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CROATIA

PUBLIC SERVICE AND THE ADMINISTRATIVE FRAMEWORK

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Introduction

This report is the second standard assessment report on Croatia against the baselines that have been applied by Sigma since 1999 for the assessment of the public service and administrative law framework in EU candidate countries. The report is based on information gathered up to early May 2006.

Only limited progress has been achieved since the 2005 Sigma assessment with regard to depoliticising and enhancing the professionalism of the civil service and improving the human resources management system.

Since January 2006 the Croatian public service has been regulated by the new Civil Service Act (CSA, *Official Gazette* 92/05 of 27 July 2005); the Law on Civil Servants and Civil Service Employees (LCSE, *Official Gazette* 27/01) remains valid regarding salaries and other benefits until new salary legislation is adopted. The CSA still includes regulations on governmental employees. After lengthy discussions with the World Bank and the EU, the Civil Service Act that was finally adopted reduced the number of positions for political appointees (art. 74). However, according to the transitional provisions, the final transformation of these positions into civil servant positions has been postponed until after the next general elections (art. 151), foreseen in 2007, with the result that the incumbents in positions that are now defined as civil servant positions remain in place. The first full recruitment procedure for these positions is foreseen within 60 days after the new government has taken office.

The adoption and enforcement of the CSA on its own can be seen as a positive development. However, the staffing of the Central State Office for Administration (CSOA) has been rather slow if not hesitant; the Head of the Department for Human Resources Planning, Development and Management was recruited at the end of 2005 and the first four staff (systematisation includes nine staff) of this unit were recruited in March 2006, despite the fact that the CSOA had already been created in 2004. HRM units have been created in most ministries and other administrative bodies, but will need further support to become fully operational. The overall staff turnover remains high, despite various efforts of individual ministries to make their working conditions more attractive. At the same time, staff turnover has also been created by the different levels of salary supplements, which in the Ministry of Finance, for example, leaves some units little chance of finding qualified staff, whereas other units have a more than sufficient number of applicants.

Since the last Sigma assessment report, only in a very few institutions has a limited delegation of tasks to the working level (civil servants) taken place. In general, civil servants enjoy very restricted responsibilities, and any decisions are still taken only by the head of the institution, which is contrary to modern administration and slows down administrative work as well as policy preparation.

With regard to the general administrative legal framework, no real progress has been achieved, although one-stop shops have been created to speed up the licensing process. However, as the underlying legal framework — i.e. the general administrative procedures law and approximately 80 special administrative procedures, as well as court procedures for the administrative court — has not changed, a real impact on the investment climate may not occur.

The quality of legislation may slowly improve due to the introduction of some limited impact assessment, but sufficient training in this area is very much missing. Moreover, there seems to be little awareness of the need or capacity to review existing legislation when drafting new legislation, which has led to a rather considerable number of contradicting and overlapping pieces of legislation, as well as blurred responsibilities of administrative bodies.

It is unfortunate that public administration reform — including law-drafting, capacity-building and institution-building — seems to be solely governed by European integration, to the detriment of all other important topics.

Conclusions and Recommendations

A) *Civil Service*

Conclusions:

1. ***Scope of the Civil Service:*** The new Civil Service Act (CSA) provides a rather clear definition of the scope of the civil service; but other regulations have not yet been aligned with this new legislation, and as a result the boundaries of the civil service remain blurred with regard to both political appointees and labour contractees. So, for the time being, senior management positions within the civil service are regulated in various pieces of legislation, e.g. the Law on the State Administration System, the Law on Obligations and Duties of State Officials, and the Conflict of Interest Law. These laws, which have not

yet been changed, define and regulate – not always in line with the new Civil Service Act – a number of positions as political appointments or civil servant positions. Sometimes a position is defined explicitly as a civil servant position (which by law is to be filled through open competition), but in the law it is then stated that the position is to be filled through direct appointment by the government. Another example is that the Law on Government (art. 26) and the CSA remain contradictory, as the Law on Government defines certain positions as civil servant positions, while the same positions are still outside the classification of the CSA and outside the salary scheme for civil servants. Moreover, these positions are still filled by political appointees. In addition, regulation in the same law of both civil servants and public employees under labour law seems inappropriate, although this was the tradition in former Yugoslavia. The referral of issues not regulated by the Civil Service Act to regulations in the labour law is inadequate, as the labour law sets minimum standards which may be negotiated, whereas rights, obligations and responsibilities of civil servants are commonly set by law based on a unilateral relationship with the state, where negotiation is largely excluded.

One can hope that this unclear situation will be remedied once the drafting of the new classification system has been finalised, adopted and implemented, and the senior management positions (art. 74) have been filled by civil servants following an open competition. However, at best this new arrangement will be in place in the late autumn of 2007. A specific law regulating staff in local authorities has been envisaged for a few years, but drafting of such a law has not yet started. Staff in local authorities continue to be covered by the Law on Civil Servants and Civil Service Employees (LCSE, 27/01) as long as no specific legislation has been adopted. Whether or not the LCSE is applied in practice is not monitored. It was reported however that the law is not fully applied across the country, staff in local authorities are highly politicised, and salary levels differ between local authorities and are often considerably higher than at state level.

2. **Recruitment:** In 2005 politicised recruitment to senior positions continued to prevail, and furthermore other positions covered by the Civil Service Act were often filled on the basis of political affiliation. No real change was observed during the first few months following the entry into force of the new law. For the time being, there seems to be only a limited commitment at the political level to implement the new Civil Service Act in an adequate way so as to enhance the professionalism and efficiency of the civil service.

The new recruitment scheme based on the CSA and the recently adopted decree governing recruitment (Decree on the Announcement of Vacancies and Implementation of Public Competition Procedures and Internal Announcements in the Civil Service, adopted 12 January 2006) define the rules for open and merit-based competitive recruitment. The decree prescribes the priority of internal transfer and promotion over external recruitment. The CSOA, in particular the Department for Personnel Policy and Human Resources Management, is responsible – among other tasks – for the development of recruitment policy and for monitoring state bodies with regard to the adequate implementation of the prescribed recruitment rules and regulations. As indicated above, staffing of this department only started in March 2006 and it is unclear whether it will be completed in 2006. For the time being, the department is not in a position to fulfil its role, i.e. to ensure that recruitment standards are homogeneously applied throughout the administration and that the principle of equal access to the civil service is respected. The CSOA should be represented in all recruitment procedures for the state civil service to ensure the legality and comparability of the procedure, but it is largely understaffed to fulfil this requirement. Recently an amendment to the CSA has been adopted which allows for the nomination of a representative from outside the CSOA; whether this solution will suffice to ensure equal standards remains to be seen.

In addition, given the prevailing tradition, it remains a fact that formal qualifications play a predominant role in recruitment and promotion. Promotion in the civil service ranks has traditionally been based on seniority and in ranks with more responsibility on political affiliation.

Now that the new legal framework governing recruitment and promotion is in place, it remains to be seen whether the CSOA, coupled with the creation of HRM units in government bodies, will change current practices.

3. **Politicisation:** All senior management positions in the Croatian civil service were filled through direct appointment and to a very large extent on political grounds, with the result that there has been a considerable turnover in management positions after elections. The new CSA enumerates in article 74 a number of positions, which used to be positions of political appointees, as civil servant positions, namely: ministry secretary, director in a ministry, deputy secretary of the government, chief of staff of a government office, deputy state secretary of a central state administrative office, and deputy and

assistant director of state administrative organisations. However the entry into force of this provision has been postponed until after the next general elections, foreseen in the autumn of 2007.

It remains to be seen if and how this change will be implemented by the new government.

It is a unfortunate that the Administrative Court, by deciding that the dismissal of heads of county offices (state administration) had been legal, interpreted the rather unclear and contradictory legislation to the detriment of a professional civil service (articles 7 and 53 of the Law on the State Administration System stipulate that these county office heads are civil servants, which is also supported by the respective decree, whereas article 53 of the law also indicates that their appointment is direct, without competition).

4. **Training:** The Civil Service Training Centre was officially opened in June 2005 and started its activities in the second half of 2005. In spring of 2006 the centre was still seriously understaffed and therefore not really operational, i.e. meeting its mandate, namely to provide systematic in-service training to civil servants. At least until May 2006 the facilities of the training centre were mainly used by other training providers or to host conferences. With foreign assistance, the centre is developing curricula and training modules for systematic initial and continuous training. However, for the time being, there is little political support for the centre's objectives of centralising training management and training activities and motivating ministries to work with the centre on the development of sectoral training modules. In fact, most ministries seem to continue with their own training activities, which may well result in a waste of funds and most likely also in contradictory and overlapping training activities. At the end of April 2006, thanks to donor pressure, 10 vacancies were announced for the training centre and should be filled by the summer. Centralised training management could possibly be envisaged if and when the training centre is better staffed. For the time being, the Civil Service Training Centre does not have either sufficient backing or staffing to ensure centralised training management, e.g. collection of training materials and checking their compatibility, and managing a complete registry of participants.

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

5. **Civil Service Management:** Certain articles of the CSA entered into force eight days after the adoption of the law in June 2005 so as to establish the necessary institutional set-up for ensuring successful implementation of the law. The Central State Office for Administration (CSOA) was already established in 2004, but only limited efforts were made to staff the office in an adequate way. This may have been one major reason why very little progress – in terms of drafting the necessary by-laws, recruitment, reclassification, performance appraisal, salaries, etc. – was observed in 2005, despite considerable efforts of the international community to assist in moving the reform forward. As a result, very few by-laws were adopted within the six-month delay set by the CSA (i.e. before its full enforcement). Only very recently, with the support of a technical assistance project, have necessary by-laws been drafted and some now adopted, namely those mentioned in articles 145/1, 145/3 and 145/5 of the CSA concerning part-time work, recruitment, and the Civil Service Board.

The central civil service management capacity – the Central State Office for Administration (CSOA) – has adequate premises, including those for the training centre. However, it is still not adequately staffed and seemingly has not sufficient power and/or political backing or willingness to negotiate on an equal footing with ministers – the Minister of Finance in particular, but also other ministers – to implement a unified civil service system. Consequently, in 2005 it could not impose common standards of management across all administrative settings. It remains to be seen whether this situation will change once all necessary by-laws to the CSA have been adopted. At the time of its mission (mid-April 2006), Sigma observed the continued fragmented management of the civil service and serious difficulties in promoting professionalism in the civil service.

6. **Rights and Obligations:** The new law regulates the rights and obligations of civil servants in an adequate way. Nevertheless, a mentality change has not yet taken place and a secrecy-based culture still defines the Croatian administration. The regulations on discipline in the new law seem adequate, but it remains to be seen whether they will be implemented in an adequate way.
7. **Conflict of Interest:** Conflict of interest regarding state civil servants is adequately regulated in the new CSA, articles 32 to 37. It is, however, unclear whether in future the new civil servant positions, enumerated in article 74 CSA, will be subject to CSA regulations and will at the same time remain

under the regulation of the Conflict of Interest Law (CoI), especially as the CoI in its enumeration includes all positions enumerated in article 74 of the CSA. It seems necessary to review the CoI to make sure that the scope of the law is clear, that the respective oversight bodies in the CoI and the CSA have clear responsibilities, and that the two laws do not overlap or contradict each other.

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

8. **Salaries:** Basic salaries of civil servants, defined according to the scope of the previous law, are generally low, whereas the salaries of political appointees, including those mentioned in article 74 CSA, are considerably higher, although they are not fully competitive with the private sector. Due to the different classifications of similar jobs in the various administrative bodies, differences in basic salaries for similar jobs are common. In addition, special salary schemes and special supplements exist for several groups of state civil servants.

A new salary law is currently being drafted with external support. Whether it will achieve a more unified salary system and pay levels for the civil service – which would be highly desirable in terms of restructuring and mobility – is rather unlikely, given that there are many vested interests and that in the Ministry of Finance alone there are several different supplements for different groups of personnel. Based on the Civil Service Act and as a prerequisite for the implementation of the future salary law, a new job classification system is being developed. If the CSOA is given sufficient capacity and political support to monitor and ensure – when implementing the new classification system – that similar jobs will be classified equally across the administration, at least some of the existing flaws should be remedied.

9. **Mobility and Redeployment:** The new CSA has regulated staff mobility in an adequate way (articles 76 to 81). In particular, it provides for the possibility of a permanent transfer for service reasons without the consent of the person concerned. These new provisions should ease the restructuring of the administration and the possible need to redeploy staff. These provisions are complemented with provisions (articles 124 to 131) that allow the dismissal of a civil servant who does not accept a transfer in the event that the state body in which he/she is working is dissolved, restructured or dislocated. Transfers may now also be used to enrich an individual's professional career within the administration. Whether these new provisions will be applied remains to be seen. However, once the recently created HRM units have been sufficiently trained and are fully functioning, the management of the civil service should improve in the medium term.
10. **Attractiveness of the Civil Service:** The new CSA provides the necessary base to make the civil service more attractive if career development and career planning are implemented and if they are coupled with a better salary scheme. For the time being, little has changed and qualified young professionals tend to remain in the civil service only for the minimal time necessary to acquire some working experience and professional or political connections. If reform implementation remains as scattered and slow as in the past, the development of a professional civil service in Croatia will remain problematic for some years to come.
11. **Judicial Review of Civil Service Decisions:** Judicial review of administrative decisions concerning civil servants is legally guaranteed. However, the Administrative Court – as the only judicial review instance for administrative cases throughout Croatia – does not review facts but only legality based on the files submitted, despite a limited right to hold public hearings. The court has a total monthly inflow of new cases of about 1200; it currently has a backlog of about 40 000 cases, 4 000 to 5 000 of which are civil service cases, although in the past year it has reduced the backlog by about 12 000 cases. The total number of judges of the Administrative Court is only 33, including the president and the vice-president. This situation leads in practice to huge delays before a final judgement can be expected.

Recommendations:

1. Implement the new CSA, in particular:
 - a) Finalise and adopt all necessary by-laws;
 - b) Finalise the new classification of job positions in the civil service;
 - c) Ensure a comparability of job positions across the civil service and similar classification for similar positions.
2. Draft and adopt a new salary law and the necessary by-laws;

3. In view of the new CSA and salary law, review, rationalise and unify all legal provisions pertaining to these issues;
4. Strengthen the position and capacity of the CSOA by completing the recruitment of staff and providing the necessary training;
5. Create functioning HRM units in all state bodies so as to facilitate implementation of the Civil Service Act.

B) Administrative Legal Framework

Conclusions:

1. **Organisation of the Administration:** Several laws (Law on the State Administration System, Law on Organisation and Scope of Affairs of Central State Administration Bodies, etc.) seem to overlap concerning the organisation of the administration, with at times duplication of articles or even contradictory articles. The Law on Government (Official Gazette 199/03), for example, empowers the government to set up various bodies. However, the structural differences between these bodies are unclear, and it is not obvious whether the various structures are linked to different legal constructs and tasks. There seems to be a tendency to create agencies, i.e. central state offices, for “political priority” or strategic tasks, with the aim of removing these functions from the internal structures of ministries and thus avoiding established administrative or even parliamentary controls as well as clear political responsibility of ministers. Such agencies often have negative effects on transparency and accountability with regard to these “political priorities” as well as on the cohesiveness of government policy and action, especially as there is no clear regulation of either their legal status or procedures.
2. **Administrative Procedures:** The General Administrative Procedures Law is not fully in line with common European standards and is not adapted to modern public administration. The existence of numerous special administrative procedures (approximately 70 to 80) leads to a lack of transparency and unnecessary difficulties for the citizen, and may even promote petty corruption and lack of accountability. In any event, this arrangement is detrimental to the principle of legal certainty. A CARDS project that has started recently will assist the CSOA (as from the autumn of 2006) in reviewing and amending this law.
3. **Accountability Mechanisms:** Accountability mechanisms exist, but their adequate functioning remains more than questionable, especially as, for example, administrative inspections and internal audit units are non-existent, understaffed or inadequately trained.
4. **Ombudsman:** There are three independent ombudsman institutions in Croatia; namely a general ombudsman, an ombudsman for the protection of children, and a third ombudsman for the protection of gender equality. While the offices of the special ombudspersons are currently in a difficult situation — it was very difficult to replace the children’s ombudsperson, who resigned, and the gender ombudsperson was accused of mobbing — the reputation and influence of the general ombudsman are positive. The ombudsman has no regional offices, but he travels to regional centres to allow citizens to meet directly with him and voice complaints. The budget funding provided to the ombudsman is insufficient and, for the time being, additional funding is provided by the OSCE.
5. **Quality of Legislation:** Over-regulation remains a problem in Croatia, which is aggravated by the fact that regulations are often adopted without sufficient consultation and existing legislation is not reviewed carefully enough when new legislation is passed. The resulting legal contradictions and conflicts of legal interpretation may lead to a situation where legislation is not applied or where new policies embedded in legislation are not implemented. This situation hampers overall reform and is highly detrimental to the principle of legal certainty, which may well have a negative impact on economic development. The situation is caused by a number of factors, in particular a lack of policy capacities at the centre and in ministries, insufficient training in legal drafting, and inadequate general legal and administrative education.
6. **Transparency in the Administration:** Despite some improvements, the administration in general is still not transparent and remains governed by the old principle of secrecy, despite existing laws on the Right to Access Information and on Personal Data Protection. A new Law on States Secrets was drafted but was subsequently withdrawn by the government in April 2006. When the new draft is tabled, it will be necessary to assess its possible impact so that the law will not reverse the slow trend towards more transparency in the administration.

However, it should be noted that the Administrative Court recently passed some decisions supporting access to information, which may help to improve the situation.

7. ***Judicial Review of Administrative Decisions***: Judicial review exists but is insufficient and not in line with European standards. The backlog of cases numbers about 40 000 while there are only 33 administrative judges. In addition, judicial review consists of only one instance, which does not even have full jurisdiction and is not recognised as a court by the European Court of Human Rights (ECHR).

Recommendations:

1. Consideration should be given to reviewing the Law on Government and the Law on the State Administration System so as to clarify the legal provisions and simplify administrative structures, as well as eliminating the overlap with the CSA.
2. The General Administrative Procedures Law should be reviewed and adapted to common European standards (now foreseen by the government for 2006). At the same time, special administrative procedures should be reduced to the absolute minimum. This measure would in the medium term strengthen the rule of law, facilitate economic development and reduce petty corruption. It is recommended to remove internal administrative procedures from the law and place them in an ordinance, which would simplify the law and make it more accessible and transparent for the citizen. Consideration should be given to reviewing and amending the Law on Administrative Disputes together with the Law on General Administrative Procedures to ensure the complementarity of both laws and to reduce formalities in the procedures act and create instead a two-instance court procedure.
3. Accountability mechanisms need to be strengthened, and the responsible bodies have to be adequately staffed and trained. A more vigorous policy to enhance transparency in the administration is needed.
4. The administrative justice system needs a complete overhaul in order to meet common European standards. Consideration should be given to introducing a full two-instance administrative court system. It is advisable to endow the courts with full jurisdiction.
5. Further efforts are needed to improve the quality of legislation, ensuring its clarity and thus legal certainty and providing more reliable information on its future impact, which should improve implementability and increase compliance.

1. Legal Status of Public Servants

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

Constitution

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

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

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

Ordinary Legislation

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

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

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

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

According to article 4/2 of the CSA, general labour regulations – signifying general labour law and/or collective agreements – apply in all matters that are not regulated by the CSA, special laws or government ordinances. In fact, collective agreements represent an important quasi-legal instrument regulating the working conditions of civil servants and employees in the state service. The current general agreement for the public service has a validity of five years and will end in December 2006. It includes regulations on working time and on a number of special supplements for civil servants and public employees (see the section below on the Salary System and Pay Determination).

Scope and Implementation

The scope of the civil service and the regulatory objectives of the CSA are sufficiently defined in articles 1 to 3 of the CSA. Article 1 defines the regulatory content, article 2 the state institutions to which the law applies, and finally article 3 the functions that are executed respectively by civil servants and public employees. Contrary to the previous law, the distinction between civil servants and public employees is now made according to functions and no longer according to level of education.

The entire public sector staff funded from state budgets number about 210 000, excluding the armed forces. Of these, about 63 000 are part of the core civil service and are therefore covered by the CSA and supplementary special acts. In local and regional self-government units, about 11 500 persons are employed and in locally-financed public services about 19 600 persons.

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

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

The new CSA clarifies in article 74/3 that the civil service includes managerial civil servants, senior civil servants and junior civil servants. It enumerates in article 74/5 the job positions, namely management positions, which under the new law are classified as civil service positions, i.e. they are now included in career development, the merit system and competition. In addition, article 11 includes the stipulation that political beliefs should not influence civil service careers. These are positive developments, as until now all managerial posts were regulated outside the Civil Service Act and were filled through direct political appointment. This new legal situation gives some hope that in the future there will be a clear separation between political positions and civil service positions; unfortunately, until the end of 2007 these positions will still be filled by political appointees. However, in this context it should be noted that some of these political appointees are in fact coming from the civil service ranks and are not really linked to party politics.

Given that the enforcement of CSA provisions regarding managerial positions has been postponed until after the elections, certain doubts remain regarding the willingness of the current government to introduce a real professional and merit-based civil service. These doubts are confirmed by other administrative legislation that includes staffing and recruitment provisions. These provisions have neither been abolished nor changed to harmonise them with the new civil service legislation. These laws regulate, *inter alia*, the organisation of the state administration and the appointment of heads of various agencies or offices. They do not clearly address the separation of political and professional positions. However, they do refer to the civil servants' status and state that the holders of these positions are to be civil servants, despite the fact that many of these positions are filled directly by government decision without competition and from outside the civil service. In fact there are still at least three different laws that enumerate the positions of political appointees, which are not necessarily identical: Law on the State Administration System, Law on Transferring of Power (94/2004), and Law on the Duties and Rights of State Functionaries.

The Government of the Republic of Croatia Act (1998), for example, specifies in article 26 that: “(2) Offices, agencies, directorates and government services are directed by office heads, agency directors, heads of directorates and heads of services respectively, all appointed by the government, at the proposal of the prime minister. (3) Office, service and directorate heads and agency directors are civil servants, who with respect to the civil servants and state employees of the office, agency, directorate and other services, have the rights and authorisations of a head of a state administration body”. This law is complemented by the Decree on Principles for the Internal Organisation of State Administration Bodies, published on 10 May 2001, which describes the principles of organisation and subdivision of administrative units as well as the duties of the various heads of these administrative units. The positions mentioned in the law have never been regulated by the LCSE nor have they been included in its classification, which constitutes the base for civil service salaries; they are regulated in the Government Decree on Job Titles and Coefficients. However, most of these positions are now covered by article 74 of the new CSA. It remains to be seen whether these positions will be included in the new classification.

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

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

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

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

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

2. Professionalism of the Civil Service

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

Recruitment

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

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

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

The main exception in the CSA to the competition principle is regulated in article 61. This exception involves admittance on a temporary basis for a maximum of six months, with a possible extension for

another six months only. Other previous exceptions have been abolished. It is now clearly forbidden to transform such a temporary contract into a permanent civil service contract.

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

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

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

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

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

The Ministry of Finance had already under the previous reporting period a specific trainee scheme for its own recruits. Selected trainees were hired or contracted for a 16-month period. During this period they were posted as interns in various administrative units in order to test their aptitudes for various jobs before a final appointment decision is taken. The trainee period ended with a competitive examination; only after passing this examination an indefinite appointment could be offered.

The CSOA is tasked with overseeing the implementation of the CSA (art. 38). The Administrative Inspection (articles 142 and 143) is tasked with controlling the lawfulness of decisions on admittance to the civil service, job placement, transfer, disposal, and civil service termination. If the case concerns civil servants in judicial and penal bodies, this supervision is carried out by the Ministry of Justice. The Administrative Inspection is to submit a report on illegalities to the head of the respective institution. In case these illegalities are not eliminated, the Administrative Inspection submits the case to the Civil Service Board. The Civil Service Board may annul or rescind the administrative enactment within five years after the decision in question becomes final.

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

The principle of recruitment by open competition and based on merit remains excluded for top management positions. Besides state secretaries, these positions still include also heads of central state offices and state offices as well as heads of state administrative organisations and state administrative offices. The Government of the Republic of Croatia Act stipulates in article 26 that the government may establish by decree offices, agencies, directorates and government services and that the heads of these bodies are to be

appointed by the government upon the proposal of the prime minister. In the Law on the State Administration System (art. 44ff), some of the above positions are described in more detail, and for some, e.g. heads of state administrative offices in counties, the text states that they are civil servants. However, the Administrative Court has confirmed the legality of the government's decision to dismiss heads of state administrative offices in counties and to appoint partisan politicians to these positions. As these bodies have clearly administrative tasks, it seems that the Administrative Court has not ruled in favour of professionalism, but has instead yielded to political pressure.

Promotion

According to the CSA, internal horizontal and vertical promotion should be based on merit. The scope for horizontal mobility has been enlarged by the new law; legally it can now be organised as part of a career development plan. According to the new legislation and supplementing decrees, the promotion system should be less open to politically or patronage-motivated decisions. However, the decree based on article 90/4 of the CSA, which further regulates promotion, has not yet been finalised. At this time it can therefore not be assessed whether the decree will in effect foster merit-based promotion and reduce the strong emphasis on seniority and/or political affiliation.

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

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

The new recruitment system is adequate to ensure an open and merit-based competitive recruitment. The necessary secondary legislation has been passed, and monitoring and oversight responsibilities have been assigned. However, in practice implementation has not really started and may not be smooth. The CSOA does not have the capacity to fulfil its monitoring role. Despite its creation in 2004, it is still far from being fully staffed. In addition, existing staff are not yet sufficiently trained to fulfil their assigned responsibilities. The CSA has assigned a wide range of control tasks to the Administrative Inspection, but it is staffed with only six persons, and whether it can cover up for the lack of capacity in the CSOA is highly questionable. Therefore, given that monitoring and oversight are rather weak and that previous practices did not foster recruitment on merit, it remains doubtful that the law will be adequately implemented.

As concerns promotion, it will be necessary to wait for the decree to be adopted. In any case, promotion on merit to management positions will only be effective after the next elections, foreseen for the autumn of 2007.

Classification of the Civil Service

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

Neither the classification decree nor the rulebook has been finalised. It is therefore not possible to assess whether these regulations will provide an adequate basis for the classification of civil service posts. Assuming that this will be the case, implementation can only be evaluated if and when civil service positions are classified according to the new regulations. It therefore remains to be seen whether the needed regulations will bring about some progress towards a unified civil service.

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

Obligations, Rights and Duties, with Special Reference to Impartiality

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

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

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

Apart from these general duties, the CSA (articles 116 to 123), as well as the Law on the State Administration System, sets down obligations of civil servants with regard to the quality of service delivery to citizens and other public service users, including information and technical help, together with the possibility of personal liability for the consequences of their actions. Some of these duties are repeated in the special legislation on the protection of personal data and access to information.

The disciplinary provisions in the CSA (articles 96 to 115) describe the accountability of civil servants for breaches of official duties. The CSA provides in articles 98 and 99 a detailed list of minor breaches (e.g. frequently arriving late to work and unjustified absences) and serious breaches (ranging from failure to properly perform official duties, illegal work, providing incorrect information and unauthorised use of the administration's resources to disclose official secrets, intentional misuse of documents, damaging behaviour, repeated absence without official leave, etc.). The law now contains a general clause for minor and serious breaches to capture any violations that are not enumerated in the text.

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

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

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

The disciplinary procedure is regulated in the CSA (articles 102 to 109), whereby article 102 prescribes that the general administrative procedures have to be applied unless otherwise regulated in the CSA and other legislation. For minor breaches of official duties, the heads of state bodies are to decide, unless otherwise determined by *lex specialis* (art. 100). The Civil Service Tribunal as the first instance and the Higher Civil Service Tribunal as the second instance are to decide in cases of serious violations. Both tribunals are to be

appointed by the government and to have a president and no less than 10 members, one of whom (for the Civil Service Tribunal – two for the Higher Civil Service Tribunal) is to be appointed from among the judges. Individual cases are to be decided by three-member panels, which are always chaired by one of the appointed judges. No data is available on whether, and how often, this disciplinary procedure is used in practice.

The catalogue of rights and duties is now in line with common European standards. Another more practical problem is that the obligation to secrecy has often led in the past to withholding information. This prevailing attitude of the civil service will hopefully change with a strict implementation of the Law on Access to Information.

The changed disciplinary regulations are now mainly in line with common standards. The statute of limitations of only two years following a serious violation remains insufficient, as it may result in serious breaches of duty going unpunished.

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

Grievances

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

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

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

Professional Independence from Politics

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

Integrity

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

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

To prevent corrupt activities of civil servants, the disciplinary regulations of the CSA apply. Management staff are – according to the new CSA – civil servants, but in practice they are still political appointees and thus still fall under the rules of the Law on Conflict of Interest (CoIL), which addresses politicians and political appointees. The CoIL includes the obligation to disclose assets; such an obligation does not exist for civil servants. For the time being, i.e. until after the next elections, it seems that the incumbents of the senior civil servant positions mentioned in article 74 of the CSA have to be treated as political appointees, i.e. the

disciplinary rules do not apply to them. As the conflict of interest legislation enumerates the positions falling under the scope of the law, the incumbents of these positions will be subject to both laws – CSA and CoIL — once the CSA is implemented for these positions. This may lead to serious responsibility conflicts, and adequate amendments should therefore be considered.

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

Parliament has, based on the government strategy to fight corruption, adopted on 31 March 2006 a National Programme for Fighting Corruption for 2006-2008. This programme includes some rather unrealistic deadlines regarding new legislation and in fact does not extend beyond the mandate of the current government, i.e. 2007 (see further in the Sigma assessment report on the Public Integrity System).

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

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

As indicated above, two different integrity regimes will apply to the incumbents of senior management positions after they have been selected according to the CSA and obtained the status of civil servants. This conflict of responsibilities needs to be solved.

As the scope of the civil service will be extended, at the latest in autumn 2007, consideration should be given to introducing disclosure provisions for at least some of the top positions, especially as keeping these positions under the CoIL with basically parliamentary control would be inadequate.

Salary System and Pay Determination

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

A new law on civil service salaries is being drafted. According to article 91 of the CSA, the new system will include pay steps that will be awarded on the basis of performance.

Currently, according to article 144 of the CSA, the LCSE regulations regarding remuneration of civil servants and public employees will remain in force until the new legislation is in place. Therefore, the general regulations for the civil service salary scheme are still set down in chapter 13 of the LCSE, articles 108-112, and in the Government Decree of 2001 on Job Systematisation and Pay Coefficients (“*titles of work posts and coefficients according to the complexity of tasks for each post in the civil service*”). Apparently special laws and decrees define specific or additional elements for numerous public service groups (police, customs, USKOK, financial police, internal audit, etc.). The Public Services Wages Act of March 2001 defines the wage principles for public employees working in the public service but who are not civil servants in the sense of the LCSE. This law is based on the same principles and processes as those set down in the LCSE. In addition, some salary components, in particular special supplements, are regulated in the collective agreements. The current general multi-annual agreement regulating a number of supplements, which are applicable to civil servants and public employees in state bodies, will expire at the end of 2006.

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

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

Article 39 of the general Collective Agreement, which is valid until the end of 2006, provides in detail the criteria for increases in basic salaries linked to working conditions and personal qualifications (education).

Article 40 of the agreement regulates increases in the coefficient of job complexity for years of service completed.

In addition to the normal take-home pay, a work efficiency bonus may be granted, according to article 111 of the LCSE. Based on performance appraisal, civil servants may receive this bonus, which cannot exceed an amount equivalent to three monthly salaries and cannot be considered in any way as a permanent *acquis*. However, the government decree specifying these jobs was in fact never issued, and so in practice these bonuses do not exist. Article 112 of the LCSE allows the granting of special bonuses to civil servants working in jobs with special working conditions. These jobs, which sometimes comprise whole services, such as the financial police or USKOK prosecutors, as well as the bonus level are determined by government decree. Some additional allowances are regulated in the collective agreement, e.g. a holiday cash allowance and retirement severance pay. Not all of these allowances have been supported by a government decree; some have therefore not been applied in practice due to budget constraints. It should be mentioned that allowances cannot be funded by the savings made by not filling vacancies but only through direct budget allocations. The trade unions have initiated court cases, which are still pending, regarding the allowances that are mentioned in the collective agreement but have not been paid

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

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

In 2005 the actual salaries in the state civil service ranged from between approximately € 400 for a beginner with a university degree to approximately € 980 for a head of sector. An assistant minister (director according to the CSA), the first political appointee level, receives approximately € 1 450. The rather large difference between the salary of a head of sector and that of an assistant minister is the result of an “advanced” salary reform for managers that was introduced about three years ago to attract highly qualified staff into the civil service. The full-scale salary reform envisaged at the time never started due to budget constraints. A salary increase to reflect inflation of 3% has been awarded since the last Sigma assessment.

Given the scattered salary increases in recent years for some profession in the public services (e.g. health service and education), it was reported that the government lacks a policy vision regarding public sector salaries and that it therefore tends to satisfy the demands of those groups in the public sector that voice their demands in the most disruptive way. This lack of vision and comprehensive policy has led to considerable pay disparities in the public sector in recent years, with the result that now entry-level positions for university graduates with basically the same requirements are allocated multipliers ranging from 1.06 in some state administrations and 1.15 in others to 1.45 in higher education. In some other special administrations, such as tax and customs administration, multipliers may be even higher. Better salary schemes also exist for the supreme audit institution and the judiciary. These existing disparities and group interests may considerably hamper the introduction of a new salary system and job classification system aimed at unifying the civil service.

“Wealthy” local authorities – such as Zagreb, Rijeka, Dubrovnik and Split – are said to pay considerably higher salaries than the state administration.

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

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

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

The method of classifying civil service positions by institution, without adequate co-ordination and monitoring, has led in some ministries to a proliferation of higher positions. The result is that very similar tasks are classified differently among institutions, and consequently the salaries for similar work differ even more than demonstrated above by the different coefficients for entry positions. To remedy this

situation, the CSOA would have to strengthen its capacity to assume its monitoring role regarding job classification and staffing plans.

In addition, the fact of having different levels of salary for various groups of the civil service may considerably hamper the creation of a unified professional civil service as well as mobility and transfers within the service and restructuring of the public administration.

Performance and Career Development

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

Mobility

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

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

The new CSA has introduced the necessary changes in the transfer/mobility rules; if adequately applied, the transfer rules – coupled with the dismissal regulation – should allow for a smooth adaptation of the public administration to a changing environment and in particular to the envisaged decentralisation.

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

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

Job Description and Performance Appraisal

The new CSA introduces a new performance appraisal scheme in articles 82 to 89. This new system, as laid out in the CSA, represents a modern performance appraisal system. It includes three stages, namely development of a work plan and agreement on goals, monitoring of performance and efficiency – including possible adjustment of the work plan, and finally assessment of performance based on results achieved (art. 84). The performance appraisal is closely linked to advancement and promotion (art. 90). It will include a performance-related award of steps while remaining in the same job position (horizontal promotion/advancement). Neither the forms for the performance appraisal nor the ordinance regarding career advancement have been finalised (April 2006).

An assessment of the new system will not be possible before mid-2007 at the earliest. Up to now appraisals were generally seen as a more or less formal and routine exercise. Appraisals had very little impact on career development, which for non-politicised positions was based mainly on seniority, nor were they a basis for any other incentives, except for perhaps one or two days of special leave, which were granted as part of the bonus system provided for in article 111 of the old LCSE. Whether the new system will change this habit will depend to a great extent on the capacities of the HRM units in ministries and other state bodies and on the capacity of the CSOA.

Training

The CSA regulates training of civil servants in greater detail than the previous LCSE (articles 90 to 95, CSA). Continuous improvement of professional skills through in-house training is stated as an obligation of civil servants. In addition, the law provides for the possibility to attend training outside the civil service, if relevant for improving professional skills. The law prescribes that the general training programme should be delivered centrally and that specific training programmes may be carried out by departmental administrative bodies. A training centre for the civil service was finally created in June 2005. A comprehensive training strategy exists, and the government decree that was required to regulate the modalities of civil service training has been adopted. According to the strategy, 3% of the budget devoted to civil servants' salaries is to

be allocated for training; for the time being this seems not to be implemented. The training centre has adequate premises and equipment, but its staffing is lagging considerably behind. Finally, in April 2006, 10 vacancies were announced, and recruitment procedures started. If these vacancies can be filled adequately, it can be expected that curriculum development will accelerate and that training in the areas foreseen in the law (art. 93) will be delivered in a systematic way. At the time of the mission, the facility was mainly used for training activities or conferences of various ministries or donors.

Some mandatory inception training is still organised as preparation for the civil service examination, which is a prerequisite for civil servants' tenure. A new decree is being prepared to regulate the procedure and content of this examination in order to adapt it to modern requirements. For the time being, the examination and the training are very limited and too focused on legal issues; it is nevertheless envisaged to review the training content, possibly before the content of the examination will be changed.

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

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

Postgraduate studies in public administration (one-year programme) have been agreed between the government and Zagreb University. Enrolment has started. The government will provide stipends for 20 civil servants to attend the course in order to increase the capacity of the civil service.

In March 2006 an Academy for Local Self-Government Democracy was created by government decree 33/2006). The aim of this academy is to organise training for all staff employed by local self-government. The state budget is funding this academy with 1 million kuna (ca. € 140 000) per year. The curricula of this academy will be developed in co-operation with the Union of Associations of Towns and Municipalities. Unfortunately, no organisation exists in which all local authorities are members, so in fact the training may not reach the staff in all towns and municipalities.

In addition, Croatia has secondary schools with education in public administration, as well as three-year studies of public administration with a B.A. degree (e.g. Zagreb, Osijek, Vukovar, Požega, Split, Rijeka, Otočac and Samobor), postgraduate studies – but for the time being without an M.A. degree (Zagreb), and doctoral studies (Zagreb, Rijeka). The University of Zagreb intends to develop an M.A. degree, possibly in co-ordination with a Slovenian university.

Training in European integration issues is well developed, and the same evaluation seems to hold for some special branches of the administration, such as customs or finance. With regard to general training under the leadership of the CSOA, hardly any recruitment was carried out between June 2005 and March 2006, and most of the training activities during this period was organised with technical assistance support. It seems that recruitment has now taken place and that – if the commitment persists –in early autumn systematic and adequate initial and continuous training activities should be in place.

A positive development is the creation of a training centre for local authorities, especially as the government is very committed to decentralisation and the updating of administrative capacities in local authorities is therefore crucial.

Overall, the attractiveness of the civil service remains insufficient. Salary levels are low compared to the private sector. Due to high politicisation, career perspectives remain limited. Qualified young civil servants still tend to remain in the civil service only the minimum time needed to acquire the experience and practice that will allow them to move to the private sector. The full implementation of the Civil Service Act and the new salary law should change this situation; however, first results may only be visible at the end of 2007.

3. Management of the Civil Service

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

Central Management Capacity

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

The CSOA is in charge of preparing secondary legislation and guidelines regarding public service management, including procedures and content for the civil service examination. As mentioned above, the CSOA is also in charge of general civil service training, and it houses the training centre.

Human resources management departments have been created in each ministry and in most other administrative authorities, but very few of them are fully functional. A TA project is currently assisting the CSOA in strengthening the capacity of some pilot HRM units in ministries. For the time being, not all HRM units are fully staffed, and only a few staff in these units have been trained in human resources management. For the moment decisions regarding personnel management are not delegated but are taken by the secretary of the ministry or even by the minister. As the secretary of the ministry is a political appointee (at least until autumn 2007) and therefore still outside the CSA, depoliticisation of the civil service could possibly encounter some difficulties.

The CSOA does legally have all the necessary powers to assume the role of a central management capacity. However, the office is understaffed and not all existing staff have received specific training; the political will to create a professional, non-politicised civil service does not appear to be very strong; and finally, the CSOA is still a rather new institution and has not yet gained full acceptance by ministries for imposing necessary measures to improve the civil service.

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

3.2 *Are staff numbers and personnel costs controlled and published?*

Staffing and Control

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

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

According to the annual Budget Law, all administrative bodies have the obligation to submit their staffing needs for the budget year. Proposals from the various state bodies and ministries are negotiated with the Ministry of Finance (MoF) and the CSOA, with reference to the staffing limits set in the rulebooks and to the operative margin provided by budgetary prospects. The annual budget may nevertheless include posts for

which no funding is available. In case a ministry wants to recruit to a position not included in the civil service admission plan, it will need to have a special approval of the MoF; without such approval, the recruitment can be annulled.

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

Data on staffing at any given point in time is not fully reliable. There is still no fully operational central personnel registry. According to article 140 of the Law on the State Administration System, such a registry should be kept by the CSOA; a decree regulating this issue is being drafted.

Unlike the central registry, a compatible computerised payroll system is in place and is reliable insofar as central state bodies are concerned. Regarding the judiciary and county offices, some problems remain.

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

Staff Representation

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

Trade unions covering public services, e.g. health services, are said to be stronger than those for staff in core public administration. All trade unions in the public sector seem to support only their individual constituency; a joint strategy covering all staff in the public service apparently does not exist. The strong position and individualistic approach of trade unions may cause serious problems when introducing the new salary system that is now in preparation.

It was reported that the trade union covering the core administration covers mainly staff without a university degree. This could be the reason why initiatives to improve salaries and career prospects for young university graduates – in order to reduce turnover and improve professionalism – do not seem to find strong support by the union.

In this context, it should be mentioned that trade unions, according to article 104 of the collective agreement, are empowered to demand a contribution from civil servants who are not unionised. The fee, fixed at 0.65% of a civil servant's net monthly salary, is considered as a bargaining fee for the period of the agreement. The application of this fee to all civil servants is based on the argument that the advantages gained as a result of the collective agreement also benefit non-members. However, in 2005 the Constitutional Court decided that this fee was unconstitutional.

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

4. Legality and Accountability

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

Constitution and Constitutional Institutions

The principle of legality is clearly established by the Constitution and the derived legal system. The rule of law is formally stated in the Constitution, article 3, as one of the "highest values that the Republic of Croatia intends to abide by". It is complemented by article 4 (separation of powers) and article 5, which establishes the hierarchy of legal acts under reference of the Constitution. Article 107 specifies that the government

"shall exercise executive powers in conformity with the Constitution and law". This article is complemented by article 113 ("The organisation, mode of operation and decision-making of the government shall be regulated by law and the rules of procedure") and by article 116, which refers more specifically to the state administration, regional and local self-government, and the civil service.

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

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

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

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

The People's Ombudsman (art. 92), appointed by parliament for a term of eight years, is vested with the protection of citizens' constitutional and legal rights before all public bodies, central or local. According to the Law on the Ombudsman, article 12, the Ombudsman is empowered to examine individual violations of constitutional and legal rights of citizens as well as other irregularities committed in the exercise of state administrative power, either on his/her own initiative or upon the request of a citizen. Every citizen has the right to submit petitions to the Ombudsman, regardless of whether the petitioner has suffered direct personal injury.

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

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

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

These constitutional institutions have in principle sufficient authority and powers to guarantee acceptable accountability standards and mechanisms. However, despite an overall sufficient number of staff in nearly all of the institutions, including the general judiciary, capacity is seriously lacking in most of these institutions. In addition, the reputation of the judiciary has suffered in recent years, and further serious efforts will be necessary to reinstate a positive image.

Organisation of the Administration

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

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

For the time being, there are 13 ministries, 9 state administrative organisations and 4 central state offices.

Quality of Legislation

To improve the cohesiveness and quality of the legal framework, Croatia has introduced a general obligation to carry out impact assessment. However, in 2005 the government could only agree on the implementation of fiscal impact assessment; the rules of procedures have been changed accordingly. Fiscal impact assessment is carried out by line ministries, but the quality of these assessments still varies considerably and the Ministry of Finance in the current phase – when reviewing them – often has to complement and correct these assessments. These fiscal impact assessments for the time being cover only impacts on the state budget. Given that own revenues at local or regional levels are still insignificant, this limitation is acceptable, but it will have to be reconsidered when and if decentralisation is further advanced. According to the Ministry of Finance, some improvements regarding the quality of legislation have been made.

Other impact assessments – regarding environmental, economic and social impacts – are supposed to be implemented by the end of 2006; however, it is unclear if the necessary preparatory work has already started.

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

Administrative Procedures

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

The law regulates the form of an administrative act, i.e. an act must be motivated and must include information for interested parties on their rights to appeal against administrative decisions (articles 206 and 210 of the LGAP). The law also recognises some rights of third parties. It sets down the principle of proportionality of administrative actions as one of the basic principles of administrative procedure. According to article 80 of the LGAP, interested parties have the right of access to all files when they are engaged in a concrete administrative procedure, and they also have the right to copy them, but at their own expense. The same right is recognised for any other person who can prove his/her justified interest in that concrete procedure. Article 292 of the LGAP regulates the interim suspension of the execution of administrative acts. An appeal to a higher administrative authority is usually possible, but may be excluded in certain cases. Appeal to the Administrative Court is constitutionally guaranteed. As a full judicial review

does not exist (see below), the administrative procedures are very formal in an attempt to replace adequate judicial review. They are also not regulating issues linked to electronic tools used in modern administration nor do they address legal constructs, such as public law contracts or space planning.

Overall the law is not fully in line with common European standards, and this is recognised by the Croatian authorities. It is therefore envisaged to review the law within the context of an EU-funded project that started in early 2006. In May 2006 a working group was finally set up and international experts to assist in the review had been identified. Sigma has provided comments on the existing law in 2005 and discussed them with the CSOA in autumn 2005, but seemingly no further action was taken by the CSOA until May 2006.

A greater problem for the proper functioning and transparency of the public administration in Croatia is that over the years a considerable number of special administrative procedures – between 70 and 80 laws – have been adopted, which makes it difficult for citizens, including legal experts, to determine in a given situation whether the general procedure applies or if a special procedure is preferred. This situation, coupled with the fact that judicial review of administrative decisions is inadequate, severely weakens administrative accountability. It also diminishes guarantees to citizens, legal persons, etc. of adequate and just administrative decisions that respect basic European principles. This problem may become even greater in view of the considerable room for discretion in substantive legislation. Together with unclear procedures and limited possibilities for appeal, this wide discretionary scope in legislation can easily lead to arbitrary decision-making in the administration, legal uncertainty and proliferation of corruption.

Transparency in Public Administration

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

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

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

The Law on the Right to Access Information was adopted in October 2003. Croatia was one of the last countries in South East Europe to adopt such a law, which now enables citizens to exercise the right of access to public information, as stipulated in the Constitution and mentioned in the Law on the State Administration System. This relatively short law of 33 articles establishes the right of access to (public) information as a principle, and rigorously regulates the exceptional denial of access. It provides for the application of sanctions for public authorities who unduly deny such access. According to Article 3, the "beneficiary of the right to [information] is every domestic or foreign, natural or legal person, as well as an entity that may have special rights and obligations (e.g. a building, settlement, group of citizens without legal personality, and similar)". Public information covers numerous areas, including information on obligations and authority, activities and decisions; it applies equally to government bodies and institutions, community councils and local government institutions. In practice this law is not always respected by state bodies and even to a lesser extent by local authorities. This behaviour has prompted several administrative disputes before the Administrative Court. The Court has confirmed the rigorous application of the law on access to public information and confirmed the requests of several NGOs. It can now be expected that compliance of the administration with this legislation will improve.

A draft law regulating state secrets, which included rather large discretion regarding classifying information as secret, has been withdrawn by the government. It remains to be seen whether a new draft of a state secret law will be in line with general standards or tend to reverse the trend of growing transparency in the Croatian administration.

A Law on Personal Data Protection was also adopted in 2003. Pursuant to article 37 of the Constitution, this law protects the privacy of individuals, as well as other human rights and fundamental freedoms in the collection, processing and use of personal data. The supervisory body, the Personal Data Protection Agency, has been created as an autonomous legal person, which reports to parliament (see further in the Sigma assessment report on the Public Integrity System).

Protection of Legality by Civil Servants

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

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

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

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

The personal liability of civil servants is regulated in article 116 ff of the CSA, devoted to “Liability for Damages”. A civil servant must compensate for any damage inflicted on the government body when in service or pertaining to the service, either wilfully or as a result of gross negligence (art. 116). When the damage or loss suffered by the government body is linked to the compensation to physical and legal persons for damage inflicted on them due to the civil servant’s personal fault, the civil servant is equally obliged to compensate for this loss. In the case of damage inflicted on property, the civil servant may request permission to have this property restored to its former state at his/her expense and within an appropriate time frame (art. 121).

The civil servant who caused the damage must be heard by the head of the state body (art. 117) before a decision on damage compensation is issued. Upon request, the payment of compensation may be made in instalments (art. 120). The civil servant has the right to lodge a complaint against the decision on damage compensation and to initiate an administrative dispute in the administrative court. The complaint should be lodged with the Civil Service Board (art. 65); however, the law is not clear regarding the responsibilities of the board, and the secondary legislation is not available in translation.

The CSA includes, as a protection of legality in decision-taking, adequate provisions regarding conflict of interest (articles 33 to 37), as well as rights and duties of civil servants and disciplinary measures. A code of ethics was adopted in March 2006; in addition, some specific guidelines exist in special administrations.

Furthermore, the Croatian administration disposes of a number of inspectorates and is now developing an internal audit system. The role of internal inspectorates is set out in detail in several pieces of legislation, particularly in the Law on the State Administration System. In the implementation of administrative control, inspectors are to supervise in particular: the lawfulness of operations and actions; decisions taken in administrative matters; the efficiency, cost-effectiveness and purposefulness of administrative bodies’ activities; the effectiveness of the internal organisation and the 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 taken at this level. Inspection over all administrative bodies and tutelage over local powers are the main direct tools for the control and review of administrative decisions.

In addition, special units in the police, customs and tax services are tasked with preventing and fighting corruption in their respective services (see further in Sigma's assessment report on the Public Integrity System).

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

Ombudsman

The Croatian Constitution provides (art. 92) for an Ombudsman, as a commissioner of parliament for an eight-year term, who protects the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public authority. The Ombudsman's authority and working methods are regulated by the Ombudsman Act of 1992. Apart from considering individual cases, the Ombudsman also studies other matters relevant to the protection of constitutional and legal rights, the existence of which the Ombudsman learns from various sources (including NGOs and the media). These matters involve irregularities in the work of administrative bodies or bodies vested with public authority.

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

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

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

Although the reports of the Ombudsman to parliament have been positively received by parliament every year, the government has not followed the Ombudsman's proposal to propose adequate financing nor has the parliament adopted a sufficient budget envelop for the Ombudsman institution. The Ombudsman has nevertheless found additional financing through international donors.

Although the Ombudsman is expected to be independent, several attempts were made during the period 2000-2004 to exert “discreet influence” on the Ombudsman's actions, which resulted in “conciliatory” and “mitigated” assessments of some cases of human rights violations.

No such interventions have been reported since the new Ombudsman has taken up duty. As the Ombudsman has no regional offices, the Ombudsman and his deputies travel to regional centres to maintain contact with the citizen and to hear complaints directly. Nearly all complaints concern the state administration. He intervenes, usually through mediation, before the cases are finally decided by the court. The Ombudsman also receives complaints regarding the judiciary, which often concern the slowness of court procedures. He also reports on those cases, which – according to other sources – has caused some discontent in the judiciary.

The Ombudsman Office is not fully staffed; however, the reputation of the office is good and the credibility problems of previous years seem to have been forgotten.

The existence of three different Ombudsmen institutions should be reconsidered, especially as now the special ombudsmen seem to be encountering some credibility problems (see further in Sigma's assessment report on the Public Integrity System).

Administrative Control and Review of Administrative Decisions

The Law on the State Administration System and the Law on Civil Procedure permit individuals to challenge the legality of a public official's action by lodging a complaint or by filing a lawsuit with the Administrative Court or with a civil court. More specifically, article 15 of the Law on the State Administration System stipulates that complaints may be made against individual actions or decisions of state government bodies and legal persons vested with public authority in specific affairs of state administration, and that court protection may be requested in the event that the complaint is not received by this administrative authority.

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

The Administrative Court is part of the judiciary (until 1997 it was a department in the Supreme Court), and in principle it is an important institution in charge of protecting citizens and legal persons as well as civil servants in their employment relation with the state against illegal and damaging administrative decisions. It is the only instance for judicial review of administrative decisions but, according to a Constitutional Court ruling of November 2000, it is not considered to be a full jurisdictional court, as the court is neither obliged to independently establish the facts of the cases submitted for its appraisal nor to have public sessions¹. Consequently, the European Court of Human Rights does not recognise its powers as being fully jurisdictional, which entails that the Croatian administrative judicial system is not in line with European standards. The Administrative Court usually reviews only the legality of administrative decisions. An appeal against its decision to the Supreme Court and/or the Constitutional Court is exceptionally possible.

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

At the moment, the court has a backlog of about 40 000 cases, about 5,000 of which concern civil service issues; civil service cases as well as property cases are considered as urgent. Each month the court receives about 1 200 new cases, but it has nevertheless reduced its backlog by about 12 000 since Sigma's last assessment. It was reported that no cases are dated earlier than 2001. This situation leads to enormous delays in judgements which in turn may entail avoidable rather high compensations to be paid by the state budget.

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

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

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

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

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

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

legislation has subsequently to be amended several times and, as a result, knowledge of the newly passed legislation becomes rapidly obsolete.

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