 116 of the Croatian Constitution only establishes 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”. While this wording does not specifically guarantee the right of equal access to work in the public administration, it is interpreted to mean that. The constitution does not give any guidance on the statutes of staff in local and regional self-government.

The general civil rights recognised in the constitution apply to state officials and state employees. These rights include 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.

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.

According to the CSA, public employees’ working conditions are regulated by general labour law, if not otherwise specifically regulated by the CSA (article 138). In addition all staff in local authorities continues to be regulated by the Law on State Servants and Employees (LCSE, 27/01) until specific legislation on rights, obligations and responsibilities of staff enters into force.

Consequently, collective agreements are 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).

There are several special laws regulating the status of public servants in certain branches of the public service or in specific positions, *e.g.* laws on police, foreign affairs service, defence, customs service, tax administration, and 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.

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. Unlike under the previous law, civil servants and public employees are now distinguished from each other by function, rather than education level.

The entire state public sector staff (funded from state budgets) numbered about 190,000 in December 2007,¹¹ excluding the armed forces. Of these, about 90,000 form part of the core civil service and are therefore covered by the CSA and supplementary special acts. About 12,500 people are employed in local and regional self-government units, and about 20,000 in locally-financed public services.

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 2001 (PSWA), are public institutions and other public legal persons whose wages are provided by the state budget. Public services also are 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 on labour relations (*e.g.* teachers, professors and medical doctors).

The CSA 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

¹¹ Data provided by the MoF. The total cost is HRK 19.9 billion, representing 17.8% of the budget (total) and 7.26% of GDP.

responsibilities are already regulated by the CSA. This provision, similar to the previous law, 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.* the police), tends to regulate issues that do not really call for differentiation (*e.g.* classification, basic salaries and career development). This regulatory practice 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. The new jobs classification¹² aimed at unifying job types across the civil service is still largely subject to the law on salaries currently being prepared. Only after its adoption will it be possible to conclude if its objective has been achieved or not.

The CSA clarifies in article 74/3 that the civil service includes managerial civil servants, senior civil servants and junior civil servants. Article 74/5 lists the management positions which are now classified as civil service positions, *i.e.* those now included in the career development structure, the merit system and open to competition. In addition, article 11 stipulates that political beliefs should not influence civil service careers. These legal provisions make it possible to clearly separate political positions from civil service positions, but it remains to be seen how they will be implemented and whether other administrative legislation, including staffing and recruitment provisions,¹³ will be coherent with this general regulation and misinterpretations thereby avoided.

The scope of the civil service is now clearly defined by the CSA but further harmonisation with other laws is still necessary to clarify that management positions are now ruled by the CSA. Other problems related to clarity and legal certainty stated in previous assessments still remain (for instance: regulating in the same law civil servants and public employees is only partly resolved by the new law; regulating the working conditions of civil servants according to general labour law, if not otherwise prescribed; the scattered regulation of civil service issues across a rather large number of laws).

The Croatian civil service remains highly politicised, with political appointments including middle managers, according to the LCSE. Article 74 of the CSA, if fully and properly implemented, could be a step forward in increasing professionalism in the civil service. However, for the time being it seems that no relevant changes are occurring. For example, managers are recruited via less demanding public competition procedures than for other civil service positions. Whilst positive steps include the public competition that is now occurring and the publication of public job announcements, most managers are recruited in an interview usually conducted by a single person (the minister, head of agency or other authorised person). Consequently, such appointments continue to be political.

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 by Part 4 of the CSA (articles 45-55). According to article 45, internal transfer or promotion have priority over filling a vacancy externally. The Central State Office for Administration (CSOA) is to monitor compliance with this rule. Candidates are to be selected on the basis of their academic qualifications, skills, professional experience, performance in previous work and demonstrated examination results (art. 45). Recruitment procedures are further defined in the government decree based on article 45/6 of the CSA, published in the *Official Gazette* 8/06,¹⁴ amended by decrees published in the *Official Gazette* 8/2007 and 13/2008. The competitive recruitment principle is also stated in article 7 of the Law on the State Administration System for positions regulated by this law.

¹² The Decree on Classification of Posts in the Civil Service was adopted on 19 July 2007 and amended on 24 January 2008.

¹³ For example, the Government of the Republic of Croatia Act (1998), and the Decree on Principles for the Internal Organisation of State Administration Bodies, published on 10 May 2001.

¹⁴ Decree on the Announcement of Vacancies and Implementation of Public Competition Procedures and Internal Announcements in the Civil Service.

The principle of competitive and merit-based recruitment is usually respected for entry positions into the civil service. 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.

There are special regulations for certain corps in the civil service, e.g. the police or foreign service, which also include exceptions to the competition principle.

The CSA (art. 47) states that regular recruitment drives should be carried out for new entrants and for a larger number of entry posts to be filled. It also requires that a CSOA representative be present during all recruitment procedures (art. 51, CSA; art. 7 of the government decree) to ensure legality and impartiality. However, the lack of enough qualified staff makes it difficult for the CSOA to fulfil this obligation and so it quite often delegates this responsibility. Thus, the effectiveness of this requirement is not ensured.

Competition is not necessary when contracting people on a temporary basis for a maximum of six months, with a possible extension for another six months only. It is expressly forbidden to transform such a temporary contract into a permanent civil service contract. Applicants admitted to the civil service through the standard procedure for a non-fixed term are obliged to work a 12-month probationary period (art. 53).

The CSA (art. 52/6) stipulates that if someone appointed to the civil service fails to take up his/her duties on the specified date without any valid reason, the appointment may be cancelled. In such cases a new recruitment procedure has to be started, according to the CSA, although the respective government decree (art. 18) offers two possible options: (1) one of the other candidates may be appointed; or (2) a new vacancy procedure may be carried out. This contradiction/ambiguity could lead to application problems, as it seems unlikely that the legal obligation to start a new selection procedure could be overruled by the government decree. In fact, either solution could be acceptable but this should be spelled out in the legislation.

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 the medium and long term (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 people from these minority groups in order to meet the requirements set by the constitutional Law on National Minorities.

The CSOA is tasked with overseeing the implementation of the CSA (art. 38). According to article 52/3 of the CSA, an applicant failing to be 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 then has 30 days to make a decision (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 still does not apply to top management positions. Besides state secretaries, these positions still also include heads of central state offices and state offices as well as heads of state administrative organisations and state administrative offices.

Promotion

According to the CSA, internal horizontal and vertical promotion should be based on merit. The scope for horizontal mobility has been broadened by the new law; legally it can now be organised as part of a career development plan. According to the new legislation and supplementary decrees, the promotion system should be less open than before to politically or patronage-motivated decisions. Decree OG 77/2007, in force since 27 July 2007, further regulates the methods and criteria for advancement. However, political influence on staff management remains strong. According to article 7 of this decree, the main manager of a state administrative body gives an "opinion on having especially high results" for civil servants based on proposals from their immediate superior. This provision could preserve the practice of politically-based merit, to the detriment of a merit-based system. This is still occurring mainly because the Rulebook on the Contents of the Report about Civil Servants' Performance Appraisal (OG no. 78/2006), adopted on 14 July 2006, retains the old manner of "assessing" personal loyalty and discipline.

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, results are not yet visible because beyond political statements, real commitment to

proper implementation is not sufficient. Resistance to change is undermining efforts to create a professional and merit-based civil service. The capacity of the CSOA is increasing but it is still insufficient to fulfil its important monitoring role.

Classification of the Civil Service

Following article 74 of the CSA, civil service posts are now classified by common standards across all state bodies: qualifications, complexity of tasks, independence of work, degree of co-operation with other state bodies, communication with clients, degree of responsibility and influence on decision-making. The Regulation on the Classification of Civil Service Jobs has been adopted (OG 77/2007 and 13/2008), and is generally in line with good practice. However, the decree is complemented by an annex listing job positions and linking them to classifications/grades. This listing is 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 opaque, making it potentially rather difficult to link job descriptions to the salary system.

It is also CSOA's responsibility to ensure a standardised classification of civil service positions. It needs to improve its capacity if it is to ensure a fair, well-balanced and unified civil service system.

Obligations, Rights and Duties

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. In addition, the right to protection of civil servants reporting a suspicion of corruption (whistle-blowing) was introduced by a law of February 2008 amending the CSA.

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.

Apart from the general duties, both the CSA (articles 116 to 123) and the Law on the State Administration System set out civil servants' obligations for 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.

The disciplinary provisions in the CSA (articles 96 to 115) describe the accountability of civil servants for breaches of official duties. Articles 98 and 99 provide a detailed list of minor breaches (*e.g.* frequently arriving late to work) and serious breaches (like failure to properly perform official duties, providing incorrect information and unauthorised use of the administration's resources, damaging behaviour, etc.). The law 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, OG 86/2007).

Disciplinary sanctions are indicated in detail in article 110 of the CSA, and are separated into two categories corresponding to the violation categories: minor (reprimand and fines) and serious (which can lead to dismissal from the civil service).

For a serious breach of official duty, the time limit for applying disciplinary sanctions is one year after the breach and its perpetrator have been confirmed, but no longer than two years.

The CSA governs the disciplinary procedure (articles 102 to 109); article 102 specifies that general administrative procedures have to be applied unless otherwise regulated in the CSA and other legislation. The heads of state bodies officiate over minor breaches of official duties, unless otherwise determined by *lex specialis* (art. 100). For serious violations, the Civil Service Tribunal decide in the first instance and the Higher Civil Service Tribunal is the second instance. Both tribunals are to be appointed by the government and must have a president and at least 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 are available on whether, and how often, this disciplinary procedure is used in practice.

The enunciation of rights and duties is in line with common European standards.

The disciplinary regulations in the CSA are mainly in line with common standards. However, as noted in previous assessments, the maximum time limit for disciplinary action of only two years after a serious

violation is committed is insufficient, and may mean that serious breaches of duty go unpunished. This provision should be changed so that the statute of limitations is linked to the discovery of the breach.

There no systematic follow-up of how discipline is implemented in the public service and so it is not possible to assess the impact of the regulation, even considering that its quality is acceptable.

Grievances

According to article 63 of the CSA, decisions about 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), which is an independent body seated within the CSOA. The board must 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 board's decision (art. 67). Secondary legislation governing the Civil Service Board was adopted in January 2006, and introduced some improvements.

In addition to the board, the law also foresees a mediation procedure carried out by elected mediators (art. 68). However, this new institute of mediation is useless in practice because procedures are just as long, complicated and expensive as in the court, and people prefer to appeal to courts. Therefore, the number of cases going to the Administrative Court is still increasing.

Professional Independence from Politics

Legally speaking, the professional independence of civil servants is now protected by the CSA. In fact, the CSA requires civil servants to be impartial (art. 6), which is coupled with the right 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 (see section below on "Protection of Legality by Civil Servants"). Some special laws (police, defence) have specific regulations on this matter. Including managerial positions in the civil service scope was another relevant measure aimed at improving independence from politics. However, implementation of this measure will most probably lead to previous political functionaries being appointed to "depoliticised" posts. Furthermore, the fact that the number of political appointees has also significantly increased shows that there is no consistent political will to improve the situation. Thus, in practice, politically influenced decisions will continue to occur in a considerable number of cases. It seems that changes are mostly superficial and more needs to be done to reinforce the neutral and professional civil service foreseen by the CSA. Those involved need to be convinced of the importance of this for improving the business environment and social and economic development.

Integrity

Articles 32-37 of the CSA regulate civil servants' possible conflicts of interest quite comprehensively. 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.

However, the new CSA still does not regulate civil servants' conflict of interest situations 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 by civil servants, the disciplinary regulations of the CSA apply. Amendments introduced in February 2008 reinforce sanctions related to corruption.

The adoption of the CSA has created a confusing situation for managerial civil servants. Their positions are still governed by the law on Conflict of Interest because they were political appointees. They also now fall under the scope of the CSA, but the law on Conflict of Interest has not been amended accordingly, so they are obliged to comply with both regulations. Thus it is not clear, for instance, if they are obliged to disclose assets or not (the Law on Conflict of Interest includes the obligation to disclose assets, but this requirement does not exist for civil servants).¹⁵

¹⁵ At the time of Sigma's mission, a proposal amending the Law on Conflict of Interest had been drafted but did not address this problem.

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 relating to corruption and fraud.

A new strategy for preventing and fighting corruption is being prepared; once it is finished, the current National Programme and Action Plan will be updated.

Following provisions in the CSA (articles 25 and 143), a Code of Conduct for the Civil Service is in place which provides clear guidance for civil servants' professional behaviour.

A new Department for Ethics has been created within the CSOA to strengthen co-ordination and monitoring of civil servants' ethics.

Conflict-of-interest regulations and incompatibilities seem to be adequately regulated, although regulations for employees' behaviour after leaving the civil service are still needed.

However, the problem of managers being governed by two different conflict of interest regulations must be resolved.

Salary System and Pay Determination

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

There have been no effective changes to the salary system or pay determination since the last assessment.¹⁶ However, a new law on civil service salaries is currently being drafted and discussed and is seen as a high political priority. It was reported that the Ministry of Finance is taking the main role in developing the new salary system, at the expense of the CSOA. This raises some concerns about the final orientation of the salary system, its connection to the CSA (and its related regulations like the classification system) and its capacity to become a motivational tool. The implementation of the new system was expected to start in January 2008. Some of its aims are to introduce certain elements of performance related pay, to provide mechanisms for career development and to add some bonuses to reduce staff turnover ("loyalty" bonuses). As a result, performance assessment will play a significant role in the new system and no salary increases based merely on years of service will be allowed.¹⁷

According to CSA article 144, the LCSE regulations on remuneration of civil servants and public employees still govern civil service salaries. The general regulations for the salary scheme are set out 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"). 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 out in the LCSE. In addition, some salary components, in particular special supplements, are regulated in collective agreements. For these reasons the salary system for civil servants appears neither unified nor fair.

Article 108 of the LCSE is the basic article governing civil servants' pay, and defines their salary as "the multiplication product of the task complexity coefficient of the workplace". The salary calculation basis is established and then adjusted every year by collective agreement between the government and the trade unions. According to article 108 it is increased by 0.5% for each completed year of service. The basis for 2008 is HRK 5,108.84¹⁸ (it was 4,819.66 in 2007). For a given job class, a range of coefficients is set to help determine the salary level. These coefficients depend on the job's complexity and are listed as follows in article 109: 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. As the current system of coefficients is neither coherent nor effectively co-ordinated, the salary system is inconsistent and unfair. It is expected that the new classification system will improve this situation.

¹⁶ For more information on the current salary system and its dynamics, see Sigma's assessment report of June 2007 on Public Service and the Administrative Framework (www.sigmaweb.org/dataoecd/30/6/39671133.pdf).

¹⁷ Sigma has only seen and commented on the November 2006 version, but we were told that a new version will be available for comment later.

¹⁸ OG 34/2008, following a collective agreement (2005-2008) establishing an increase of 6% per year.

Pensions in the public service are paid according to the general pension scheme and are still extremely low. Politicians' salaries are not linked to civil service salaries and are considerably higher. Full pension rights are offered to MPs after only two years, at a much higher pension rate than normal, active civil service salaries.

A new salary scheme will be necessary in order to attract and retain qualified young staff and to develop and ensure professionalism and mobility within the civil service. It remains to be seen how the new law being drafted will solve these difficulties. Moreover, the salary system must improve internal equity; therefore the job classification system must be consistently implemented. The CSOA must be deeply engaged in the salary reform and will have to strengthen its capacity if it is to monitor the system effectively and provide guidance for state administration bodies.

The new salary system should ensure a unified system and abolish unjustified pay differentiation. Currently, such differentiation is creating an artificial internal climate of competition among public services that leads to high staff turnover in poorly-paid sectors.

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

Temporary and permanent transfers of civil servants, including the opportunity of working for an international organisation whilst remaining a civil servant, are regulated in articles 76 to 81 of the CSA. Transfers are recognised as a tool for human resources management and career development, and can be determined by the service or at the civil servant's request. Conditions and incentives for mobility are also governed by the CSA.

The CSA governs mobility appropriately; if adequately applied, it should allow the public administration to adapt smoothly to a changing environment, and in particular to the envisaged decentralisation. However, no data are currently available on how mobility is being implemented.

Job Description and Performance Appraisal

The CSA has introduced a new performance appraisal scheme (articles 82 to 89) but its implementation is still being tested. It has been implemented by all state bodies but the CSOA does not have detailed information on the results. In any case, we were told that it was useful in providing some inputs to the training needs assessment. Considering that the new salary system will introduce some aspects of a performance related pay scheme, full and strict implementation of the performance appraisal system is crucial. Monitoring and controlling its implementation is an important task for the CSOA as well, in close collaboration with the HRM units in ministries and other state bodies.

Training

The CSA states that the continuous improvement of professional skills through in-house training is a requirement for all civil servants. In addition, the law allows civil servants to attend 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 been adopted (OG10/2007, 29 January 2007). In 2007 the centre delivered more than 60 programmes (254 training modules) attended by 3 675 civil servants.

The Training Centre is part of the CSOA. It has adequate premises and equipment and the number of staff has increased to 15 (from just three in 2005). However, staff are still inexperienced and need further training. Moreover, staff turnover is increasing, which makes it difficult to ensure continuity.

The main limited factor for training is funds. According to the adopted training strategy, 3% of the budget devoted to civil servants' salaries is to be allocated for training, but to date this component has still not been implemented. For 2007, HRK 10 million were estimated to be needed for implementing the training programme, but only HRK 1.9 million were allocated by parliament. Therefore, external aid (bilateral funding) was needed to develop the training necessary for implementing the CSA (especially the classification decree). For 2008, a target figure of HRK 5.8 million was foreseen, but in reality only HRK

1.73 million have been allocated for training, which does not even cover the funds necessary for mandatory training. Consequently, even considering the additional bilateral funds for training (for instance, it was reported that the Danish contribution exceeds the national contribution by a factor of four or five), the training programme has been reduced again. Therefore, the target number of 9 500 civil servants to be trained in 2008 will be unachievable.

Some, but not all, 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. Some international organisations also provide training programmes. However, co-ordination of training activities is very poor.

An Academy for Local Democracy has been established for training elected and employed officials in local administration. However, it seems that it does not currently deliver any training programmes; neither does it have the capacity to develop any. A recent training strategy developed by the CARDS project for decentralisation, under the framework of the government's decentralisation strategy, set quite ambitious objectives for the Academy. But the national budget for 2008 allocated only HRK 1.2 million for the current expenses of the entity (and of that, only HRK 165 000 is for training). So, limited results are expected, at least during 2008.

A one-year postgraduate course in public administration was delivered in 2006/07 for the first time, based on an agreement between the government and Zagreb University. Lectures for the second intake were given at the university premises. The third generation is about to begin. However, the success of the students is only moderate because the government has not ensured financial resources for the course. Every state body ensures a study-fee for their civil servants, so the real entrance selection of candidates is not really possible because candidates are not admitted according to their abilities but only if their fees have been paid. This in return causes suboptimal results of students. Students' prospects for promotion on the basis of this course are not clear. Half of the places are allocated to students who want to join the civil service.

Some efforts are being made to develop a training strategy for civil servants. However, it seems that there is still poor understanding of the decisive importance of training in changing public administration. This is undermining Croatia's prospects for a professional and competent civil service able to serve the citizens and the economy and to foster European accession. Legislative change will not produce any visible or sustainable improvements if it is not supported by intensive and widespread training. The reform of the Croatian public administration will require a profound cultural change from an authoritarian to a service-driven approach. This will not occur if training is neglected. Therefore, enough funds have to be provided, mainly from the state budget, and the capacity of the Training Centre needs to be sustained and strengthened. In addition, co-ordination should also be improved inside the CSOA's departments (assessing training needs and delivery of trainings, for instance) and with other training providers.

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

According to article 38 of the CSA, 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. It has to enforce the CSA, monitor its status and propose measures for the development of the civil service. Further specific tasks are stated under the specific chapters of the CSOA, e.g. providing a presence on all recruitment procedures and reviewing classifications and staffing plans. The CSOA is progressively increasing its staff size (from 66 in 2004 to 115 in March 2008), but more employees are still needed. For example, 140 were ideally needed for 2008. Moreover, new internal departments are being added to the CSOA (Department for Ethics, Department for Minorities, Department for General Administrative Procedures, etc.), for which new staff will also be needed.

The CSOA is supposed to work closely with the existing personnel units in all state bodies employing 50 or more civil servants and governmental employees (for state bodies with less than 50 staff, the CSOA is directly responsible for human resources management). However, although the situation is improving, personnel units are not fully operational yet, mainly due to lack of staff and inadequate training in HRM. Therefore, many HRM decisions are made at the political level, thereby undermining the depoliticisation of the civil service.

CSOA's HR Management and Development Department is the main service in charge of implementing the CSA, but staff shortages are undermining its capacity to fulfil its duties. For instance, it has to delegate its responsibility for participating in all the recruitment commissions.

The new legislation gives the CSOA all the necessary powers to assume the role of a central management body and to ensure the unified development of the civil service. However, the office remains understaffed and turnover is a concern.

Political support and lines of accountability are not clear. Previously the CSOA was directly accountable to the Prime Minister, meaning that it had political visibility and support. However, the Prime Minister's wide scope of political responsibilities meant that not enough attention was paid to the CSOA's specific needs. A new post of Vice Prime Minister has now been created within the new government, and one role will be to co-ordinate public administration reform. However, the situation remains unclear, mainly due to the vague definition of "co-ordination power", and it may lead to some disturbance in the decision-making system

Apart from some political statements, there appears to be little real will to create a professional, non-politicised civil service. Problems with funding civil servants' training and the PAR strategy, and the way recruitment is being done for the new managerial positions within the civil service, all suggest that changes are mainly superficial and not consistent.

3.2 Are staff numbers and personnel costs controlled and published?

Staffing and Control

The situation remains unchanged since the previous assessment. The law provides for enough mechanisms to control staff numbers. A systematisation rulebook is adopted by the minister (for a ministry) or by the head of the state administration bodies, which establishes the upper staffing limits needed to accomplish their tasks and the necessary professional requirements.

Personnel units shall prepare civil service admission plans which are co-ordinated by the CSOA (along with other co-ordination entities in some sectors, like the judiciary) and must be approved by the Ministry of Finance. They are published in the *Official Gazette* and posted on the CSOA website. These plans have 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 or if a late special approval of the MoF is given.

Data on staffing at any given point in time are not fully reliable. There is still no fully operational central personnel register, even though article 140 of the Law on the State Administration System states that such a registry should be kept by the CSOA. Data are collected on a monthly basis, but not in a systematic or structured way. It was reported that FINA (the Financial Agency, a service provider company owned by the government) could perform this task in the future under a contract with the CSOA, but to date the register is not in place.

On the other hand, a compatible computerised payroll system is in place in the MoF and is basically reliable. However, it is insufficient as a control instrument, given that neither agencies 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

The law respects the civil servants' right to form and join professional associations aimed at defending civil servants' and public employees' interests. Trade unions are powerful in Croatia and are involved in policy-making. They are consulted on legal drafts if issues of relevance to their members are at stake. Multi-annual collective agreements have been signed (including some additional supplements¹⁹). The current collective agreement (2005-2008) foresees a 6% salary increase per year and certain special bonuses (although these were subsequently not distributed because of budget constraints).

¹⁹ Supplement I to the Collective Agreement, OG 77/2007, June 2007; Supplement II to the Collective Agreement, OG 98/2007, September 2007; Agreement on Protection of Dignity of the Civil Servants and Employees, OG 98/2007, September 2007.

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 as one of the "highest values that the Republic of Croatia intends to abide by" (article 3). It is complemented by article 4 (on 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 in the law. For example, the CSA (art. 8) states that civil servants are answerable for their actions and work performance, and also establishes that civil servants are accountable for breaches of official duty (art. 96). Finally, Part 11 of the CSA (articles 116-123) regulates personal liability for damages.

Equality before the law is also a constitutional principle and the constitution designates the Supreme Court as the highest court of justice, specifying 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. They are selected from among jurists, lawyers, judges, public prosecutors and university law professors. 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 of the Constitution), 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).

The Office of Public Prosecutions 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 Chief Public Prosecutor (art. 124) is appointed by parliament for a four-year term on the proposal of the government.

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 mostly seriously lacking. One reason could be the large volume of often poor quality new legislation, coupled with insufficient training. In addition, the reputation of the judiciary has seriously suffered in

recent years and, despite a number of efforts, further improvements 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:

1. The Law on the State Administration System (September 2003; last amended in July 2007 — OG 79/2007).
2. The Law on the Structure and Scope of the Central State Administrative Bodies (2003, last amended in 2008 — OG 27/2008, in force since 13th March 2008).
3. 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 Law on the State Administration System is the general law governing the organisation of the administration, and prescribes in a generic way the powers and responsibilities of governmental and administrative bodies at all hierarchical levels of authority. It also defines the organisation and functioning of inspection control within the public administration.

A high degree of co-ordination and co-operation is needed to deal with the overlaps and unclear and blurred responsibilities of several administrative bodies. This situation has been caused by the frequent reorganisation and restructuring of the administration, including the creation of new bodies. However, such co-ordination has unfortunately not yet become general routine for Croatian civil servants. In addition, the law has created some special offices/public agencies 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.

Quality of Legislation

To improve the cohesiveness and quality of the legal framework, Croatia has introduced a general obligation to carry out impact assessments of new legislation (fiscal, social, ecological impact and protection of free-market competition), but the quality of these assessments still varies considerably and are often seen as a formality. In order to improve the situation an Office for Co-ordination of the System of Regulatory Impact Assessment (the RIA Office) was created in 2007 and is now starting operations.²⁰ HITROREZ, a special unit in the government for cutting red tape and improving the legal environment for business, is now part of the RIA Office. For the time being it is not possible to assess the impact of this new office. However, HITROREZ has developed an interesting role in screening all regulations related to business. Of 1 451 legislative acts it analysed, 799 are expected to be amended (194 already implemented) in order to harmonise them with EU regulations.

Despite these efforts, over-regulation remains a key problem, 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. This situation is detrimental to the principle of legality and to the rule of law, burdens the courts, hampers economic activities and may invite corrupt behaviour.

Administrative Procedures

The current Law on General Administrative Procedures (LGAP) dates from 1991 and is an amended version of the Yugoslav General Administrative Procedures Law of 1986. It reflects a strong normative tradition and is not fully in line with common European standards.

²⁰ The office head was being recruited during Sigma’s mission.

Under a CARDS project, a new general administrative procedures law has been prepared and delivered to the government. The new draft respects general standards and has the following main objectives:

- to make procedures as simple and as informal as possible;
- to shorten procedures;
- to simplify and improve flexibility and adaptability of procedures;
- to facilitate communication and e-government; and
- to follow, adopt and adapt good European practices and standards.

If adopted and properly implemented it will greatly help to improve the openness and effectiveness of public administration, protect citizens' rights and create a better environment for business. But intensive training and public information campaigns will be needed. Another necessary measure will be to review all the special administrative procedures — between 70 and 80 laws — in order to abrogate as many as possible and to align the remainder with the general principles of the new law. A working group in CSOA is now reviewing the draft, but there are some concerns that possible changes to some key areas will blur the final draft. It was reported that the draft will be submitted to parliament before the summer break and the government seems to have a clear engagement in supporting the adoption of a new law.

Transparency in Public Administration

The Law on the State Administration System broadly obliges state authorities to inform citizens and the public, and to act based on mutual co-operation and trust, but it does not give any individual rights to citizens.

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. They can also decide to publish, in the mass media and on websites, any draft regulations being prepared that are of particular interest to the public. They can also invite all interested parties to comment on these draft regulations.

The Law on the Right to Access Information was adopted in October 2003. It 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.

In spite of some improvements, several reports mention that a culture of secrecy is still dominant in public administration and therefore the right to access information is not yet reasonably respected. As a consequence, the Administrative Court was requested to decide on several administrative disputes related to this law. The court has confirmed that the law on access to public information must be rigorously applied, and this has improved the administration's compliance with this legislation. But although improvements have been reported, there is still a long way to go. The fact that there is no special entity in charge of controlling the implementation of the law could be one reason for this situation. Moreover, citizens need to be better informed about their rights and how to act when they are denied them. Free legal aid should be provided when such rights are not respected.

A Law on Personal Data Protection was also adopted in 2003 (amendments in OG 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. A supervisory body, the Personal Data Protection Agency, has been created as an autonomous legal person, and 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 requires civil servants to reject any unlawful orders (art. 27, CSA). If the order is repeated in writing and if it does not constitute a criminal offence, the civil servant should then execute the order, but must notify the person who is immediately superior to the ordering officer. However, the civil servant is not accountable for the possible negative impact of his/her action. Civil servants must not execute any order that would result in a criminal offence; if they do, they are held accountable along with their immediate superior who issued the order.

The general liability of the public administration is regulated in an adequate manner in article 13 of the Law on the State Administration System, which prescribes the full and institutional liability of the state. Citizens

and legal persons are vested with the right to file formal appeals, objections and complaints about the work of the public administration, as stated by article 15 of the Law on the State Administration System. 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 part 11 of the CSA, “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. 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 a 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 timeframe (art. 121).

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, OG no. 8/2006).

The CSA includes, to protect 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 is also in place and the CSOA’s Department for Ethics supports and monitors its implementation. 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 uses a number of inspectorates and an internal audit system is being developed. For instance, in CSOA there is an Administrative Inspection Department. Inspectors are supposed to look at the implementation of administrative control, and to supervise in particular:

- the lawfulness of operations and actions;
- 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.

Ombudsman

In article 92 the constitution provides for a General Ombudsman (People's Ombudsman). This is a commissioner of parliament, appointed 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-government. 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 — OG no. 71/1997). Apart from considering individual cases, the ombudsman also studies other matters relevant to the protection of constitutional and legal rights.

Three other specialised ombudsmen institutions have been created in Croatia: the Children's Ombudsman, the Gender Equality Ombudsman and an Ombudsman for Disabled Persons. It was reported that a new ombudsman for protecting immigrants' rights is also being considered.

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

The General 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 ombudsman's reports to parliament are public and are available on the Internet.

Most ministries and other central administration bodies have reacted positively and acted in accordance with the ombudsman's recommendations on individual cases.

The Ombudsman's Office is still understaffed (it only has 22 staff, including the Ombudsman and deputies), while 32 staff were foreseen. The number of complaints is increasing (1 650 written complaints in 2006; 1 850 in 2007). The main areas of concern are: housing, property rights, refugees and reconstruction, court proceedings, absence of a law on free legal aid, and rights of access to information.

The Ombudsman's Office has insufficient and inadequate premises. However the funding situation is improving and for 2008 the requested funds were allocated. There are no regional or county ombudsman offices, but the ombudsman travels around the country to meet citizens and entities and to hear complaints directly.

The reputation of the Ombudsman's Office seems to be generally good but its capacity needs to be improved. A three-year plan to strengthen it is being implemented. The existence of four different ombudsmen institutions (soon to be five) should be reconsidered. Given the scarcity of resources and expertise, concentrating efforts could improve the effectiveness of these institutions. Moreover, the special ombudsmen seem to be encountering some credibility problems.

Administrative Control and Review of Administrative Decisions

The laws on the state administration system, local and regional self-government and 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. Court protection against all individual acts of local bodies is ensured by 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 — directly to the Administrative Court. The court reviews the legality (legal and formal aspects, not facts) of the administrative decision. For the time being, the law foresees a direct hearing before the court only under exceptional circumstances (in 90% of the cases public hearings are not held). At least 50% of the cases are sent back to the administration for a new decision that takes into account the court's opinion. This attitude often results in the same case coming several times to the court for decision, thus increasing the workload even further.

The Administrative Court consists of 28 judges, including the president (they were 33 in May 2007) and a new recruitment procedure has been launched by the National Judicial Council.

There have been recent improvements in the court's performance. In 2007 the court decided more cases — 15 874 — than the number of new cases introduced (14 409). The same trend has been occurring during the first months of 2008. However, the court continues to have a considerable backlog of cases. Enforcement of the court's decisions is also still a big problem as the court is not vested with the power to directly intervene and ensure the actual enforcement of its decisions, remaining dependent on the compliance of the respective administrative authority, which unfortunately does not always comply.

The Administrative Court is part of the judiciary system and plays an important role in protecting citizens, legal persons and civil servants in their employment by the state from illegal and damaging administrative decisions. It is the only opportunity for judicial review of administrative decisions. However, as it is not considered as a full jurisdictional court, the European Court of Human Rights does not recognise its powers as being in line with European standards. An appeal against its decision to the Supreme Court and/or the Constitutional Court is exceptionally possible.

Another issue that raises international concerns about the Administrative Court is the fact that the president is appointed by the government, suggesting that it may allow politicisation of the court.

Currently, an interesting CARDS project is helping the Administrative Court make profound changes to Croatia's administrative justice system so as to bring it in line with European standards. The project has four components: legislation, organisation, training and IT. Under this project, a new law on administrative disputes is being drafted to address full jurisdiction and public hearings issues. It is also expected that the new law will help reduce the backlog of cases in the Administrative Court. A strategy document has been drafted and discussed and the draft law should be completed by the end of July 2008.

However, there are concerns about the deadline of this CARDS project (October 2008) because the time is too tight to accomplish all the tasks. Part of the problem is that some solutions depend on what will ultimately be established by the new Law on General Administrative Procedures.

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. However, the legal framework still requires crucial amendments to adapt it to common European standards.

It is expected that the current CARDS project will have a decisive role in solving many of the shortcomings of the administrative justice system and the Administrative Court.

However, as the main outputs of this project depend on the outcome of the new Law on General Administrative Procedures, it remains to be seen if this one will be adopted in due time and if it will incorporate the solutions expected.

*In any case, and notwithstanding the need to improve the legal framework, the most serious remaining problem is the implementation gap. Laws are often not implemented for a variety of reasons, whether it be ignorance, lack of secondary legislation, deliberate inaction, lack of political will, insufficient training or ineffective control. In some cases, the abundant legislation — which has been adopted too quickly — exacerbates the implementation gap, as legislation has subsequently to be amended several times and, as a result, knowledge of the newly passed legislation rapidly becomes obsolete. The adoption of the *acquis communautaire* is another source of concern about whether absorption capacity is adequate.*

Institutions exist to carry out audit and control, but enforcement and control mechanisms remain weak due to understaffing, lack of adequately trained personnel and high staff turnover.