



## **SIGMA**

### **Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

# **ASSESSMENT**

## **Croatia**

### **2010**

#### **TABLE OF CONTENTS**

DEMOCRACY AND THE RULE OF LAW .....	2
CIVIL SERVICE AND ADMINISTRATIVE LAW .....	5
INTEGRITY .....	8
PUBLIC EXPENDITURE MANAGEMENT AND CONTROL .....	11
PUBLIC PROCUREMENT .....	14
POLICY-MAKING AND CO-ORDINATION .....	20

This document has been produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union, and they do not necessarily reflect the views of the OECD and its member countries or of the beneficiary countries participating in the Sigma Programme

## DEMOCRACY AND THE RULE OF LAW

The Government's actions during the period under review focused on recovering from recession, stabilising government finances and securing EU accession. Despite weak public support, the Government is aiming to complete the technical phase of the negotiations with the EU by the end of 2010. Considering the close prospect of accession, administrative actions must be more and more judged against the level required for being a member (rather than for becoming one).

The Government's reaction to the economic crisis will constrain governance reform. Current public administration reform efforts seem to be only weakly supported and their scope is too limited relative to the challenges.

### ***Democracy***

The conduct of the presidential elections and the handling of the numerous governmental crises confirm that the democratic processes are well embedded in Croatia's political system. Although horizontal governance management systems remain insufficiently robust, a number of actions aimed at strengthening all three branches of government show positive developments. It remains to be seen whether this will translate into an effective transformation of the governance system.

Croatia lags behind other countries of the region in setting up an effective system for access to information. Although a working group has been established to prepare amendments to current laws, the real issue is implementation.

### ***Rule of Law***

The legal framework still suffers from a persistent formalistic and detailed approach, which reduces management effectiveness, increases costs for the administration and for citizens, and creates legal loopholes requiring continuous amendments. This in turn weakens society's respect for the law.

Major reasons for the insufficient quality of the legislation include: deficient law-drafting capacity in ministries and administrative bodies; inadequate consultation with regulated communities; excessive ambitions for the legislative agenda; inadequate attention to implementation issues during drafting; and constrained potential for parliament to scrutinise government proposals adequately.

Respect for the Rule of Law (i.e., a set of principles that require a separation of powers between the judicial, executive and legislative branches of government, compliance with the law by government, individuals and economic operators, the proper functioning of the judiciary and the consistent application of fair procedures by the administration) remains a source of relative concern and needs to be continuously scrutinised.

**Constitution**

No constitutional amendments have been introduced and adopted during the period under review. The amendment of the Constitution to guarantee the existence and independence of the Supreme Audit Office has been put on the agenda of the Parliament but has still not been discussed.

**Parliament**

Parliament continues to play a limited role in controlling the executive, but a few initiatives (including the setting up of corruption-related enquiry commissions) could indicate that some progress has been made in this area. Further attention has been given to the reports of the State Audit Office (SAO), including the one on budget execution. The dispersion of rules on MPs' incompatibilities, through the laws on Election and on Conflict of Interest, is an obstacle to the compliance with, and enforcement of the legislation.

**Government**

The formal quality of legislation seems to be appropriately ensured through the action of the government's Office of Legislation, which also plays a role in the strengthening of law-drafting capacities in ministries and other state administration bodies. However, besides the general weakness of the legal framework, the situation regarding consultations with potentially affected parties during the law-making process and the timely and adequate assessment of the potential impacts (fiscal, economic, social and environmental) of draft laws and regulations submitted to the government is unsatisfactory.

The Ministry of Foreign Affairs and European Integration (MFAEI) manages European Integration (EI). It has two directorates: the Directorate for Support to Croatia's EU Accession Process and the Directorate for Co-ordination and Monitoring of Adaptation to the EU Legal System and Monitoring of Implementation of the Stabilisation and Association Agreement. There is also an Office of the Chief Negotiator in that ministry. These directorates and the Office report to the State Secretary for European Integration and form a rather autonomous structure within MFAEI.

**Public Administration**

Positive developments have taken place in the area of administrative law and the potential for further improvements in the administration is also increasing. Two examples are the establishment of a separate Ministry of Administration and the entry into force of the new Law on General Administrative Procedure, which create better conditions for political visibility and guidance of the public administration reform process. This law could lead to change, provided that it is correctly enforced and monitored.

For the time being, the new ministry's capacity is still being developed, both in terms of human resources, organisation and functioning and as a key player in the overall process. Due to the country's difficult economic situation and the many challenging tasks that need to be undertaken in the short term, this capacity development is a gradual and demanding change.

Croatia has embarked on substantial and important reforms in both public expenditure management (PEM) through the Treasury Strategy, and public internal financial control (PIFC) through the PIFC Strategy. The prospect of EU membership in the coming years clearly has a positive impact on the readiness to implement the necessary changes, although the pace of these changes has slowed down in 2009.

### ***Judiciary***

Changes to the judicial system were also made at the end of 2009, through the Law on the Judicial Academy, amendments to the Law on Courts, the Law on the State Judicial Council, and the new Law on State Prosecution. The new training and examination system for recruiting judges and prosecutors should contribute to increasing professionalism and independence in the judiciary. However, its implementation should be carefully monitored. The new Rules of Procedure for Courts entered into force on 1 January 2010. Among other measures, these Rules provide for the establishment of special departments for criminal cases dealing with corruption and organised crime. The new Law on Administrative Disputes was adopted on 29 January 2010 and will come into force on 1 January 2012. This law is an important step forward in the introduction of an administrative justice system in line with European standards. Whether the required new courts, judges and staff are allocated sufficient resources is a matter of concern.

### ***Anti-corruption Policy***

A number of positive developments and actions in this area should be seen as evidence of a more effective functioning of mechanisms and instruments of political accountability. Croatia has shown that strong political commitment in fighting corruption and promoting integrity can increase the impetus for reforming institutions, legislation and attitudes, in spite of a less favourable economic environment. Implementation and consolidation should now be the priorities, which will require a clear identification of the most relevant actions and a strict allocation of resources.

## CIVIL SERVICE AND ADMINISTRATIVE LAW

### ***Main Developments since the Last Assessment***

Some positive developments have taken place in Croatia's administrative legal framework since the 2009 assessment, and the potential for further improvements in the administration has increased.

Following the government reshuffle, the establishment of a separate Ministry of Administration has created better conditions for political visibility and the guidance of the public administration reform process. For the time being, its capacity is still being developed, in terms of human resources, organisation and functioning, and as a key player in the overall process. Due to the country's difficult economic situation and the many challenging tasks that need to be undertaken in the short term, this capacity development is a gradual and demanding change.

The General Administrative Procedures Act (GAPA) was adopted in March 2009 and has been in force since 1 January 2010. Some training activities have been carried out to support the implementation of this important law. However, a great effort in training and information is still needed in order to take full advantage of the opportunities for change provided by the new GAPA. At the same time, an urgent review of the special procedures established in various laws is required.

A new regulation dealing with office management was adopted by the government in January 2009 and has been in force since January 2010. This regulation aims to adapt the functioning of the state administration to the new possibilities offered by information and communication technologies. However, electronic communication is still limited by special laws that strictly regulate the use of electronic documents and electronic signature.

The Law on Administrative Disputes (LAD) was also adopted by parliament (on 29 January 2010) and will come into force on 1 January 2012. The new law creates conditions for more effective administrative justice, including better control of the legality of administrative acts and contracts and improved protection of citizens' rights. The *vacation legis* must be used to create new administrative courts and to recruit and train new judges and support staff. It will require resources which, in the current economic context, are not easy to mobilise. Therefore, clear political determination will be necessary in setting priorities.

In terms of decentralisation, no progress seems to have been made in the past year. Territorial reform is being discussed but has not yet materialised in any way.

There have been no special developments in the area of legislation on financial management – the main reform had already been carried out in 2008. The Government Office for Internal Audit was reorganised in May 2009.

Regarding public procurement, several pieces of legislation were adopted in 2009 to improve the capacity and effectiveness of the institutions in charge of this area and to increase the transparency of procurement procedures, including appeals.<sup>1</sup>

In the area of civil service reform, the draft law on civil service salaries is still pending. To address such an issue in the current circumstances will be highly demanding, but the rationalisation of the salary system is necessary. Meanwhile, salaries were actually lowered in 2009. A law on salaries in local and regional self-government was adopted by parliament in February 2010. This law, which was a result of the current economic crisis rather than an attempt to create a sound salary system, aims to align salaries in local and regional self-governments with those of the state administration.

Some interesting initiatives are being developed so as to provide a more solid basis for coherent policies regarding public administration reform in the near future. The review of the State Administration Reform Strategy (SARS) was launched, the Human Resources Development Strategy (HRDS) and its Action Plan were adopted, and the National Strategic Reference Framework (NSRF) includes a chapter on administrative capacity.

### ***Main Characteristics***

In spite of the positive signs regarding the will for reform, the situation of the public administration remains unchanged from that of previous assessments.

Politicisation is still problematic and contributes to reducing the attractiveness of the civil service and to perpetuating public distrust of public services. The organisation of the administration lacks coherence and a set of clear rules establishing models, internal organisation, managerial responsibilities, accountability, etc. is missing. Public agencies have been created without a general legal framework and have therefore followed various patterns, on a case-by-case basis.

The capacity of civil servants is insufficient to fulfil their mandate and their behaviour is, in general, still old-fashioned and takes a very bureaucratic approach to problems and to the public. It is to be expected that this situation will worsen as the responsibilities of civil servants increase in the short/medium term. Further investment in training – visibility, resources, facilities and training delivery – is needed in light of its important role in improving skills and changing attitudes.

Transparency in the functioning and decision-making of the public administration has not improved, and further action is needed.

### ***Reform Capacity***

Improvements have been noted in the administrative legal framework and in the political capacity for leading reforms in the public administration. However, these improvements relate more to a potential for change than to actual transformation. Change requires time and continuous efforts. Greater commitment to reform is also necessary.

There is an important gap between the main reformers in the central administration and those in administrative bodies. There is also a clear gap between top managers and the lower levels within administrative bodies. These gaps are an obstacle to accelerating change and could even demotivate reformers. Therefore, incentives, better communication and effective participation are necessary.

---

<sup>1</sup> For further information on developments in financial management and public procurement, see the assessments of these areas.

The current economic crisis is having an important impact on the attractiveness of the civil service. It is now more difficult to recruit and retain the skilled civil servants needed to support the implementation of public policies. Therefore, improved selection, better defined priorities, further co-ordination and co-operation, and better allocation of resources will be necessary.

The Ministry of Administration is attempting to increase its capacity in order to play its role in an effective manner. However, for the time being, its current capacity is still insufficient to cope with the many urgent and complex activities. Enhanced co-operation with the Ministry of Finance will reinforce effectiveness in promoting, implementing and continuing public administration reform. The involvement of civil society in the reform process is not visible and must be encouraged.

# INTEGRITY

## ***Main Developments since the Last Assessment***

Since SIGMA's last assessment of Croatia's public integrity system (May 2008), parliament has passed a number of laws and other legal documents dealing with the fight against corruption.

The new Law on the Office for the Prevention of Corruption and Organised Crime (USKOK) was adopted (June 2009), as were the new Law on the General Attorney's Office, the Law on Police Tasks and Powers, and amendments to the Criminal Procedure Act.

The Law on Preventing Conflict of Interest in Performing Public Office was amended in May 2008 and March 2009. This law as amended provides a new list of public officials falling under the scope of the law (about 1,850), regulates their duties in a more precise and wider manner, creates an independent commission for the implementation of the law, and regulates sanctions in a more effective manner. According to the 2009 annual report submitted to parliament, out of 317 decisions, 296 cases resulted in fines exacted from local officials, directly elected municipal mayors and county governors who had not submitted asset declarations. The commission functions in a very transparent manner, which includes access to all decisions on its website. The commission has identified several legal shortcomings, and new amendments to the law are foreseen.

Parliament also established two inquiry commissions related to the procurement of army vehicles for the Ministry of Defence (February 2009) and to the contract between the former Croatian National Petroleum Industry (INA) and the Hungarian oil and gas group MOL (March 2010). The results of the latter inquiry served as a trigger and provided evidence for the criminal investigation and trial of the former Defence Minister and Assistant Minister.

The new Law on General Administrative Procedure (LGAP), which entered into force on 1 January 2010, has reinforced transparency in the functioning of the public administration, enhanced the protection of citizens' rights, and contributed to the de-politicisation of decision-making, as according to this law acts in administrative cases have to be issued by civil servants and not by ministers and other officials. The new Law on Administrative Disputes will enter into force in January 2012 and will further enhance the positive impact of the LGAP.

A Law on Regional Development aims to introduce more transparency in relations between the state and local and regional units in the co-financing of infrastructural and other large projects. The absence of an effective legal instrument (such as a development contract) that would enable better public control is a shortcoming. Therefore, arbitrariness, lack of transparency and corruption could easily develop in the government's decision-making, and further attention to this area is therefore required.

The National Anti-Fraud Strategy for the Protection of the European Union's Financial Interests and its Action Plan for the period 2010-2012 were adopted.

Substantive changes to the judicial system were also made at the end of 2009, through the Law on the Judicial Academy, amendments to the Law on Courts, the Law on the State Judicial

Council, and the new Law on State Prosecution. The new training and examination system for recruiting judges and prosecutors should contribute to increasing professionalism and independence in the judiciary. However, its implementation should be carefully monitored. The new Rules of Procedure for Courts entered into force on 1 January 2010. Among other measures, these Rules provide for the establishment of special departments for criminal cases dealing with corruption and organised crime.

The National Office for the Prevention of Corruption and Organised Crime within the Police (PNUSKOK), established in 2008, was reinforced by the establishment of four branch offices in September 2009.

The new Criminal Procedure Act, passed in 2008, entered into force on 1 January 2009. This law aims to make criminal procedures quicker and more efficient.

Substantive changes were introduced into the public procurement system in 2008 and 2009 in order to strengthen its transparency and effectiveness.

The Action Plan of the Strategy for Fighting Corruption, revised in March 2010, indicated that 80% of the measures of the initial plan had been implemented. Parliament has established two bodies for co-ordination, monitoring and evaluation in this area: the Government Commission for Monitoring the Implementation of Anti-corruption Measures and the National Council for Monitoring the Fight against Corruption.

The positive developments in this area are evidence of a more effective functioning of the mechanisms and instruments of political accountability. External pressure during the EU accession negotiations has also played a relevant role.

### ***Main Characteristics***

Remarkable efforts are being made to improve Croatia's integrity system. The new Prime Minister has introduced more transparency into the functioning of the government and identified the fight against corruption as one of the government's main priorities. The new President and parliament are also supporting this fresh impetus. This commitment can be seen in some public cases. The legal framework is now more complete and consistent. Internal and external monitoring has increased and has led to the identification of the remaining gaps or problems. On the implementation side, progress is not as visible. The economic crisis is delaying some expected outputs (e.g. implementation of the Law on Administrative Inspection, development of the Ombudsman's capacities, and increase of salaries in the civil service).

Electoral campaigns continue to be an area of concern. Rules on the financing of political campaigns and political parties need to be reviewed in order to increase transparency and reinforce control.

The role and effectiveness of the Ombudsman are increasing. However, staffing of this office is still insufficient.

Ethics in the administration are also improving, mainly due to the new efforts being made in implementing the Ethical Code of Civil Service. Some institutions, such as the police and the tax administration, have adopted their own codes of ethics. However, the pace of progress has been generally slow. There is a widespread and strong public belief that state subsidies (agriculture, economy, tourism, etc.) are highly exposed to corruption.

In spite of the new LGAP, the administration is still characterised by opacity. Too many special and unjustified procedures are in place, and the persisting politicisation of the civil service raises concerns about the capacity to resist undue pressures.

In the absence of a law on agencies, this area remains opaque, poorly controlled and open to recurrent suspicion of nepotism.

### ***Reform Capacity***

Croatia has shown that a strong political commitment to fighting corruption and promoting integrity can strengthen the dynamic for reforming institutions, legislation and attitudes, in spite of a less than favourable economic situation. Implementation and consolidation should now be the priorities, and they will require a clear identification of the most relevant actions and a strict allocation of resources.

The public administration's capacity for reform in this area is increasing, but it is still weak in terms of financial and human (in terms of both quantity and quality) resources. Therefore, support must be channelled into strategic sectors, which include those where the risk of corruption is high, such as state subsidies, EU funds, taxes, customs, police and the courts. Support to ongoing reforms in the judiciary is another key issue.

# PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

## *Main Developments Since Last Assessment*

The Budget Law 2008 came into force on 1 January 2009 and is primarily designed to facilitate the implementation of the Strategy for the Development and Modernisation of the State Treasury 2007-11 (published in October 2007). The 2008 Budget Law puts greater emphasis on longer term budgeting, the introduction of performance information and on programme budgeting.

While 2008 was a period of active changes, which saw the start of the implementation of the Treasury Reform Strategy, changes in the **public expenditure management (PEM)** system in 2009 were modest. There are signals that the pace of reform is slowing. The preparation of secondary legislation foreseen in the Budget Act (adopted in 2008) has been delayed and some of the regulations are still at different stages of preparation. For example, progress appears to have slowed considerably in improving the management of investment projects through the development of a new decree and the issue of a rule book.

The Ministry of Finance has continued to develop the new strategic planning framework. In 2009, when the budget users prepared their three year strategies for the first time, the focus was primarily on the strategic framework (vision, mission, strategic objectives). In 2010, the Ministry of Finance has instructed the direct budget users to define more specific goals and the activities relating to the goals. The ultimate aim is to create a basic link between the strategic plan and the budget by ensuring that the activities from strategic plans are directly linked with the activities in the budget. In view of other countries' experiences in developing linkages between strategic planning and budgeting, the Croatian authorities should be aware that this will (have to) be a process spanning several years.

The main development in **public internal financial control (PIFC)** in 2009 was the formulation and launch of a revised PIFC Strategy "Public Internal Financial Control System Development Strategy for the Period 2009-2011", which was accompanied by a detailed 'Action Plan'. The revised PIFC strategy represents a considerable step forward in developing the awareness of managers that financial management should be seen as a tool to improve efficiency and effectiveness in the use of public resources. The Financial Management Manual is currently being rewritten with the assistance of a twinning light project. The launch of the PIFC strategy was accompanied by a series of 'promotional' seminars around the country. The Central Harmonisation Unit (CHU) was reorganised at the beginning of 2009 and a new head appointed. Croatia has been accredited for all components of the IPA programme. An audit on its readiness for EDIS has to be finalised before September 2010. The Agency for the Audit of the Implementation System for the European Union (EU) Programmes (established 20 June 2008) has further developed its role and has started auditing pre-accession funds. A National Anti-fraud Strategy for protecting European Union's financial interest was drafted in 2009 and was adopted on 14 January 2010.

There were no specific developments in the **external audit** institution (the State Audit Office - SAO) in 2009. The amendment of the Constitution to ensure the SAO's existence and independence has been put on the Parliament's agenda but has still not been discussed. The Auditor General's

eight-year term ended in April 2010. At the time of writing (May 2010), Parliament had not yet decided whether to renew it.

### ***Main Characteristics***

The key evidence of good fiscal policy has been the fiscal adjustment process. Continuing from 2009, when altogether three supplementary budgets were adopted, the government proposed April 2010 a programme for economic recovery which also includes measures that improve the sustainability of public finances in the longer term.

Although some progress has been made in the past year, the Croatian PEM system does not yet comply with good international practice. For instance, the number of direct budget users (45) is still relatively high to ensure meaningful ministerial ownership and good quality of strategic planning. Although the number of line-items in the budget has been reduced from around 7000 to less than 5000 the documentation is still too detailed and difficult to understand. Despite an existing rule that only 5% of the budget may be reallocated, the government is still given almost unlimited (except for the co-financing of EU funds) authority in the Budget Execution Act for 2010 Budget for the reallocation of funds during the budget year. Further alignment of government financial statistics with the ESA 95 standard has still not been dealt with. The national parliament has only one month to adopt the budget, and its tools for scrutinising the annual final accounts are limited. The Treasury is still carrying out relatively detailed controls. The Treasury Single Account (TSA) does not cover all payments of third level budget users and the technical solution for integrating foreign currency transactions in the TSA has not yet been prepared.

The implementation of PIFC is supported by a coherent and comprehensive legislative framework. So far the interpretation of the PIFC Law has been on 'control' in the narrow sense of 'checking and authorisation'. The revised PIFC Strategy puts more emphasis on the implementation of the PIFC arrangements to financial management as a support to managers in helping them deliver services efficiently and effectively and set the appropriate tone for the further development of financial management. A weakness in the present organisational arrangements is the entrusting of responsibility on the most senior official. Too much power is held by one official. Governance arrangements within and between public entities are weak or absent. A number of 'risk management' initiatives have been taken, but no overarching risk management strategy seems to exist at the moment.

A internal audit service functioning independently is in place in Croatia. Most of the institutions required to establish internal audit units have done so, although the majority is – sometimes considerably – understaffed. Although there has been an increase in internal audit activity, the focus still seems to remain on compliance. The Budget Supervision Department of the Ministry of Finance still functions as the ex-post control institution, although it is reviewing its future position and role iafter the implementation of the Treasury and the PIFC strategies.

The **external audit** institution (the SAO) has a strong reputation as Croatia's independent supreme audit institution. In 2009, the SAO took steps to strengthen the impact of its work. In May 2010, it will for the first time report to the National Assembly on the budget execution before the government does so (June). Since September 2009 it applies the system-based approach in the financial audits in a more structured manner. And in order to prepare itself for its future task of auditing the management of EU structural and cohesion funds it has arranged traineeships with the European Court of Audit for four of its auditors. However, the SAO has not yet taken steps to seek alternative solutions to deal with its over-heavy mandatory audit tasks and to develop options for more performance audits in the near future.

### ***Reform Capacity***

Croatia has embarked on substantial and important reforms in **both PEM** through the Treasury Strategy and **PIFC** through the PIFC Strategy. The prospect of joining the EU in the coming years clearly has a positive impact on the readiness to implement the necessary changes, although the pace of these changes has slowed in 2009. Still a lot of work remains to be done. Both strategies require a significant change in the approach to the management of public services and the development of new information systems. Equally, both will require a complementary development of devolved management: a minister or mayor cannot be responsible for everything. The reform will essentially call for a cultural change within management (at both the political and official levels) and not just a technical one.

The State Treasury and the CHU are both being supported through technical assistance programmes to implement the Treasury and the PIFC Strategies. However, they (and especially the Treasury project) focus mainly on the technical PEM issues. The finance function within public organisations should be strengthened, and considerable effort will be required to educate managers as well as finance directors. It seems that the capacity for the reforms is present in the Ministry of Finance, although the PIFC Action Plan imposes significant demands upon the CHU. In particular, the development of a finance function in the line ministries will need specific technical assistance. Moreover, the sequence of activities of both reforms and their interrelations will require specific attention or even revision.

The **external audit** institution (SAO) should further develop its capacity to think strategically and develop a vision on how it should develop and formulate near-term priorities. The SAO should certainly continue to modernise audit practice, deepen the financial audit and abandon the identification of individual irregularities in favour of assessing the functioning of internal control systems. External views on the SAO's vision and on alternatives it might have for further developing in as a well-respected, professional and efficient institution could certainly have a positive effect on its decision making process.

# PUBLIC PROCUREMENT

## ***Main Developments Since Last Assessment***

For Croatia's public procurement system, 2009 was a year of consolidation and gap filling after the significant changes of 2008, which included the entry into force of a new Public Procurement Act (PPA), a Concessions Act (CA), a PPP Act (PPPA) and a new institutional set-up. During 2009, this process was complemented with:

1. Regulation on the list of entities bound by the Public Procurement Act (OG 83/09);
2. Regulation on the implementation of control of the Public Procurement Act enforcement through the activities of prevention and instruction (OG 97/09);
3. Regulation on the format, methods and conditions of training in the public procurement system (OG 43/09);
4. Regulation on amendments to the Regulation on the methodology for drawing up and handling tender documents and tenders (OG 04/09);
5. Regulation on amendments to the Regulation on public procurement notices and records (OG 04/09);
6. Regulation on amendments to the Regulation on the content and the method of forwarding public procurement reports (OG 04/09);

Additionally, the first quarter of 2010 saw the adoption of the Regulation on public procurement for defence and security purposes and of the Ordinance on public procurement for the purposes of diplomatic missions and consular offices of the Republic of Croatia abroad.

The Regulation establishing the Central procurement office of the government of the Republic of Croatia was also adopted (OG 138/09) and its Director appointed in April 2010.

As a follow up to the adoption of the CA, a Roadmap for harmonisation of special (sectoral) regulations governing concessions with the Concessions Act was developed. As of April 2010, 17 out of 18 sectoral acts have been harmonised.

Regarding the PPPA, the following subordinate regulations were adopted on 7 May 2009:

- Regulation on content of PPP contracts;
- Regulation on the criteria for assessment and approval of the PPP projects;
- Regulation on supervision of implementation of PPP projects;
- Regulation on training of participants in procedures for the preparation and implementation of PPP projects.

In the review area, the new Act on the State Commission for the Supervision of Public Procurement Procedure (PPRA) was adopted (OG 21/2010) on 5 February 2010 and came into force on 23 February.

### ***Main Characteristics***

The PPA complies fully and is harmonised with the EC Directives (this applies also to EC Directive 2007/66). Its implementation has been efficiently coordinated and supported by the Public Procurement Directorate (PPD) within the Ministry of Economy through a range of activities, including training, guidelines and daily assistance. It is clear that knowledge of public procurement procedures has permeated to procurement officers, both in line ministries and in small contracting authorities (including municipalities). At the same time, more needs to be done to build understanding and capacity. This includes guidance to explain these new concepts and practices, to allow the system to operate more effectively.

The PPD remains a leading and strong policy making and monitoring institution, although recent staff changes and transfers could potentially lead to a weakening of that role. Additional efforts should be made to retain both the competence and system leadership.

The somewhat formalistic approach that continues to govern the management of procurement processes still needs to be eliminated. Increased capacity-building, not only on compliance issues but also on the more general objectives of procurement rules and the operation of procurement markets in a market economy, would also be welcome. The further guidance needed should also take into account the reality of procurement markets and avoid mechanistic solutions, which reduce procurement to a clerical function.

The elaboration of additional common training materials and a programme for training public procurement officers will be important elements in tackling this problem.

Mainly because of the financial crisis, the PPP system has not led to the conclusion of any PPP projects, and a certain risk arising from the fact that three acts cover similar situations (where the public contract or concession nature is hard to determine) remains. This uncertainty will have to be carefully addressed by the policy-making institutions in charge.

Although the independent DKOM (State Commission for the Supervision of Public Procurement) has, for a long period, been the solid cornerstone of the Croatian procurement system, recently, the sheer number of appeals lodged has placed strains on the Commission's delivery of judgments. Both financial and personnel resources will have to be allocated to the DKOM to allow it to continue to work effectively. Rules on filling fees should also be reviewed.

### ***Reform Capacity***

Croatia's public procurement system has reached a high level of functionality and compatibility with the EU Member States' procurement system. Extensive resources have been invested in the elaboration of a legal framework transposing the EC Directives. The PPA, CA, PPPA, PPRA has also been supplemented by the issuance of secondary legislation and the preparation of operational tools in the form of guidelines and website information. A number of training activities have been conducted to support capacity-building at operational level.

However, a challenge for the future will be to overcome the formalistic approach of contracting authorities towards public purchasing, putting more stress on obtaining value-for-money than on correctly executing a law.

PROCUREMENT/CONCESSIONS STATISTICS for 2009<sup>2</sup>

<b>A. Number of contracting entities<sup>3</sup></b>		
Central government	85	
Regional and local authorities	450	
Other (bodies governed by public law)	972	
Utilities	147	
Total number of contracting entities	1654	
<b>B1. Awarded<sup>4</sup> public contracts/Contracting entities</b>	<b>Total (estimated) value (Mio EURO)</b>	<b>Total number<sup>5</sup></b>
Central government	471.0	2465
Regional and local authorities	825.1	5131
Other (bodies governed by public law)	3,346,0	15729
Utilities	823.6	5760
Total public contracts awarded	5,465.5	29085
<b>B2. Awarded concessions/Contracting entities</b>	80.1	63
Central Government	21,4	233
Regional and local authorities	/	4
Other (bodies governed by public law)	/	/
Utilities		300
Total concessions awarded	80,1	63
<b>C1. Awarded public contracts above the EU thresholds<sup>6</sup></b>		
Works <sup>7</sup>	2,110.1	67
Services <sup>8</sup>	908.2	624
Goods <sup>9</sup>	776.0	647
Mixed contracts		
Total public contracts above the EU thresholds	3,794.3	1338
<b>C2. Awarded concessions above the EU thresholds</b>	/	/
Works <sup>10</sup>	/	155
Services <sup>11</sup>	/	145
Other	n.a.	300
Total concessions above the EU thresholds	/	/
<b>D. Procurement methods used<sup>12</sup> (above the national thresholds<sup>13</sup>)</b>		
Open procedure	4,088.8	6165
Restricted procedure	7.0	28
Negotiated procedure with prior publication of a notice	115.4	172
Negotiated procedure without prior publication of a notice <sup>14</sup>	839.3	1226

<sup>2</sup> Statistics should cover contracts awarded in the period 1 January 2009 – 31 December 2009

<sup>3</sup> As for 31 December 2009

<sup>4</sup> Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

<sup>5</sup> Please indicate whether the data include the low value contracts

<sup>6</sup> Please indicate whether the data include contracts awarded by the utilities sector

<sup>7</sup> above 5.150.000€

<sup>8</sup> above 137.000€ for public institutions, 412.000€ for utilities

<sup>9</sup> above 137.000€ for public institutions, 412.000€ for utilities

<sup>10</sup> above 5.150.000€

<sup>11</sup> above 137.000€

<sup>12</sup> Both for public contracts and concessions

<sup>13</sup> Including contracts above EU thresholds

Other procedures (competitive dialogue, etc)	57.0	319
<b>D1. Low- value procurement (estimated)</b>	358.0	21175
<b>E. Participation rate (average number of submitted tenders)</b>		
Works	3.27	
Services	2.25	
Goods	3.68	

**F.** A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.) - operation, construction and maintenance of motorways
2. Hrvatske ceste d.o.o. (Croatian Roads, Ltd.) - operation, construction and maintenance of state roads
3. Ministry of Regional Development, Forestry and Water Management
4. City of Zagreb
5. Autocesta Rijeka – Zagreb d.d. (Rijeka-Zagreb Motorway) - construction and operation of motorway
6. HEP-Operator distribucijskog sustava d.o.o. (HEP-Distribution System Operator, Ltd.) - distribution system operator responsible for delivery of electricity to customers
7. Zagrebački holding d.o.o. (Zagreb Holding, Ltd.) – Ltd. In 100% ownership of the City of Zagreb; utility, traffic and market activities
8. Hrvatske šume d.o.o. (Croatian Forests, Ltd.) - public enterprise for forest and woodland management in Croatia
9. INA Industrija nafte d.d., - national oil company; exploration and production of oil and gas, processing of oil and production of oil derivatives, retail sales of oil derivatives and other products
10. Plinacro d.o.o. (Ltd.) – gas transmission system operator

**G.** A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

Regular maintenance and protection of state roads  
Hrvatske ceste d.o.o. (Croatian Roads, Ltd.)  
Županijske ceste Zagrebačke županije d.o.o. (Roads of Zagreb County, Ltd.)  
1,607,118,829.64 HRK (219,348,795.12 EUR)  
31/08/2009

---

<sup>14</sup> Including single-source procurement

Construction of part of motorway Zagreb-Split-Dubrovnik  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)  
Viadukt d.d., Strabag AG, Skladgradnja-grup d.o.o.,  
1,232,748,986.91 HRK (167,476,776.30 EUR)  
11/05/2009

Procurement of long-term credit  
Autocesta Rijeka – Zagreb d.d. (Rijeka-Zagreb Motorway)  
JP Morgan Chase London Branch  
974,542,995.00 HRK (132,953,167.49 EUR)  
09/09/2009

Bridge construction on Drava river  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)  
Viadukt d.d., Osijek:Koteks d.d., Konstruktor-inženjering d.d., Skladgradnja-grup d.o.o.,  
Hidroelektra niskogradnja d.d.  
949,386,067.65 HRK (129,177,153.36 EUR)  
15/05/2009

Construction of part of motorway Zagreb-Split-Dubrovnik-Doli  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)  
Konstruktor-inženjering d.d, Hidroelektra niskogradnja d.d., Osijek-Koteks d.d.  
641,173,720.05 HRK (87,107,520.53 EUR)  
11/05/2009

Construction of part of motorway Zagreb-Split-Dubrovnik  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)  
Hidroelektra niskogradnja d.d., Konstruktor inženjering d.d., osije-Koteks d.d., Zagorje-Tehnobeton  
d.d.,  
620,454,596.19 HRK (84,292,696.01 EUR)  
11/05/2009

Road construction on “Podravski ipilon”  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)  
Hidroelektra niskogradnja d.d., Konstruktor-inženjering d.d., Osijek.Koteks d.d.  
599,210,071.64 HRK (80,697,552.31 EUR)  
29/04/2009

Construction of facilities, crossings and passages on “Podravski ispilon”  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)  
Strabag AG, Viadukt d.d., Skladgradnja – grup d.o.o.  
571,845,002.90 HRK (77,012,210.27 EUR)  
29/04/2009

Regular maintenance of public roads 2009-2012  
City of Zagreb  
Zagrebački holding d.o.o. (Zagreb Holding, Ltd.) – branch Zagreb Roads  
545,881,131.64 HRK (73,117,253.59 EUR)  
25/03/2009

Construction of part of motorway Zagreb – Sisak  
Hrvatske autoceste d.o.o. (Croatian Motorways, Ltd.)

Konstruktor-inženjering d.d., Hidroelektra niskogradnja d.d., Osijek-Koteks d.d.,  
529,184,843.74 HRK (71,893,120.69 EUR)  
09/05/2009

## POLICY-MAKING AND CO-ORDINATION

### *Main Developments since the Last Assessment*

Overall, the system has hardly changed over the past two years.

The Civil Service Training Centre of the Ministry of Administration is undertaking training to improve policy development and legal drafting skills in line ministries. However, these training courses are limited in frequency and in number. The Legislation Office is involved in the training and is preparing a law-drafting manual for use in ministries.

The Ministry of Finance, in association with the Central State Office for Development Strategy and Co-ordination of EU Funds (CODEF), initiated in 2009 a ministry-level strategic planning system. At the start of each year, each line ministry is to prepare a three-year strategic plan. These plans are then compiled to form a government-wide three-year strategic plan that is intended to influence the annual budget process. This system involves primarily a bottom-up process, but in 2010 the Ministry of Finance and CODEF organised joint workshops with line ministries to review progress achieved in comparison with 2009 objectives and to link line ministry plans with wider strategic and budgetary objectives.

The Ministry of Foreign Affairs and European Integration (MFAEI), in addition to the Office of the Chief Negotiator, now has two directorates for EI: (i) Directorate for Support to Croatia's EU Accession Process, and (ii) Directorate for Co-ordination and Monitoring of Adaptation to the EU Legal System and Monitoring of Implementation of the Stabilisation and Association Agreement. These directorates and the Office report to the State Secretary for European integration and form a rather autonomous structure within MFAEI.

In 2009 the government abolished the recently created Regulatory Impact Assessment System Co-ordination Office for financial reasons. It subsequently reallocated responsibility for all four types of impact assessment (fiscal, economic, social and environmental) to the Legislation Office, which appears to be taking this responsibility seriously and has prepared a plan for the future operation of the system. A modest number of extra staff has been added to the Legislative Office, which has had to rely principally on the four main line ministries (Finance; Economy, Labour and Entrepreneurship; Health and Social Welfare; and Environmental Protection, Physical Planning and Construction), each of which must make four staff members available to work on impact assessment.

In November 2009 the government adopted a code of practice on consultation, drawing on international good practice. The provisions of the code include advance notice of consultation exercises, publication of draft laws for consultation with a minimum period of 15 days for the public to comment, and feedback to the public from ministries after consultation. The adoption of this code is a welcome development.

### *Main Characteristics*

On the positive side, in general the legal framework for the policy system is adequate. A good sequential system is in place for funnelling items and for conflict-resolution in preparation for

sessions of the government. A good system within the General Secretariat of the Government ensures logistical support to sessions of the working bodies and of the government.

The Strategic Development Framework for 2006-2013 (shortly to be "refreshed") now overarches three interlinked strategic planning systems: one budgetary system based on the Pre-Accession Economic Programme; one EI-related system centred on the Annual Plan for the National Programme for Accession; and one system based on the new line ministry strategies. Like many other governments in the region, the Croatian Government has trouble in ensuring consistency between its various strategic systems.

The centre of government is fragmented, but working procedures and the existence of expert task forces, co-ordination committees and an inner cabinet somewhat compensate for this fragmentation. Fiscal Impact Assessment arrangements are operational and are gradually improving. An effective structure is in place to manage and co-ordinate European integration activities. Procedures for ensuring transparency and communication with the public are adequate. Consultation is being strengthened.

On the negative side, despite improvements in recent years, the quality of policy development and law-drafting in ministries remains variable and overall is poor.

The mechanism to plan and monitor work that is not related to European integration, envisaged in the 2008 Strategy for the Reform of State Administration, has not been introduced.

As successive Sigma assessments have pointed out, the centre of government remains weak and fragmented. The General Secretariat of the Government does not have adequate legal competence or capacities to co-ordinate policy, plan the work of the government, monitor implementation of decisions, or provide policy and strategic support to the Prime Minister and to the government.

### ***Reform Capacity***

Line ministries' capacities for policy development and law-drafting remain variable and are generally weak. The capacity of the Civil Service Training Centre to provide remedial training is limited, partly because it provides many IT and language courses that might more appropriately be provided by the private sector. The Legislation Office is playing a helpful role in training and is developing a law-drafting manual.

In terms of central co-ordination, EI capacities in MFAEI remain strong. The Ministry of Finance is taking an increasingly active role in strategic planning. CODEF has a small core of strategic planning expertise. However, the restrictive remit of the General Secretariat of the Government and the general weakness of the centre of government constitute a major capacity gap.

Capacities are also attenuated by the fragmentation of responsibilities. The institutional and physical isolation of CODEF from other co-ordination institutions makes little sense. Similarly, the viability of the new impact assessment arrangements may be endangered by the fragmentation of responsibility between four ministries co-ordinated by the Legislation Office. These various weaknesses may explain why important undertakings in the 2008 Strategy for the Reform of State Administration, such as the introduction of a government work planning and monitoring system, have not been activated.