

## **First Report of the Government of the Republic of Croatia on meeting the closing benchmarks in Chapter 23 – Judiciary and Fundamental Rights, pursuant to the Interim Report of the European Commission dated 2 March 2011**

Following the European Commission's Interim Report on reforms in Croatia in the field of judiciary and fundamental rights, Croatia has created a Plan of Activities to meet all the remaining requirements in Chapter 23. The Croatian Government has also decided to periodically report to the Commission on the implementation of the remaining parts of the closing benchmarks in Chapter 23. This is the first report of such type. It follows the closing benchmarks and the to-do list published by the Commission as part of the Interim Report, outlining all the respective activities and accomplishments on the Croatian side. The report focuses on the period from 3 March to 5 April 2011, but in some areas it covers a wider timeframe.

**Report structure:** 1) the text of the Interim Report in individual benchmarks (paragraph containing the to-do list); 2) completed – activities implemented by Croatia pursuant to the above documents.

<b>CBM 1: Croatia updates its Judicial Reform Strategy and Action Plan and ensures effective implementation.</b>
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1. Croatia has updated the requested documents and, regarding implementation, has put in place improved institutional capacity for the management of judicial reforms, including post-legislative scrutiny.

2. **Completed** – Benchmark met. Efficient implementation continues.

<b>CBM 2: Croatia strengthens the independence, accountability, impartiality and professionalism of the judiciary.</b>
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1. Croatia will need to ensure that the newly constituted SJC and SPC demonstrates their ability to correctly apply the new transitional provisions for the recruitment of judges and prosecutors, as well as an improvement in the conduct of disciplinary proceedings against attorneys and judges.

2. **Completed**

### **Activities of the State Judiciary Council**

The appointment procedure for members of the new State Judiciary Council (SJC) was completed in February 2011, and the SJC held its first constitutive session on 3 March 2011. The SJC is composed of 11 members (seven judges - who are appointed by a secret vote of all the judges in the Republic of Croatia, two university law professors, and two members of the Croatian Parliament), the president being a Supreme Court judge. The second session of the SJC was held on 4 April, while the third session has been scheduled for 7 April 2011.

In February 2011, a public announcement for the appointment of 75 judges was published (approx. 1,100 candidates have applied). Abiding by the principle that the quality of the

process is much more important than its speed, the SJC plans first to decide on 12 appointments to the Supreme Court, the High Commercial Court and four county courts. The process of appointing these 12 judges has been initiated, and it will be conducted according to objective and transparent selection criteria with regard to the 191 candidates who have applied. The applications (which were accepted until mid-March) have been sorted and the files have been sent to the competent councils of judges (consisting only of judges) for them to provide an assessment of the candidates' work results.

The draft of a new ordinance has been completed regulating the procedure of conducting and assessing tests (*Ordinance on the manner of conducting the writing and evaluation of written papers, on the manner of allocating points for grades attained in the course of study, and the manner of conducting and evaluating the oral interview in the process of appointment to judicial office*) in order to more efficiently and objectively assess the who apply for judges' posts. The Ordinance will be adopted by the SJC no later than 15 April 2011. It lays down further improvements of objective criteria for the selection of judges, and, *inter alia*, defines in more detail the method of conducting the structured interview. A workshop on conducting structured interviews for members of the SJC and the SAC (in co-operation with German experts) will be held on 14 April 2011.

The SJC has instigated disciplinary proceedings against judges in 13 cases, and the decisions are expected in the course of April. At the SJC session on 7 April, a narrower body will be appointed (Minor Disciplinary Council) which is due to establish the facts in all 13 instigated disciplinary proceedings, so that the SJC can deliver decisions on disciplinary measures.

In an additional 10 cases, the SJC will deliver decisions related to requests to lift judicial immunity (in one case the applicant is the State Attorney's Office of the Republic of Croatia), and in another two cases decisions will be delivered related to suspension from exercising judicial office.

In order to secure the full functioning of the new SJC, administrative recruitment has started. The Secretary General of the SJC started work on 1 April 2011, and adequate archive space has also been secured. At the moment, the SJC employs four expert personnel, and further recruitment is planned in the coming period (budget funds have been secured). The Minister of Justice and the President of the SJC meet on a weekly basis in order to secure all the necessary requirements for the efficient organisation of the work of the SJC.

In order to further improve disciplinary proceedings, amendments to the State Judiciary Council Act and amendments to the State Attorney Offices Act have been drafted in the Ministry of Justice and are currently being finalised in consultations with the relevant institutions. The Government plans to adopt the said acts and submit them to the Croatian Parliament for further procedure no later than 15 April 2011. These amendments will broaden the scope of possible sanctions in disciplinary proceedings for judges and state attorneys and strengthen the investigative part of the disciplinary procedure.

The Ministry of Justice, the State Judiciary Council and the State Attorney Council are continuing to co-operate intensively with experts from France related to further improving disciplinary proceedings and sharing views and best practices in the field (consultations held, workshops organised, study visit planned, etc.). Workshops on deontology were held in Zagreb on 28 March for 98 presidents of courts, and in Split on 1 April for an additional 27 presidents of courts. The presidents of courts were further trained regarding their rights and obligations to initiate disciplinary proceedings, as well as their accountability for not doing so.

### **Activities of the State Attorney Council**

On 11 February 2011, the constitutive session of the new State Attorney Council was held. The president and deputy president were elected. The SAC is composed of 11 members (seven from the ranks of state attorneys, two university law professors and two members of the Croatian Parliament), the president being a deputy state attorney.

The second session of the SAC took place on 4 March 2011. Three county state attorneys were appointed (previously they had been appointed by the State Attorney General). A decision was adopted on the deployment of 20 attendees of the State School for Judicial Officials in municipal state attorney offices. A decision which obligates state attorneys and deputy state attorneys to submit declarations of assets by the deadline prescribed by law was also adopted.

The third session of the SAC was held on 18 March 2011. The decision on publishing an announcement for 22 deputy municipal state attorneys was adopted. The Secretary General of the SAC started work on 1 April. Two decisions on the permanent transfer of two deputy municipal state attorneys from less burdened to more burdened state attorney offices were also adopted.

On 23 March 2011, a public announcement for 22 deputy municipal state attorneys was issued (OG 34/11). The candidates who are to be appointed for the first time as deputy state attorneys will undergo the knowledge testing procedure before the SAC, in accordance with the Ordinance on the manner of conducting and evaluating the exam and interview with candidates in the procedure of appointment to the office of state attorney (OG 19/11). The testing consists of a written part where the candidate must deliver and draft a state attorney's decision based on a specific case file, and a structured interview.

<p><b>CBM 3: Croatia improves the efficiency of the judiciary.</b></p>
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1. Croatia will need to further reduce the overall case backlog, and in particular to reduce the number of old civil cases and enforcement decisions. The implementation of the civil procedure code should be improved to reduce the excessive length of civil proceedings.

#### **2. Completed**

##### **Reducing the case backlog**

Progress has continued in reducing the case backlog, especially in resolving cases older than three years. Complete statistical data will be available on 15 April; according to the currently available statistical data for the first quarter of 2011, the following results have been achieved:

- on 31 December 2010, municipal courts had 84,802 outstanding civil cases older than three years, and on 25 March 2011, 14,222 civil cases had been resolved, or 16.8%.

- on 31 December 2010, municipal courts had 2,988 outstanding criminal cases older than three years, and on 25 March 2011, 1,419 criminal cases had been resolved, or 47.5%.

- on 31 December 2010, county courts had 15,072 outstanding civil cases older than three years, and on 25 March 2011, 1,632 civil cases had been resolved, or 10.8% .

- on 31 December 2010, county courts had 291 outstanding criminal cases older than three years, and on 25 March 2011, 81 criminal cases had been resolved, or 27.8%.

With a view to reducing the number of old outstanding cases, on 25 March 2011 the Government of the Republic of Croatia adopted a Decision on empowering municipal courts to terminate enforcement proceedings, and state attorney offices to withdraw enforcement motions and claims for the collection of costs of criminal proceedings in which enforcement has become impossible or may not be conducted for other reasons, and in which the individual amounts do not exceed HRK 1,000.00 (one thousand) and empowering state attorney offices to withdraw enforcement motions and claims before courts for the collection of disputable receivables of the Republic of Croatia in which individual amounts do not exceed HRK 1,000.00 (one thousand) if they assess from the status of the case file that the entire procedure, including the collection of the debt, will last a disproportionately long time or that its completion will incur disproportionate costs.

The successful implementation has continued of the Action Plan for the reduction of the case backlog at the most burdened courts (Municipal Civil Court in Zagreb, Municipal Court in Split, County Court in Zagreb, commercial courts and the High Commercial Court), adopted in May 2010. The administrative capacity of these courts has been significantly strengthened and the first results can already be seen in their improved efficiency (*abovementioned data on cases resolved in the first quarter of 2011*), and further significant progress is expected in the coming period. In accordance with the Action Plan, for the purpose of strengthening the administrative capacity of the most burdened courts, a total of 34 judges, 48 court advisors, 38 registry clerks and 98 court recorders, as well as 13 land registry clerks have been employed.

Nine court advisers were approved for the County Court in Zagreb, and they began work in November 2010. The number of judges at the High Commercial Court of the Republic of Croatia has been increased (by 5 judges). These judges were appointed, and they began work on 15 February 2011.

In order to give additional impetus to resolving the case backlog, in March 2011 meetings were held between the presidents of the most burdened courts and the Minister of Justice, and with the president of the Supreme Court. The effect of measures undertaken so far was discussed, as were further steps for specific courts that need to be taken according to the needs presented. Further measures were agreed to strengthen the most burdened courts:

- Through a Decision of the Minister of Justice of 1 March 2011 on determining the number of judges at county courts, the number of judges at the County Court in Zagreb was increased by 16 judges, and the number of judges at the County Court in Split by five judges. An addendum to the Plan of filling vacant posts of judges (of 14 and 20 March) provides for the filling of nine judges' posts at the County Court in Zagreb, and five judges' posts at the County Court in Split. The addendum to the Plan was delivered to the State Judiciary Council with a request to publish an announcement of vacancies for judges' posts as soon as possible. In addition, the filling of five judges' posts has been planned for the Municipal Civil Court in Zagreb.

- The Recruitment Plan for civil servants in judicial bodies provides for the recruitment of five additional court advisers at the County Court in Split and five members of administrative staff – court recorders. An approval of the Ministry of Finance was requested for the Recruitment

Plan, and the procedure of filling these vacancies will be carried out as soon as the said approval is obtained.

### **Civil Procedure Act**

The training of judges on the Civil Procedure Act has continued. On 5 April, a workshop was held, organised by the Judicial Academy and with the support of the Supreme Court of the Republic of Croatia, which was attended by 70 judges of municipal, county and commercial courts. The aim of the workshop was to transfer best practices in the use of procedural possibilities offered by the CPA in order to improve efficiency in conducting civil proceedings, with special reference to resolving small value disputes and the service of communications of the court.

For the purpose of further improving the civil procedure, the Ministry of Justice has drafted the Proposal of the Act on Amendments to the Civil Procedure Act and submitted it for legislative procedure. These amendments introduce the following novelties:

- the possibility of audio recording the trial, thus facilitating and making more credible the procedure of presenting evidence;
- the prohibition of the repeated quashing of judgements in labour disputes before county courts, as well as in commercial disputes before the High Commercial Court of the RC;
- radical amendment of the provisions on the request for revision on points of law (*revizija*) as an extraordinary legal remedy. The request for revision on points of law becomes an extraordinary legal remedy in the true sense of the word, thus preventing procedure from dragging on. On the other hand, an "extraordinary request for revision on points of law (*izvanredna revizija*)", which is allowed in all cases, strengthens the constitutional function of the Supreme Court of the RC in ensuring the uniform application of the law and equality of all before the law.
- alignment of one part of the provisions on the collection of costs of court proceedings with the Act on Free Legal Aid (Official Gazette, No 62/08), by clarifying the method of calculating the costs the party is entitled to when represented by an attorney pursuant to the said Act;

These amendments are expected to improve procedural efficiency and functionality, and to speed up the civil procedure as a whole.

### **Court Fees Act**

The drafting of the Proposal of the Act on Amendments to the Court Fees Act is in its final stage. The draft Act provides for the following amendments:

- significant amendments to the provisions regulating the procedure for collecting unpaid fees by using the possibility of settling the debt with the feepayer's monetary funds through the Financial Agency pursuant to the provisions of the Act on the Execution of Monetary Claims (OG 91/10). This will significantly improve the efficiency of the forced collection of fees with the aim of preventing the avoidance of payment and abuse of rights;
- promotion of peaceful dispute resolution by abolishing the fee for concluding a court settlement;
- an increase in court fees charged for lodging legal remedies, thereby discouraging the unjustified lodging of legal remedies which cause procedures to drag on.

The adoption of these amendments is expected to further reduce the burden on courts and enhance their efficiency.

<p><b>CBM 4: Croatia improves the handling of domestic war crimes cases.</b></p>
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1. Croatia will need to proceed with the domestic war crime cases which have not yet been addressed, in particular through implementation of its new strategy and systematic use of specialised chambers so as to present a convincing track record.

## 2. Completed

Croatia remains determined to continue thorough investigation and prosecution of domestic war crimes committed in Croatia from 1991, regardless of the ethnicity or rank of the perpetrators. With this in mind, a set of strategic and operational documents has been created in order to streamline activities of the Ministry of Justice, the Ministry of the Interior and the State Attorney's Office. These documents include: 1) Overview of War Crimes Cases in which the Perpetrators or Persons who issued the Orders are Not Known (created by the State Attorney's Office, dated September 2010); 2) Strategy and Plan for the Investigation and Prosecution of War Crimes Committed during the Homeland War in the Republic of Croatia (1991 – 1995) (created by the Ministry of the Interior, dated December 2010); 3) Strategy for the Investigation and Prosecution of War Crimes Committed in the period 1991-1995 (signed by the Minister of Justice, dated 11 February 2011); and in order to implement the Strategy, the Ministry of the Interior and the State Attorney's Office have co-ordinated to prepare two operational documents – 4) the Implementation Plan (Ministry of the Interior, dated 28 February 2011) and 5) the Operational Programme (State Attorney's Office, dated 4 March 2011).

The two latter operational documents outline in more detail the co-ordination between the competent bodies, the resources required and the persons responsible for the operational tasks. Taking into account the defined national and regional priorities for the investigation and prosecution of domestic war crimes, the Ministry of the Interior has organised 20 police investigative teams comprising 120 police officers (of which eight teams are in charge of the national and 12 teams in charge of the regional priorities). The State Attorney's Office has tasked 15 deputy state attorneys with prosecutions of national priority and 34 deputy state attorneys with prosecutions of regional priority. A number of co-ordinating meetings between the three main stakeholders have taken place in the Ministry of Justice (on 9, 18, and 28 March, and on 5 April 2011).

The Croatian Government is studying reports on the aforesaid strategies and plans made by the Ministry of Justice, the Ministry of the Interior and the State Attorney's Office. Consequently, based on the findings and recommendations for enhancing efficiency, the Government will adopt on 8 April strategic recommendations and operational commitments with a view to ensuring further necessary action in this area.

With the amendments to the Book of Rules for Courts (OG 34/11), specialised war crimes chambers are being established in the four biggest courts in Croatia: Osijek, Rijeka, Split and Zagreb. No later than 30 April, a legislative framework will be adopted that will make these four courts solely responsible for handling all future war crimes cases. Based on the decision of the State Attorney General, the most important cases that are already subject to on-going proceedings before other courts will also be transferred to these four specialised courts.

The amendments to the Act on the Implementation of the Statute of the International Criminal Court and the Prosecution of Crimes against the International Law of War and Humanitarian Law will stipulate that the evidence collected by the bodies of the ICTY is admissible in criminal proceedings in the Republic of Croatia, provided it is presented in accordance with the manner prescribed by law and that it is admissible in proceedings before the ICTY. The existence or non-existence of facts for which this evidence is presented as proof will be decided upon by Croatian courts in accordance with the Criminal Procedure Act.

In accordance with the Act on the State Attorney Offices and their Rules of Procedure, special war crimes divisions have been established in four county state attorney offices (Osijek, Rijeka, Split and Zagreb). Deputy state attorneys specialised in processing war crimes and with suitable experience in this field of criminal law have been assigned to these divisions.

**CBM 5: Croatia establishes a track record of substantial results based on efficient, effective and unbiased investigation, prosecution and court rulings in organised crime and corruption cases at all levels including high level corruption, and in vulnerable sectors such as public procurement.**

1. Croatia will need to demonstrate effective handling of a sufficient number of cases through the relevant stages of the procedure (investigations, prosecutions or court rulings) covering high level corruption cases, local level corruption and including cases related to public procurement and the judiciary. Effective control of the dismissal by the prosecutor of criminal reports is required. Croatia should further reinforce PNUSKOK and adopt the new police act which is currently under preparation, and which addresses in particular issues of depoliticisation and merit-based appointments. Croatia should improve interagency cooperation, including information exchange.

## **2. Completed**

### **Track record in corruption cases**

Through the considerable results it has achieved in combating corruption, Croatia has confirmed in practice the Government's policy of zero tolerance in this area. Particular attention has been attached to high-level corruption cases (including proceedings against the former prime minister, deputy prime minister, ministers, heads of companies and ambassadors). Statistical data for 2010 demonstrate the following: in cases of high significance, five final judgments and another twelve first-instance judgments were rendered; in addition, indictments were raised in 14 cases, while in 10 cases investigation is underway.

The total number of persons reported in 2010 for corruptive crime at all levels amounts to 1,101. During this period, investigation was opened with regard to 249 persons, indictments were issued against 302 persons, and judgments were rendered with regard to 514 persons. In criminal cases of corruption for the period 2009-10, statistical data show the following: 1,787 reported persons, 399 investigations, 385 indictments and 328 convictions. Early data for this year show that there has been no further increase in cases, thus confirming the positive preventive impact of the zero tolerance policy, efficient prosecution and court procedure and anti-corruption measures.

An analysis has been carried out of the criminal reports that have been dismissed, which has revealed that the largest number of dismissed criminal reports are those filed for the criminal offences of abuse of office and official authority (in 2008 – 78.5% criminal reports, in 2009 – 86% reports, in 2010 – 83.14% reports).

These criminal reports have, as a rule, been filed by parties in judicial and administrative proceedings who were dissatisfied with decisions rendered by the officials in charge of conducting these proceedings. A significant number of criminal reports have been filed on account of legal views expressed by judges, state attorneys and deputy state attorneys, with the applicants simply asserting that the official concerned committed a criminal offence because he or she did not render a decision which the applicant deemed could be the only correct one, without referring to any specific information which would give rise to reasonable suspicion that a criminal offence had actually been committed in that particular case.

Prominent USKOK cases in which final or first-instance judgments have been rendered:

- Corruption in privatisation: of several indicted persons, two persons were sentenced (final judgements); one of the vice presidents of the Croatian Privatization Fund sentenced (final judgement) to 11 years in prison, and one person to two years in prison;
- Abuse of office and official authority: three persons were sentenced – two persons to one year and six months in prison (suspended for four years), and a former deputy prime minister to one year – suspended for four years (final judgment);
- Illegal use of public money in the diplomatic service: former Croatian Ambassador to the UN sentenced to one year in prison (final judgment);
- Corruption in the judiciary: former president of a municipal court sentenced to four years and six months in prison (final judgment);
- Corruption in the medical sector: of several indicted persons, four persons were sentenced to three to four years' prison terms (final judgments);
- Corruption in the Ministry of Finance: three persons were sentenced to prison terms ranging from six months to four years;
- Corruption in the education sector: 32 persons were sentenced (including nine university professors, sentenced to prison terms ranging from six to ten months, and from one year and three months to two years, and to suspended sentences);
- Corruption in the education sector: 23 persons were sentenced to prison terms ranging from six months to two years and six months, and to suspended sentences;
- Corruption in high office: two persons were sentenced to one year and one year and three months in prison (among them a former deputy prime minister);
- Diplomacy: two persons (among them a former ambassador) sentenced to seven months (suspended for two years) and five months (suspended for two years);
- Corruption in the defence sector: two persons were sentenced (among them the former minister of defence) to four years, and two years in prison;
- Corruption in the judiciary (land registry): judgement by which 22 defendants were found guilty was published, with a maximum prison term of one year and nine months;
- Privatisation: two persons were sentenced to one year and six months, and one year in prison (among them former vice president of the Croatian Privatisation Fund);

- Corruption in the judiciary: three persons were sentenced (among them a former county state attorney sentenced to nine months in prison);
- Corruption in local government: three persons were sentenced to prison terms of five months (suspended for two years), one year and six months (suspended for three years) and one year and six months (suspended for three years);
- Corruption in the penitentiary system: three persons were sentenced to prison terms of one year and eight months, one year and two months and to seven months (suspended for two years).

### **Control of the dismissal of criminal reports**

On 2 April the Croatian Government adopted and submitted to the Croatian Parliament the amendments to the Act on the Office for the Suppression of Corruption and Organised Crime (USKOK). The proposed amendments resolve the issue of second-instance proceedings in the event of dismissal of criminal reports concerning criminal offences in which there is no injured person, in order to achieve efficient control of the prosecutor's procedure with regard to criminal reports. In this legislative solution, account was taken of the constitutionally guaranteed independence of the State Attorney's Office of the Republic of Croatia (SAORC) from the executive branch and from the courts.

The amendments to the USKOK Act prescribe that the Collegiate Body of the State Attorney's Office decides in second-instance proceedings, following a complaint against the decision of the Director or Deputy Director dismissing a criminal report for criminal offences in which there is no injured person. The Collegiate Body appoints a rapporteur who presents the case to the Collegiate Body, following which a decision on the foundedness of the complaint is rendered by a simple majority of votes. If the Collegiate Body establishes that the complaint is unfounded, the complainant may file a report against the decision of the Collegiate Body to the Department for the Supervision of SAORC which may request the rapporteur to conduct particular evidence-collection activities.

### **Police Act**

The Croatian Parliament adopted on 11 March 2011 a new Police Act which entered into force on 1 April 2011 (OG 34/11). The Act introduces a number of novelties that further enhance police effectiveness and independence. Particular emphasis is placed on depoliticising and increasing the professionalism of the police force. The Act lays the foundation for a transparent and professional system of promotion, rewards, evaluation, transfer, education, training, and medical and psychological assistance in the police service.

In order to fully depoliticise the police service, the Act prohibits police officers from being members of political parties, from carrying out political activities within the Ministry of the Interior, or from standing in state or local elections. Police officers found to be members of political parties on the date of entry into force of the Police Act are obliged to withdraw from the aforesaid membership within three months.

The General Police Director's position must be filled through a public job vacancy announcement; deputies and assistants, as well as heads of police administrations and police stations, must be filled through an internal job vacancy announcement. The General Police Director and other top police officers are appointed for a period of five years, and can be

dismissed before the expiration of this term under the following conditions: at their own request; due to permanent disability to perform their function; in the case of a serious breach of official duty established by an executive decision of the Disciplinary Tribunal; and due to the termination of service in cases prescribed by law. In this way, managing police officers independently of political hierarchies is additionally enhanced.

## **PNUSKOK**

The administrative capacity of the Police National Office for the Suppression of Corruption and Organised Crime (PNUSKOK) has been significantly strengthened, and all vacant posts were filled during March 2011. It now counts 452 staff members in line with its new additionally increased systematisation approved by the Government of the Republic of Croatia (the new systematisation of PNUSKOK increased the number of envisaged staff members from 436 to 452). This strengthening will additionally improve the efficiency of PNUSKOK, and of the anti-corruption system as a whole.

### **Inter-agency co-operation**

In order to strengthen inter-agency co-operation, so far in 2011 USKOK has reached co-operation agreements with the Anti-Money Laundering Office (Ministry of Finance), the Financial Inspectorate (Ministry of Finance), the Financial Police (Ministry of Finance) and the Government Office for Public Procurement. A taxation expert from the Tax Administration has been assigned to USKOK, with authorisation to access data bases related to the assets of taxpayers. USKOK's operational framework has been further strengthened through co-operation with the Ministry of the Interior that allows direct access to certain databases in the Ministry.

An agreement has been reached to hold periodical co-ordination meetings where representatives of different institutions consider the existing modes of co-operation, the results achieved, and the possibilities of further improving co-operation. The first such meeting was held on 18 March, involving representatives of the State Attorney's Office of the Republic of Croatia, the Tax Administration, the Financial Police, the Financial Inspectorate, the Ministry of the Economy, Labour and Entrepreneurship (Public Procurement Directorate), the Anti-Money Laundering Office and the Office for Central Public Procurement.

<p><b>CBM 6: Croatia establishes a track record of strengthened prevention measures in the fight against corruption and conflict of interest.</b></p>
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**1.** Croatia will need to demonstrate effective implementation of the new access to information legislation in practice, to improve transparency in public procurement, notably by publishing information on the actual implementation of contracts, and adopt all sectoral legislation in line with the GAPA. As regards the law on financing of political parties, Croatia should clarify the rules concerning supervision of private contributions and provide the administrative capacity necessary for applying the legislation.

## **2. Completed**

### **Right of Access to Information Act**

By a decision of the Constitutional Court (of 23 March 2011) initiating a procedure of assessing the compliance of the Right of Access to Information Act with the Croatian

Constitution, the Act in question was abolished, and will cease to be in force on 15 July 2011. The reasons for abolishing the Act are of a procedural nature, and are based on the fact that the Right of Access to Information Act is an organic act regulating a fundamental human right, and, pursuant to Article 82, paragraph 2 of the Constitution of the Republic of Croatia, a majority vote of the total number of Members of the Croatian Parliament was needed for its adoption. By the date stated above, alignment of the procedure for adopting this Act with the provisions of the Croatian Constitution will be completed. Until then, the Act will remain in force and will be implemented. In the first quarter of 2011, the results of its implementation were as indicated below.

Within the period from 1 January to 15 March 2011, 18 appeals were received by the Personal Data Protection Agency (PDPA) in cases concerning the right of access to information. Of this number, six appeals were transferred due to lack of jurisdiction, which means that the Agency has jurisdiction over 12 appeals. Of the 12 appeals over which the Agency has jurisdiction, seven concern "administrative silence", and five procedures were conducted against a ruling dismissing requests to access information. The Agency received 2 complaints which fall under the jurisdiction of the Agency pursuant to Article 24 of the Right of Access to Information Act, and are related to the control of the implementation of the Act, and 3 queries concerning the application of the Right of Access to Information Act and procedures arising from it (these appeals, complaints and queries have either been resolved or are pending resolution).

Up to 15 March 2011, no appeals had been resolved pursuant to Article 8 of the Act, so that a public interest test has not yet been conducted. One case is currently pending in which the first-instance body considered the request in the sense of Article 8, paragraph 4 of the Access to Information Act. By 15 March 2011, no administrative disputes had been instigated against an Agency's decision. On 10 March 2011, a report was submitted to the Croatian Parliament on the application of the Right of Access to Information Act for 2010.

Suitable administrative capacities are being provided for the implementation of the Right of Access to Information Act (on 4 April an additional member of staff was assigned to work on these tasks through the internal redeployment of staff, so that now there are three people working on issues concerning the Right of Access to Information Act).

## **GAPA**

Croatia has continued aligning individual laws with the legal framework provided by the General Administrative Procedure Act. With the aim of ensuring alignment with the provisions of the General Administrative Procedure Act, work has begun on making appropriate amendments to 56 special laws (*lex specialis*), of which 36 laws have been adopted by the Croatian Government, and 35 of those have been submitted to the Croatian Parliament. The alignment work is continuing, with the target date for the completion of this task being the end of April 2011

## **Public procurement**

Through the last amendments to the Act on the Right of Access to Information (adopted and published in December 2010), Article 20 was amended in such a way that it has introduced the obligation for public authorities bound by this Act, to publish information on the execution of public contracts (in official gazettes or by means of electronic media). This obligation ensures transparency of data on the execution of public contracts. With the aim of

implementing these provisions, the Government adopted the Conclusion on the publication of information on the award and execution of public procurement contracts on 17 March 2011.

This Conclusion sets the obligation for public authorities, which are also bound by the Public Procurement Act, to establish and publish a “List of awarded public contracts and of their execution” (List of contracts) on their websites within 20 days. The first publication of the List of contracts must include at least the information on the contracts awarded and executed in 2010 and then chronologically as contracts are awarded in 2010. Subsequently, the public authorities are obliged to update this List of contracts every six months. They have to submit the information on the website on which the List of contracts is published to the Personal Data Protection Agency (the body in charge of the control of the implementation of the Act on the Right of Access to Information) which will report to the Government on the implementation of the Conclusion by 5 May 2011.

### **Political parties**

On 17 March detailed information on the control of private donations pursuant to the Act on Financing Political Activities and Election Campaigns was drafted and delivered to the European Commission on 18 March.

On 15 March the necessary legislative amendments were adopted (amendments to the Ordinance on the internal order of the State Election Commission - SEC) with the aim of strengthening the administrative capacities of the SEC with an additional six members of staff. On 1 April three members of staff of the Ministry of Finance (Tax Administration) were assigned to the SEC with the aim of promptly strengthening its capacity with experienced staff. In parallel to the temporary redeployment of these members of staff from the MF TA, the SEC initiated a public recruitment process for three members of staff. Funds have been ensured, the approval of the MF has been granted, and it is expected that the public recruitment announcement will be published in April. The (future) three new members of staff who will be employed through the public recruitment process will, initially, work together with the three members of staff who have been temporarily deployed from the MF and who will assist them in assuming their work and will provide relevant training.

<p><b>CBM 7: Croatia strengthens the protection of minorities, including through effective implementation of the Constitutional Act on the Rights of National Minorities (CARNM).</b></p>
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1. Croatia will need to set out long term plans, backed by statistics, for fully meeting its obligations under the CARNM as regards minority employment, and should adopt a plan to tackle the shortcomings identified by the study on the under-representation of minorities in the wider public sector.

### **2. Completed**

The Action Plan on the implementation of the Constitutional Act on the Rights of National Minorities (CARNM) for the period 2011 – 2013 is being finalised and will be adopted a session of the Croatian Government on 8 April. This comprehensive Plan relates to all relevant aspects of protection provided for in the Constitutional Act. It is based on the analysis of the results of the 2008 – 2010 Action Plan, including relevant statistical

information, with a view to further strengthening protection in the areas where shortcomings have been identified. It introduces concrete implementation frameworks and resources.

In respect of increasing recruitment of persons belonging to national minorities in general, the Plan provides for greater financial resources for new employment and for measures to enhance the educational structure related to members of national minorities.

A separate part of the Plan addresses the issue of the representation of national minorities in state administration bodies, judicial bodies, and administrative bodies of units of local and regional self-government. The Plan contains an extensive, statistically backed evaluation of the current situation and refers to the operational target for increasing the representation of national minorities in the mid-term period. The Plan also sets a precise deadline (30 April) for the adoption of a long-term Employment Plan for persons belonging to national minorities in state administration bodies, setting realistic annual targets for a gradual increase in their representation. These targets will be further reviewed in view of the results of the population census in Croatia that began on 1 April this year.

Activities planned include the systematic monitoring of statistical data on the representation of national minorities and the implementation of measures aimed at improving their representation; providing information and education on the rights as prescribed in Article 22 of the Constitutional Act, both for persons belonging to national minorities and for the personnel of relevant institutions, with an emphasis on members of selection commissions; awareness raising activities and monitoring and supervision.

An integral part of the Plan is the collection of forms for the unified statistical monitoring of the representation of national minorities, allowing for the regular and continuous evaluation of the representation of national minorities in institutions covered by Article 22 of the Constitutional Act. The Plan envisages the periodical analysis of the state of play in the implementation of the measures.

The mentioned measures create a suitable foundation for quantifiable changes in this area when the conditions for this arise (once the preconditions are met for lifting the ban on new employment of civil servants and civil service employees in state administration bodies, professional services and offices of the Croatian Government).

### **Wider public sector**

The Study on the Representation of Members of National Minorities in the Wider Public Sector has been completed and presented to the European Commission. The Study was conducted by an independent scientific institution with proven experience in this type of project, the Ivo Pilar Institute in Zagreb.

The Study is broad in scope, since not only does it deal with the representation of national minorities but data were also collected on the perception of the general and the work status of national minorities in Croatia, the level of the familiarity of minorities with their rights, and their evaluation of the relevant legal framework and its implementation. The Study was conducted in five Croatian counties - the Osijek-Baranja, Vukovar-Srijem, Bjelovar-Bilogora, Sisak-Moslavina and Istria County, in settlements where 71% of the total minority population live. It covered around 53% of the total number of public institutions in selected settlements (altogether 148 institutions chosen by a random procedure). In order to broaden the scope, invitations to participate in the structured interview were also sent to 30 national minority

associations representing 19 national minorities (to all but three that do not have national minority associations).

In the areas it covered, the Study has not established that national minorities are under-represented in the wider public sector; nor did it show that their representatives perceive themselves generally as being under-represented. Nevertheless, Croatia will continue with the active policy in ensuring an adequate proportion of national minorities in the public sector, and the results of the Study will be analysed additionally against the results of the 2011 Census.

The draft Action Plan for the implementation of the CARNM envisages a number of measures specifically devoted to protecting national minorities from any activity that jeopardises the realization of the rights and freedoms of persons belonging to national minorities, as well as measures for the promotion of tolerance and combating discrimination. It includes a specific measure on the implementation of a public campaign for the promotion of diversity in the Croatian labour market.

The Study by the Ivo Pilar Institute also revealed that the majority of employees claim to be familiar with the content of the CARNM. However, the majority was not familiar with the specific content of Article 22 of the Constitutional Act. This calls for further measures to raise the awareness of persons belonging to national minorities of the possibility of priority treatment under this Article. These measures are already envisaged in the Action Plan for the implementation of the CARNM and cover the specific proposals made by the national minority associations.

In the wider sense, the new draft Action Plan envisages that the Government Office for Human Rights will each year conduct the organised provision of information and training for employees in state and public service for the purpose of further familiarising them with legislation on the protection of national minorities, combating discrimination and the promotion of tolerance.

### **Other relevant activities**

In terms of monitoring the implementation of Article 22 of the Constitutional Act, since the Civil Servants Act entered into force, the public administration body responsible for civil servants (now the Ministry of Public Administration) appoints its representatives to selection commissions. Their role, among others, is to follow the implementation of the relevant provisions of the Constitutional Act on the Rights of National Minorities, i.e. provisions guaranteeing priority to persons belonging to national minorities.

In order to **tackle the issue of discrimination** in the employment environment, a number of measures are already being implemented in the Republic of Croatia:

- The Civil Servants' Code of Ethics stipulates that civil servants should treat all citizens on an equal basis, without discriminating and/or favouring one over the other on any basis, including ethnic affiliation. Citizens and civil servants may report the unethical behaviour of a civil servant on a free telephone line, or they may file a complaint to their superior or to the ethics commissioner.

- Pursuant to the provisions of the Collective Agreement for Civil Servants and Employees, the personhood and dignity of civil servants and employees in their working environment are to be respected. In order to exercise this right, state bodies promote relations of tolerance,

understanding and acceptance of the dignity of civil servants and employees. All unwanted behaviour and acts by which such relations may be harmed are defined, identified, prevented and sanctioned.

- Civil servants and employees may report all cases of unacceptable behaviour to their superior, the commissioner for the rights of trade union members, or a confidential counsellor – a person authorised to deal with complaints related to the protection of dignity.

A number of training courses are being conducted in the state administration for the purpose of promoting tolerance and combating discrimination. Since 2007, the Centre for the Training and Professional Development of Civil Servants has been carrying out courses entitled “Public Administration for Trainees”, the aim of which is to acquaint trainees with the institutional and legislative framework of public administration. Trainees are, among other things, familiarised with the provisions relating to the prohibition of all kinds of discrimination, including discrimination based on ethnic affiliation (as laid down in the Constitution, the Civil Servants Act, etc.). In addition to this, they are acquainted with rules of behaviour as defined in the Civil Servants’ Code of Ethics.

Provisions prohibiting discrimination on all grounds, including on the grounds of ethnic affiliation, constitute an integral part of numerous training courses (“Preparations for the General Part of the Civil Service Exam”, “Basics of Public Administration”; in 2011, two additional courses for civil servants are envisaged: “Constitutional Protection of Human Rights and Civic Freedom” and “Legal Protection of National Minorities”).

### **CBM 8: Croatia settles outstanding refugee return issues.**

1. Croatia will need to implement in full its 2009 target and make substantial progress in providing accommodation to applicants for housing care not included in the 2009 target. Croatia should also eliminate the backlog of existing reconstruction appeals.

#### **2. Completed**

##### **2009 Benchmark**

Execution of the 2009 benchmark as of 28 March 2011, amounted to 1,427 available and vacant housing units (out of the total figure of 2,070), or 69%. From 11 February to 28 March 2011, 127 housing units were secured for housing care beneficiaries/former tenancy rights holders, which represents a further growth of 6.2%. By the end of May 2011, 643 vacant housing units must be provided.

MRDFWM plans to ensure a total of 1,909 housing units by the end of April (92.2% of the benchmark) through the following activities: purchasing 213 flats, completing the reconstruction of 164 flats, completing the reconstruction of 28 houses, allocating 77 flats from the existing housing stock. In May 2011, additional flats will be provided to meet the benchmark (161) through the purchase of flats and the allocation of flats from the existing housing stock.

MRDFWM will provide financial support to 643 beneficiaries who were not provided with housing by 28 March 2011, for the renting of a flat pursuant to the Conclusion of the Government of the Republic of Croatia of 17 July 2008 (HRK 25 per person per day) until the

time when they are provided with housing. At the beginning of April 2011, all beneficiaries will be sent notifications and forms to complete in order to receive the payment of financial support.

### **Providing housing beyond the benchmark**

Resolving outstanding housing care applications has been accelerated and the number of outstanding cases has been reduced. According to a plan drafted by the Ministry, it has been envisaged to provide 250 housing units beyond the benchmark in 2011.

By 28 March 2011, 509 approvals for housing care beyond the benchmark were issued. Since the building and reconstruction of 193 flats and houses is underway, and the completion of the work is due at the end of June 2011, the Ministry will be able to provide housing for 193 beneficiaries beyond the benchmark in June/July 2011.

Housing for the estimated number of beneficiaries who have already exercised or will exercise the right to housing care will be carried out at the foreseen pace, and funds for this have been earmarked in the State Budget for 2011-2013. Funds for 2014 will be earmarked when a three-year budget is planned at the end of 2011.

### **Newly introduced measures**

On 2 September 2010, the Government of the Republic of Croatia adopted a *Decision on the sales of flats owned by the Republic of Croatia*, and thus enabled housing care beneficiaries/former tenancy rights holders outside ASSC to purchase housing units at a preferential price, much lower than the market price. The price was additionally adjusted by including in the calculation the period of time spent as a refugee, so that a discount on the price of real estate has been offered for each year that the person spent with the status of refugee.

MRDFWM, in co-operation with the members of the international community, prepared an Instruction on the implementation of the Decision, which was sent to the Regional Offices of the ASSC Administration.

The Ministry of Regional Development, Forestry and Water Management also informed in writing 1,040 beneficiaries with whom the Ministry had concluded a lease agreement about the possibility of purchasing the respective property. A total of 521 beneficiaries out of the total number of those who received the notifications submitted a purchasing request by 28 March 2011.

The *Decision on the housing care of returnees/former tenancy rights holders outside ASSC* was adopted at a Government session on 3 March 2011 and came into effect on the day of its publication in the Official Gazette, No. 29 of 9 March 2011. FTRHs who failed to submit a housing care application are given a new chance in 2011, and a new period of nine months from the coming into effect of the Decision has been granted to submit applications.

An information campaign related to the adoption of these Decisions of the Croatian Government began with their publication on the website of the Ministry of Regional Development, Forestry and Water Management. In co-operation with UNHCR, a strategy for the implementation of a cross-border information campaign was defined, and printing is underway of 7,000 brochures which will be distributed in the countries in the region. The text of the brochure has also been posted on the Ministry's website.

A special agreement has been reached with the Republic of Serbia on a joint information campaign which will be conducted in co-operation with UNHCR and the Commissariat for Refugees of the Republic of Serbia.

### **Resolving reconstruction appeals**

In March, 10 lawyers were engaged to resolve appeals. On 17 March 2011, another 2 lawyers were engaged on a temporary basis until 17 May 2011.

From 11 February to 28 March 2011, a total of 1,180 appeals were resolved, while 2,650 appeals remained outstanding. It is planned to complete the major part of the work on the elimination of the backlog by the end of April, which involves the resolution of 1,600 appeals. The additional staff engaged on this task will make it possible to reach this goal. It is planned to resolve the remaining 1,050 appeals by the end of May. The aim is also to maintain the highest level of legality, expertise and impartiality in the procedure of resolving appeals.

<h3><b>CBM 9: Croatia improves the protection of human rights.</b></h3>
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1. Croatia will need to further strengthen the Office of the Ombudsman in particular through ensuring the planned additional staff members and budget increase, ensure proper follow-up of the Ombudsman's recommendations and make further progress in implementing the Anti-Discrimination Law and the Law on Hate Crimes.

### **2. Completed**

#### **Strengthening the Office of the Ombudsman**

The Ombudsman's Office is currently comprised of 32 persons, including the Ombudsman and his three deputies. In the course of 2011, strengthening the Office through the employment of three new officials is envisaged, namely an advisor for legal affairs, an advisor for human rights protection, and one administrator. The funds for this purpose are provided in the budget for 2011 and the Ministry of Finance has approved the new employment. Further dynamics in this respect now entirely rest with the Ombudsman's Office.

In January 2011, the Croatian Government established a task force responsible for the elaboration of a new draft Act on the Ombudsman, aimed at further strengthening the capacities of the Ombudsman's Office. The task force is currently reviewing possible ways to ensure the further institutional strengthening of the Ombudsman's Office, including through the possible enhancement of its analytical capacities, the employment of additional personnel and strengthening of the component related to the implementation of the Anti-discrimination Act. In this context, merging the Centre for Human Rights with the Ombudsman's Office is also planned, which should create a more efficient system capable of undertaking new activities and should strengthen the Office's interaction with civil society organisations. This merger would also provide an additional five persons for the Office.

#### **Follow-up to the Ombudsman's recommendations**

With a view to strengthening capacities to allow for adequate response from state bodies and bodies of public administration to the recommendations of the Ombudsman, the Government has entrusted a co-ordination and monitoring function in this respect to the Government

Office for Human Rights. The required amendments to the Regulation on the Establishment of the Office for Human Rights were adopted in March 2011. In accordance with its new, broadened mandate, the Government Office for Human Rights is entrusted with monitoring powers in relation to the implementation of the Ombudsman's recommendations and it will keep a record of activities and measures specifically undertaken by state and public administration bodies in this area. A newly established Department in the Office will monitor the annual reports of the Ombudsman and submit reports on the implementation of recommendations from the Ombudsman's annual reports.

In March 2011, the Government Office for Human Rights drafted the first report on the Ombudsman's recommendations. This report presents the measures which the Croatian Government has undertaken following the Ombudsman's recommendations in the following areas: administration and citizens; complaints concerning the length of court proceedings; property restitution, reconstruction and housing care; social and legal security; gaps in data collection and in the statistical monitoring of cases of discrimination; position of the Roma minority and discrimination against patients with disabilities.

### **Implementation of the Anti-discrimination Act and with regard to hate crime cases**

In March 2011, the Government Office for Human Rights drafted a Report on the Implementation of the Anti-discrimination Act and with regard to Hate Crime Cases.

In April 2011, the Croatian Government adopted the Protocol on Action in Case of Hate Crimes, with the aim of further developing the monitoring system for hate crimes. The Protocol envisages the quarterly exchange of statistical data between relevant state bodies through the use of a standard reporting form, to be completed by all competent authorities (the Ministry of the Interior, the State Attorney's Office and the Ministry of Justice). The Protocol also foresees the central role of the Government Office for Human Rights in the collection and publication of data on hate crimes and co-operation with civil society organisations and international organisations in this respect.

**CBM 10: Full cooperation with the ICTY remains a requirement for Croatia's progress throughout the accession process, including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005.**

1. As requested by the Office of the ICTY Prosecutor, the Croatian Government's inter agency task force has begun exploring important new avenues in its investigations aimed at locating or determining the fate of missing artillery documents. The ICTY Prosecutor will next report to the UN Security Council in May 2011.

### **2. Completed**

On 28 February 2011, the Croatian Government Inter-Agency Task Force submitted a comprehensive report to the ICTY Prosecutor on actions taken, future plans for cooperation and results achieved. In March, the Republic of Croatia continued to fully cooperate with the ICTY, fulfilling regular requests for assistance received from the ICTY Prosecutor and court chambers conducting proceedings in various cases.

The Government of the Republic of Croatia shall continue to work on and meet all its obligations under Chapter 23, aware of the utmost importance of all the areas covered by this Chapter. The Government's next periodic report is planned for the second half of April.