



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL I - HUMAN RIGHTS AND RULE OF LAW
INFORMATION SOCIETY AND ACTION AGAINST CRIME DIRECTORATE



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Third Evaluation Round

Compliance Report on Croatia

"Incriminations (ETS 173 and 191, GPC 2)"

"Transparency of Party Funding"

Adopted by GRECO
at its 53rd Plenary Meeting
(Strasbourg, 5-9 December 2011)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Croatia to implement the 11 recommendations issued in the Third Round Evaluation Report on Croatia (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 45th Plenary Meeting (30 November – 4 December 2009) and made public on 9 December 2009, following authorisation by Croatia (Greco Eval III Rep (2009) 1E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Croatian authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 6 July 2011 and served as a basis for the Compliance Report.
4. GRECO selected Denmark and Montenegro to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Flemming DENKER, on behalf of Denmark, and Mr Dusan DRAKIC on behalf of Montenegro. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It was recalled that GRECO in its evaluation report addressed 5 recommendations to Croatia in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The authorities of Croatia report that a working group was established in February 2009 to draft a new Criminal Code, based on guidelines provided by the government as well as international documents – including GRECO recommendations – and practice. This working group was composed of professors of criminal law, judges, deputy state attorneys and representatives from the Ministry of Interior, Ministry of Justice and the Bar Association. On 21 October 2011, the Croatian Parliament adopted the new Criminal Code, which will enter into force on 1 January 2013.

Recommendation i.

8. *GRECO recommended to ensure that the offences of active and passive bribery in the public sector are construed in such a way as to cover instances unambiguously where the advantage is not intended for the official him/herself but for a third party.*
9. *The authorities of Croatia report that the Criminal Code referred to above mentions specifically in articles 296 and 293¹ instances in which the advantage is intended for a third party.*
10. *GRECO welcomes that the offences of active trading in influence and passive bribery in the public sector, as foreseen in the Criminal Code, make specific reference to instances in which the advantage is intended for a third party, as requested in the recommendation. However, this reference is missing from article 294 on active bribery, which is a lacuna that should be remedied.*

¹ Giving bribe for trading in influence - Article 296, new Criminal Code (hereafter CC)

(1) Whoever offers, promises or gives bribe to another, intended for that or another person, in order to make them intercede in the performance of an official or another act which should not be done, or the omission to perform an official or another act which should be done, by using their official or social position or influence, shall be punished by imprisonment of one to eight years.

(2) Whoever offers, promises or gives bribe to another, intended for that or another person, in order to make them intercede in the performance of an official or another act which should be done, or the omission to perform an official or another act which should not be done, by using their official or social position or influence, shall be punished by imprisonment of six months to five years.

(3) The perpetrator of a criminal offence from paragraphs 1 and 2 of this Article, who has given bribe upon request by the person from Article 343 of this Act and reported the offence before it has been discovered or before the discovery of the offence has become known, can be remitted.

Acceptance of bribe –Article 293, CC

(1) An official or responsible person who demands or accepts bribe, or who accepts the offer or promise of bribe for himself or another person, in order to perform an official or another act which should not be done, or omit to perform an official or another act which should be done, within or outside the limits of his authority, shall be punished by imprisonment of one to ten years.

(2) An official or responsible person who demands or accepts bribe, or who accepts the offer or promise of bribe for himself or another, in order to perform an official or another act which should be done, or omit to perform an official or another act which should not be done, within or outside the limits of his authority, shall be punished by imprisonment of one to eight years.

(3) An official or responsible person who, upon performing or omission to perform an official or other act as specified in paragraphs 1 and 2 of this Article, demands or accepts bribe in relation to this act, shall be punished by imprisonment of up to one year.

Giving bribe - Article 294, CC

(1) Whoever offers, gives or promises bribe to an official or responsible person, in order to persuade them to perform an official or another act which should not be done or omit to perform an official or another action which should be done, within or outside of the limits of his authority, or whoever intercedes in giving such bribe to an official or responsible person, shall be punished by imprisonment of one to eight years.

(2) Whoever offers, gives or promises bribe to an official or responsible person in order to persuade them to perform an official or another act which should be done or omit to perform an official or another act which should not be done, within or outside of the limits of his authority, or whoever intercedes in giving such bribe to an official or responsible person, shall be punished by imprisonment of six months to five years.

(3) The perpetrator of a criminal offence from paragraphs 1 and 2 of this Article, who has given bribe upon request by an official or responsible person and reported the offence before it has been discovered or before the discovery of the offence has become known, can be remitted.

11. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

12. *GRECO recommended to take the legislative measures necessary to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competences.*
13. The Croatian authorities stress that articles 293 and 294 of the Criminal Code on passive and active bribery cover, by the use of the expression "within or outside the limits of his authority", all acts/omissions of a public official in the exercise of his/her functions.
14. GRECO notes with satisfaction that articles 293 and 294 of the Criminal Code now cover all acts and omissions of a public official within the scope of his/her competences, as requested by the recommendation. However, as the new Criminal Code has not entered into force yet, GRECO cannot yet conclude that this recommendation has been fully complied with.
15. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

16. *GRECO recommended (i) to ensure that current legislation in respect of bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for – in any capacity – private sector entities; and (ii) to amend this legislation in such a way as to cover unambiguously all instances implying a breach of duty by the bribed person as well as instances where the advantage is not intended for the bribee him/herself but for a third party.*
17. As regards the first part of the recommendation, the authorities of Croatia report that articles 252 and 253 of the Criminal Code on bribery in the private sector apply – by use of the word "whoever" – to any person engaged in economic business operations².

² Accepting a Bribe in Economic Business Operations - Article 252, CC

(1) Whoever in economic business operations solicits or accepts a bribe or accepts an offer or promise of a bribe for himself or another person, so that he, while concluding or executing business or providing services would favour another causing thereby damage to whom he represents or to whom he works for or whoever intermediates in so bribing, shall be punished by imprisonment for one to eight years.

(2) Whoever in economic business operations solicits or accepts a bribe or accepts an offer or promise of a bribe for himself or another person as a counter favour for concluding or executing business or providing services or whoever intermediates in so bribing, shall be punished by imprisonment for six months to five years.

Offering a Bribe in Economic Business Operations - Article 253, CC

(1) Whoever in economic business operations offers, promises or gives a bribe to anyone so that he would favour the bribe giver or any other person while concluding or executing business or providing services and in doing so would cause damage to whom he represents or to whom he works for or whoever intermediates in so bribing, shall be punished by imprisonment for six months to five years.

(2) Whoever in economic business operations offers, promises or confers a bribe to another person as a counter favour for concluding or executing business or providing services or whoever intermediates in so bribing, shall be punished by imprisonment not exceeding three years.

18. Concerning the second part of the recommendation, the Croatian authorities state that the same articles cover cases in which the advantage is intended for a third party, by use of the expression "for himself or another person". As regards the manner in which the instances of breach of duty are covered, they consider that the element of a damage incurred by the employer of the bribed person is a necessary element of the incrimination under articles 252.1 and 253.1. This element is however not required by the second paragraphs of these articles, where the expression "as a counter favour for concluding or executing business or providing services" is used to establish a link between the bribe and an action or omission by the bribed person.
19. GRECO takes note of the information provided. It welcomes the use of the word "whoever" in articles 252 and 253 of the Criminal Code, which enlarges the *rationae personae* scope of the offences in the manner requested by the first part of the recommendation.
20. As regards the second part of the recommendation, GRECO accepts the argument according to which the expression "as a counter favour for concluding or executing business or providing services" (articles 252.2 and 253.2) intends merely to establish a link between the bribe and an act or omission by the bribed person. Therefore, even if it maintains that articles 252.1 and 253.1 contain an additional element of damage which is absent in articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), it considers that articles 252.2 and 253.2 are broad enough to cover cases in which no damage occurred as a result of the action or omission of the bribed person. Finally, GRECO welcomes the introduction of the expression "for himself or another person" in article 252 and of the word "anyone" in article 253.1 CC, which adequately meet the requirement of the recommendation regarding cases in which the advantage is meant for a third party. However, it observes that such words are still missing in article 253.2.
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended to consider increasing the penalties for active bribery offences in the public and private sectors.*
23. The authorities of Croatia indicate that the penalties for both active and passive bribery offences in the public sector, as well as for active bribery in the private sector are increased in the new Criminal Code. Active bribery in the public sector is now punished by imprisonment of 1 to 8 years (the previous penalty was 6 months to 3 years of imprisonment) if it involves an illegal act or omission by the public official; cases involving a legal act or omission by a public official are now punished by imprisonment of 6 months to 5 years (the previous penalty was a fine or imprisonment up to 1 year). Passive bribery in the public sector is punished by imprisonment of 1 to 10 years if illegal acts/omissions are involved and 1 to 8 years if legal acts/omissions are involved (the previous penalties were imprisonment of 1 to 8 years and 6 months to 5 years respectively). Finally, active bribery in the private sector now carries a penalty of imprisonment between 6 months and 5 years in cases of acts causing damage to the private entity (the

(3) *The court may remit the punishment of the perpetrator of the criminal offense referred to in paragraphs 1 and 2 of this Article, provided that he has given a bribe at the request of a responsible person and that he reports this act prior to its discovery or prior to his knowledge that it has been discovered.*

previous penalty was imprisonment of 6 months to 3 years) and imprisonment not exceeding 3 years in other cases (the previous penalty was imprisonment not exceeding 1 year).

24. GRECO notes with satisfaction that the Croatian authorities have not only considered an increase of the penalties for active bribery offences in the public and private sectors, as requested by the recommendation, but have actually opted for such an increase in the new Criminal Code.
25. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

26. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and in the private sector who report to law enforcement authorities, and to abolish the restitution of the bribe to the bribe-giver in such cases.*
27. The authorities of Croatia explain that the working group referred to in paragraph 7 analysed the provision on effective regret of the previous Criminal Code and proposed to abolish the automatic and mandatorily total exemption of punishment, as well as the restitution of the bribe to the bribe giver. Accordingly, articles 253 and 294 of the new Criminal Code, on active bribery in the private and public sector respectively, state that the court “may” remit the punishment of the perpetrator of the criminal offence. In the same articles, a provision providing for restitution of the bribe to the bribe-giver is omitted.
28. GRECO welcomes that the provisions on the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and in the private sector have been analysed in conformity with the requirements of the recommendation and that, in addition, legislation aimed at abolishing the mandatory character of this defence, as well as the restitution of the bribe to the bribe-giver, has been adopted by Parliament. GRECO looks forward to the entry into force of the new Criminal Code, as scheduled (i.e. on 1 January 2013), so that the relevant provisions become enforceable.
29. GRECO concludes that recommendation v has been partly implemented.

Theme II: Transparency of Party Funding

30. It was recalled that GRECO in its evaluation report addressed 6 recommendations to Croatia in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

31. *GRECO recommended to ensure that annual accounts of political parties include entities which are related directly or indirectly to the political party or under its control, including the support provided by these entities, and the donations to individual party candidates.*
32. The authorities of Croatia report that a new Act on Financing Political Activities and Election Campaigns (hereafter AFPA), as well as amendments to this Act, were adopted on 11 February 2011 (entry into force on 3 March 2011 - Official Gazette 24/2011) and 20 May 2011 (entry into force on 11 June 2011 - Official Gazette 61/2011) respectively. Article 30 of this Act prescribes the obligation for political parties to submit annual financial statements to the State Audit Office.

These statements have to include information on donations in cash or in kind received from all natural and legal persons, including entities linked directly or indirectly with the party or otherwise under its control. Statements also have to include information regarding payments made to the accounts of such entities and to the campaign accounts of individual party candidates.

33. GRECO notes with satisfaction that the relevant article of the AFPA now includes explicit references to donations made to the accounts of individual party candidates, as well as to financial movements between party accounts and those of entities related directly or indirectly to parties or otherwise under their control, as requested by the recommendation.
34. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

35. *GRECO recommended that the timeframes for publication of annual reports by political parties, independent lists and candidates be clearly specified by law.*
36. The authorities of Croatia explain that Article 39 of the AFPA imposes on political parties, independent members of parliament, members of parliament representing national minorities and independent members of the representative bodies of local and regional self-government an obligation to publish on their websites, by 1 March each year, their annual financial statements for the previous year. Election campaign statements of political parties, independent lists and candidates must be published on their websites or in the daily press within 15 days from expiry of the deadline for submission of these reports to the State Election Commission. Once published on websites, these documents have to remain available for a minimum of 90 days.
37. GRECO welcomes that the timeframes for publication of annual reports by political parties, independent lists and candidates are now clearly specified by law.
38. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

39. *GRECO recommended to harmonise the provisions on election campaign funding contained in the various election laws and to align these provisions with the standards set by the 2006 Act on the financing of political parties, independent lists and candidates, addressing, inter alia, the level of detail, the frequency of reporting on and the publication of donations received by parties, lists and candidates, including during the electoral campaign period.*
40. The authorities of Croatia state that the AFPA regulates the annual financing of political parties, independent members of parliament, members of parliament representing national minorities, independent members of the representative bodies of local and regional self-government, as well as the financing of the election campaigns of political parties, independent lists and candidates in elections for the President of the Republic, the Parliament, the European Parliament, for municipal prefects, mayors, county prefects, the mayor of Zagreb and for members of the representative bodies of local and regional self-government units. It has replaced previous laws dealing with these elections. As to the level of detail required, the frequency of reporting on and the publication of donations, the authorities refer to their submission under recommendations i and ii (see paragraphs 32 and 36).

41. GRECO takes note of the information provided, which strongly suggests that the legislative harmonisation, as intended by recommendation iii, has been achieved.
42. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

43. *GRECO recommended that the supervision of the annual financial reports of political parties, independent lists and candidates be complemented by specific monitoring of their campaign financing, to be effected during or shortly after presidential, parliamentary and local elections.*
44. The authorities of Croatia report that Articles 34 to 39 of the AFPA introduce specific monitoring of election campaign financing. According to these articles, political parties, independent lists and candidates have to submit to the State Election Commission, within 30 days from the elections, a financial statement on campaign resources and expenses, including donations received and donations made by political parties to individual party candidates. For this purpose, political parties and election candidates have to keep a record of all donations received and of all expenses made, updating them on a daily basis. They have to submit to the State Election Commission, upon its request, any additional information and documentation required.
45. The authorities add that the State Election Commission, when conducting supervision on the basis of the documents submitted, has to verify, through competent bodies and services, namely the Ministry of Finance, the Ministry of Interior and the State Inspectorate, whether the amounts of funds spent correspond to the amounts received and whether information stated in the financial reports is accurate. The report of the State Election Commission on supervision of compliance with the provisions of the AFPA is to be published on its website within 60 days from the date of announcement of the final election results.
46. GRECO notes with satisfaction that the relevant law now provides for specific supervision of election campaign financing and that its results are to be published within a reasonable period of time after the final results of the elections are announced.
47. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

48. *GRECO recommended to ensure that an independent mechanism/bodies is/are in place for the monitoring of the funding of political parties, independent lists and candidates and of their electoral campaigns, and which is/are given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose administrative sanctions.*
49. The authorities of Croatia indicate that the arrangements for monitoring the funding of political parties, independent lists and candidates and their election campaigns have been reviewed and the respective roles of the bodies involved have been clarified. Along with the introduction of specific monitoring of election campaigns, performed by the State Election Commission, the sole responsibility for the audit of political parties' annual financing has been given to the State Audit Office (article 27 of the Act on the State Election Commission) – the Tax Administration is no longer competent in this regard.

50. Both the State Audit Office and the State Election Commission are independent and permanent bodies. According to the Croatian authorities, the State Audit Office is staffed with 227 auditors, with a planned increase of 15 in 2012. Part of them will be entrusted with the auditing of political parties, depending on the increase of the number of entities subject to audit, which will be known once the financial statements of the independent members of representative local government bodies are received. The State Election Commission has a budget of 133,373,500 Kunas for the year 2011 (about 17.8 million Euros) and consists of 20 persons: the chair, four vice-chairs, four members, eight specialised public officials, as well as three employees transferred from the Tax Administration.
51. In the course of their work, both institutions may request information and documents from the entities subject to supervision (articles 31 and 35 of the Act on the State Election Commission). The Croatian authorities add that the State Audit Office, the State Election Commission and the Ministry of Finance signed on 3 May 2011 a cooperation agreement on the implementation of the AFPA, whereby these institutions undertake to exchange information on their respective findings. Within 30 days of the conclusion of their respective supervision process, they also have to inform each other about possible infringements found, measures taken and deadlines given to the supervised entities to comply. The Croatian authorities state that, as a result, the supervisory entities perform cross-checks of their information. Finally, as regards sanctions, they refer to the information provided under recommendation vi (see paragraphs 55 and 56).
52. GRECO takes note of the information provided, which seems to indicate that the division of responsibilities between both competent bodies, the State Audit Office and the State Election Commission, is clearly provided for by law. It would also appear that the independence of these bodies is ensured and that they have been given the necessary mandate, authority, personnel and financial resources to perform their tasks. GRECO also welcomes the arrangements made for an enhanced exchange of information and cooperation between these bodies. It therefore believes that the necessary conditions are in place for a more substantial monitoring and hopes that the State Audit Office and the State Election Commission will make use of the powers and resources at their disposal to perform an effective and pro-active supervision of political financing.
53. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

54. *GRECO recommended to establish, in addition to the existing criminal sanctions, a) more flexible sanctions with regard to the infringement of rules concerning the funding of political parties, independent lists and candidates, including administrative sanctions, and b) effective, proportionate and dissuasive sanctions for infringements of existing and yet-to-be established regulations concerning election campaign funding under the various election laws.*
55. The authorities of Croatia state that the new Act on the Financing of Political Parties and Election Campaigns provides for administrative sanctions, applicable in addition to possible criminal sanctions, for violations of the provisions of this act. Article 40 foresees a complete or partial loss of reimbursement of election campaign expenses, or a suspension of reimbursement, in case of violation of the provisions concerning the restrictions applicable to campaign expenses and the publication of financial information. These sanctions are imposed by the State Election Commission and are not subject to appeal, but may be contested by the introduction of an administrative complaint.

56. The authorities also stress that Articles 41 and 42 of the AFPA foresee similar sanctions for violations of the provisions regarding annual financial reports. Political parties, members of parliament and members of representative bodies of local and regional self-government are subject to suspension of their regular annual financing if they fail to submit to the State Audit Office their annual reports, with the requested enclosures, within the prescribed deadlines. They are subject to loss of regular annual financing for a three-month period if they fail to publish their annual financial statements within the stipulated deadline. Decisions on the suspension or loss of public funding are taken, in the case of political parties and members of parliament, by the Committee on the Constitution, Standing Orders and Political System of the Croatian Parliament, upon the proposal of the State Audit Office. In the case of members of representative bodies of local and regional self-government, the sanctions are issued by the relevant body of local or regional self-government.
57. GRECO welcomes the information provided, which indicates that administrative sanctions have been introduced as a more flexible complement to the existing criminal sanctions. It also welcomes that the infringements of election campaign financing regulations under the AFPA are now subject to sanctions that seem effective, proportionate and dissuasive, as required by the recommendation.
58. GRECO concludes that recommendation vi has been implemented satisfactorily.

III. CONCLUSIONS

59. **In view of the above, GRECO concludes that Croatia has implemented satisfactorily seven of the eleven recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation iv has been implemented satisfactorily and recommendations i-iii and v have been partly implemented. With respect to Theme II – Transparency of Party Funding, all recommendations (i-vi) have been implemented satisfactorily.
60. In particular, concerning incriminations, Croatia has adopted substantial amendments to the Criminal Code which, once it comes into force, will meet the requirements of most of GRECO's recommendations. GRECO regrets, however, that minor ambiguities remain in the new Criminal Code as regards some instances in which the advantage is intended for third parties. It urges therefore the Croatian authorities to take determined action to remove them.
61. Insofar as the transparency of political funding is concerned, significant efforts have been carried out to comply with all the recommendations. New legislation is already in place to enhance the transparency of general party funding, including as regards publication of reports, and the provisions contained in various legal instruments have been harmonised. Supervision over the annual financial reports of political parties, independent lists and candidates has been complemented with specific campaign finance monitoring, carried out by the State Audit Office and the State Election Commission respectively, and the roles of both bodies have been clarified. These institutions now appear to have adequate authority, as well as financial and personnel resources to be able to carry out an effective monitoring of campaign finances. Finally, the existing criminal sanctions for violations of the political financing provisions have been complemented with more flexible administrative sanctions.
62. In the light of what has been stated in paragraphs 59 to 61, GRECO commends Croatia for the substantial reforms carried out with regard to both themes under evaluation, and which show that,

already at this stage, Croatia complies with almost two thirds of the recommendations issued in the Third Round Evaluation Report. It encourages Croatia to pursue its efforts in order to implement the pending recommendations within the next 18 months. GRECO invites the Head of the delegation of Croatia to submit additional information regarding the implementation of recommendations i-iii and v (Theme I – Incriminations) by 30 June 2013 at the latest.

63. Finally, GRECO invites the authorities of Croatia to translate this report into the national language and to make the translation public.