



**SIGMA**

**Support for Improvement in Governance and Management**

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**CROATIA**

**DEMOCRACY AND THE RULE OF LAW**

**ASSESSMENT MAY 2009**

## **Democracy and the Rule of Law**

The economic situation and consequent fiscal difficulties will have a negative impact on the timing and feasibility of PAR actions. The authorities may rely more heavily on donor funds to pursue PAR activities, thus making donor co-ordination even more necessary.

Considering the near prospect of accession, Croatian administration must be judged against the level required for being a member (rather than becoming one). In that perspective, the horizontal governance management systems are insufficiently robust and their weakness permeates the whole governance system. It is worrying to note that the Croatian authorities show a weak commitment to the sustainability of the reformed institutions and that they are little concerned with the internalisation of the rationale of the reforms. This raises the question of the real preparedness of the country for EU membership, especially because implementation does not always follow the provisional closing of horizontal negotiation chapters.

The legal framework suffers from the persistent legalistic and detailed approach, which reduces management effectiveness, increases costs for the administration and for citizens, and creates legal loopholes requiring continuous amendments, which generates a socially weakened respect of the law. It is questionable whether time pressures and ticking boxes are helpful devices, because the cultural context can only be changed by developing long-term processes and through investment in education and training.

## **Constitution**

No constitutional amendments have been introduced and adopted during the period under review. However, the government is preparing a new “package” of constitutional amendments, one of which should anchor the State Audit Office in the Constitution.

## **Parliament**

Parliament continues to play a very modest role in control over the executive, but there has been progress in the attention given to the reports of the State Audit Office (SAO). 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 is unsatisfactory from the standpoint of 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. The methodology and practice of regulatory impact assessment (RIA) require further improvement. Despite the fact that several public statements have demonstrated political commitment to fight corruption, there are examples that contradict this political will. Coherent and consistent enforcement measures are vital.

## **Public Administration**

The adoption by parliament in March 2009 of a new General Administrative Procedures Act (GAPA) is a relevant step in the development of the Croatian legal administrative framework. This law, which will enter into force on 1 January 2010, incorporates many of the proposals inspired by EU technical assistance, but it is not daring enough in breaking with old traditions. The law has some potential for introducing change, provided that it is correctly enforced and monitored. It remains to be seen if the authorities can mobilise the necessary resources to meet this challenge.

The PAR strategy is too ambitious, lacks prioritisation and is too narrow in scope as it does not cover local governments and regions. The objectives of the strategy seem too generic and the established indicators are mainly qualitative. It is also incoherent because the interaction of this strategy with other relevant reforms is not clear, which is liable to have negative impacts on the state administration reform. This is the case, for instance, of the budget reform, which is not only important in providing resources but also in requiring and increasing efficiency. The potential of the budget reform, and therefore of the new approach to public expenditure management, to significantly impact on other areas is unfortunately ignored by the strategy. Monitoring of the implementation of the PAR strategy is carried out by a special council (National Council for the Evaluation of State Administration Modernisation) comprised of representatives of parliament, civil society, trade unions, state administration bodies and legal experts. The Council has already held its first meeting. However, the effectiveness of this monitoring mechanism has yet to be demonstrated.

The Croatian authorities have implemented many of the planned changes in the public finance management system since May 2008. The key change during the past year was the adoption of the new (organic) Budget Act, which provides for a multi-annual budgetary framework and better quality expenditure management, but many of the new procedures still have to be tested in practice. The strengthening of the PIFC system is urgent, but it is not clear how far public servants' managerial environment, culture and skills are up to the challenges required by the new public finance system.

While the institution of the (general) People's Ombudsman seems to be fulfilling its constitutional and legal role in an adequate manner, the assignment of new tasks and responsibilities to this Office may have a negative impact on its performance, due to limited resources. The problem of the multiplicity of ombudsmen institutions persists.

Croatia has signed, but not yet ratified, the ReSPA international agreement.

## Judiciary

*Judiciary:* To make the judicial system more efficient, modern and independent, key improvements will be needed to the legal framework, court infrastructure and computerisation, human resources skills and expertise (judges and judicial clerks). The appointment by the Minister of Justice of presidents of courts of first instance and of the Administrative Court brings the independence of the judiciary into question. More empowerment for the National Judicial Council to decide on this matter would be welcome. The current institutional capacity of the judiciary to promote integrity and fight corruption is limited.

*Administrative Justice:* Although the (sole) existing Administrative Court has now strengthened its capacity to deal with the judicial review of administrative acts, it is time for a further development of the system of administrative justice, with the creation of other administrative courts (at regional level) and the expansion of the courts' mandate towards full jurisdiction. Work on the final development, drafting and adoption of a new Law on Administrative Disputes should now be speeded up so that the new law comes into force not much later than the new General Administrative Procedures Act (GAPA). Recruitment and specialised training of judges, who may in the future join the administrative court system, should be started soon so that a sufficient number of judges with the necessary knowledge and preparation are ready to integrate the new regional courts once they are established.

## Anti-corruption Policy

Despite some improvements, the previous National Programme for Fighting Corruption did not produce the intended results and much is now expected of the strategy.

Some of the bodies attached to the Ministry of Finance (especially Financial Police, the Customs Directorate and the Tax Directorate), which may contribute to the fight against corruption, should co-operate and co-ordinate better to increase their effectiveness in their anti-corruption roles. The Office for the Prevention of Corruption and Organised Crime (UNKOK) has both a preventive and enforcement role and has been gradually strengthening its operational capacity and resources. It is to

be noted that international experience shows that in governance environments where checks and balances are defective, anti-corruption agencies often lack credibility, run the risk of being captured by vested interests, and are generally ineffective.

The establishment of the Conflict-of-Interest Commission seems to be more the result of pressure from the EU than the result of an internal desire to prevent corruption and improve governance and the business climate. This is supported by the fact that the commission has weak powers, limited resources, is too dependent on parliament, and has weak enforcement capacity of its decisions. Thus, although on paper conflict-of-interest regulations do exist, their implementation and control are almost non-existent.