

3.3.2 Public procurement

3.3.2.1 Legal framework

The new legal framework for PPL was adopted in 2001, but...

A new Croatian Public Procurement Law (PPL) was adopted on 14 December 2001 and came into effect on 1 January 2002, thereby replacing the previous law, effective since 1997. It represents a first step towards aligning the Croatian legal framework with EC requirements by providing additional transparency, competition and accountability mechanisms.

The PPL of Croatia maintains generally an acceptable international standard, but there are also a number of important improvements to be made after the amendments to the PPL have been enacted. Several incompatibilities with the EC Directives also need to be addressed by the government and considered in future revisions of the PPL.

...it remains incomplete

The PPL anticipates the preparation of a number of supplementing regulations to support the effective implementation and correct application of the PPL. Only two such regulations have so far been adopted by the government, covering small-value procurement procedures, announcements and record-keeping.

Obtaining Value for Money is inhibited by systemic lack of flexibility

The PPL is extremely prescriptive. Its purpose seems to be to limit the discretion of the purchaser and to make completely transparent all of the procedures to be used in procurement in the diverse sectors of the Croatian public and utility sectors. This approach has the advantage of transparency for potential suppliers, and simplicity of implementation (in that only one set of rules needs to be learned). However, it limits the flexibility needed by purchasers to obtain value for money in a volatile commercial climate and confines procurement to the completion of administrative routines. The long-term effect of this approach will probably be poor commercial performance.

3.3.2.2 Institutional framework

The new PPL foresaw the creation of a Public Procurement Office (PPO) within one year from its entry into force. The creation of the PPO has been postponed a number of times but was finally established (through the appointment of a Director) by the outgoing Government in December 2003. The new Government is understood to have decided in favour of retaining the PPO. The Department for Public Procurement (PPD) in the Ministry of Finance is currently, *de facto*, responsible for guiding and monitoring the public procurement system. It is a small department with two units (legal and control) and with a staff of 10. To date, the MoF has not exerted effective supervision over the activities of the various procuring entities, largely

because it has had neither the resources nor the capacity to do so.

Institutional capacity is not yet fully developed

Institutional mechanisms for control and audit are not yet in place, which in the light of the high risk for corruption and fraud adds another dimension to the problematic institutional situation. The long-term absence of an independent complaint review procedure (the Public Procurement Review Commission was established in November 2003 but is still not operational) as well as the lack of proper external audit of public procurement operations therefore constitute serious problems which need to be dealt with urgently by the government. The establishment of the Review Commission will resolve some of the problems, but it will take considerable time before the Commission be fully operational.

3.3.2.3 Reform agenda and capacities

There is no coherent and systematic approach yet in place in the process of reforming the public procurement system beyond the initial steps already taken. A desirable next step would be to formulate a national strategy for the reform process, including a set of clear objectives, identification of priorities, and formulation of an action plan – in short and medium-term perspectives – as well as the allocation of the budget means needed for the reform process. It is also important for the government to realise that a successful reform process relies strongly on the availability of adequate capacity and ability to lead the reform process. This is just as important as recognising the basis and conditions under which co-operation with external partners should be planned and conducted by the government's representatives.

PPL is undermined by the failure to provide the enabling elements relevant to EC Directives

While the new PPL is a step towards aligning the relevant Croatian legal framework more closely with EU requirements, the failure to put in place the necessary enabling elements seriously undermines its effectiveness. Substantial work is necessary to bring the law fully into line with the relevant EC Directives. This will not happen unless the Government decides to address seriously the risks of political and administrative corruption.

3.3.2.4 Assessment

Croatia has implemented a new PPL, largely modelled on the EC Directives, which introduces a number of changes and new procedures of a rather complex nature for the procurement community to consider. The quality of the PPL is generally satisfactory, but as indicated above, a number of deficiencies still need to be addressed by the Government. Unfortunately, the timing of the various measures to reform the procurement system was not optimal. It would have been more logical and correct to introduce the reform by establishing the PPO as a first measure and let the PPO be the driving force in the preparation of the procurement community for an effective PPL, by organising basic training on the application of the PPL for all users as

a start, and by issuing some of the more important supplementing regulations.

The lack of adequate mechanisms for review of complaints and external audit remains a serious problem.

3.3.2.5 Recommendations

1. The Public Procurement Office should be established as an independent agency and given adequate resources to perform its functions
2. The government should take further actions to revise the PPL in order to further align it with the EC Directives.
3. The Review Commission should be established immediately and given the resources needed, enabling it to provide sufficient training and individual capacity development of the staff.
4. Consideration is required on how internal and external audit should be organised to secure the integrity of the procurement processes.
5. The government, in close consultation with all important stakeholders, should create a strategy and detailed action plan for the public procurement reform process with a clear view to the needs and measures to be taken.

3.3.2.6 External assistance

In April 2002, after discussing priorities with the drafters of the PPL, Sigma developed a CARDS draft project fiche for an undertaking to provide technical assistance to the PPO in the establishment of a public procurement system. This project was expected to commence in 2003 and continue for a period of 18 months, but because of the delay in the creation of the PPO this has not been possible.

Sigma conducted an analysis of the compatibility of the PPL with the *acquis* in this area.

No other donors are currently involved in the procurement area in Croatia. A World Bank *Country Procurement Assessment Report* is planned for 2004.

Suggestions for further assistance

1. Support to the development of the operations of the future PPO by provision of training, experience-sharing with PPOs in other countries, and help in the preparation of operational guidelines, calls for tender and contract documentation;
2. Support to the newly established Review Commission and its operations;
3. Support in the preparation and conduct of a comprehensive training programme and information programme directed to purchasers at all levels, but in particular to units at regional and local levels. An information programme should also be designed for the private sector;
4. Support to the introduction of modern techniques for tendering and contracting, such as electronic means and framework agreements.