5 April 2006

Screening report

Croatia

Chapter 5 – Public procurement

Date of screening meetings:
Explanatory meeting: 7 November 2005
Bilateral meeting: 29 November 2005

I. CHAPTER CONTENT

The *acquis* on public procurement is based on the **general principles** deriving from the Treaty and from the jurisprudence of the European Court of Justice such as transparency, equal treatment, free competition and non-discrimination. These principles apply to all procurement procedures including those falling outside the scope of the EU procurement directives for example in view of their value (procurement below the EU thresholds) or subject matter (service concessions).

The **award of public contracts** (public works, public supply and public service contracts) is coordinated by two specific directives: directive 2004/18/EC regarding the so-called "traditional contracting authorities" (the “classical sector”) and directive 2004/17/EC concerning the authorities and entities operating in the fields of water, energy, transport and postal services (the “utilities sector”).

The respective scope of application of the directives is defined in terms of the contracting authorities/entities and contracts covered, application thresholds and specific exclusions. Within this framework, specific requirements are laid down to guarantee full respect of the general principles in the course of the procurement process. In particular, specifications and contract documents, different types of procurement procedures, advertising and transparency, as well as the conduct of the procedure including qualitative selection and contract award are regulated. Specific requirements apply to design contests and - in the “classical sector” – for public works concessions as well.

The directives also provide a framework introduced in 2004 for electronic procurement including electronic means of communication, dynamic purchasing systems and electronic auctions. The rules on the contracts covered and on advertising are complemented by separate regulations on the Common Procurement Vocabulary (CPV) and on standard forms for publication.

Compliance with the procurement directives requires an adequate implementation capacity. In particular, there is need for appropriate administrative structures at central level to ensure the key functions of policy-making, drafting of primary and secondary legislation, provision of operational tools, help-desk, monitoring and statistics as well as controls in a coherent manner for all areas related to public procurement. Moreover, main purchasers at all levels have to possess the necessary administrative capacities to allow for an effective implementation of the procurement rules.

Further to the award of public contracts, the procurement *acquis* entails two directives on **remedies**: directive 89/665/EEC regarding the “classical sector” and directive 92/13/EEC concerning the “utilities sector”. The remedies directives contain requirements for the establishment of effective review procedures against any action or inaction of contracting authorities/entities liable to produce legal effects. The procedures need to guarantee access to independent review, including the powers to adopt interim measures and award damages. Review bodies have to be equipped with the adequate capacity to guarantee the effectiveness of the system as a whole. Furthermore, in line with the principle of judicial protection deriving from the Treaty, the availability of remedies is also required outside the scope of application of the directives.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

Croatia indicates that it can accept the *acquis* regarding public procurement. Croatia indicates that it does not expect any difficulties to implement the *acquis* by accession.

This section summarises the information provided by Croatia and the discussion at the screening meeting.

II.a. General principles

Public contracts

Regarding public contracts, the 2001 Public Procurement Act as last amended with effect from 1 October 2005, applies to all procurements above HRK 200,000. It includes the principles of equal treatment, free competition by providing for the equal treatment of tenderers and candidates, prohibits restrictions to free market competition and declares the principle of transparency. There is an explicit preference for open and competitive procurement procedures and the conditions for the application of the negotiated procedure are strictly circumscribed. There are requirements for advertising both before and after the procurement procedure.

As far as the principle of non-discrimination is concerned, Croatia indicates that national price preferences have ceased to apply as of 1 January 2002 and that the Public Procurement Act provides for free access to procurement procedures irrespective of residence or registered seat, differing national classification of activity, status of legal or natural person and origin of goods. Croatia informs that, should a foreign tenderer be selected, Article 612 of the Companies Act and Article 2 of the Trade Act require respectively foreign companies and self-employed traders to establish in Croatia in order to operate in the country. The Public Procurement Act foresees the possibility that separate rules require the use of domestic sub-contractors. As regards the participation of European Economic Interest Groupings, Croatia underlines that although there is no explicit provision for EEIGs, the Public Procurement Act does not restrict their participation in procurement procedures. Croatia declares that it intends to remove these provisions by 1 February 2008 at the latest, as foreseen in Article 72 of the Stabilisation and Association Agreement. The Regulation on EEIGs will apply directly as from accession.

Regarding public contracts below HRK 200,000, the procedures laid down in the Regulation on Procurement Procedures of Goods, Works and Services of Lesser Value are the public invitation to tender, which provides for advertising, the restricted invitation to tender, and direct award. The latter is permitted only in cases specified in the Regulation.

Concessions

The Croatian legislative framework governing the award of concessions is composed of the 1992 Concessions Act and around 40 sector-specific acts setting out different rules for concessions in their respective fields.

The Concessions Act contains a small number of general provisions without reflecting the general principles. Croatia indicated that the sector-specific acts do not provide a comprehensive framework for the award procedures capable of guaranteeing application of the general principles either.

Croatia indicates that an inter-ministerial group to draft a new Concessions Act is in the process of being established with a view to adopting the Act in the 3rd quarter of 2006. The

act would provide a general framework for the award procedure of concessions (*lex generalis*) and enter into force as of 1 January 2007. Upon the adoption of the Act, other sector-specific acts dealing with concessions (*lex specialis*) will be amended accordingly.

International aspects

Croatia is not a party to the WTO Government Procurement Agreement (GPA). It regularly participates in the GPA activities as an observer.

Croatia has concluded eight Free Trade Agreements (FTAs) with the EFTA States, CEFTA, Albania, Bosnia and Herzegovina, Serbia and Montenegro, The former Yugoslav Republic of Macedonia, Moldova, and Turkey. These FTAs foresee the possibility for the parties to open up public procurement, but so far no measures have been agreed for that purpose.

II.b. Award of public contracts

Public contracts

As stated before, all public contracts above HRK 200,000 are governed by the Public Procurement Act. The Public Procurement Act regulates both the "classical" and the "utilities" sectors. Further to the latest amendments, which entered into force on 1 October 2005, the Government has issued the list of authorities and entities covered by the Public Procurement Act in February 2006. Certain implementing rules still remain to be issued.

The *scope of application* of the Public Procurement Act includes public supply contracts, public service contracts and public works contracts above HRK 200,000, defined largely in conformity with the procurement directives. Regarding services, there is no differentiation similar to annexes IIA and IIB of the classical directive. The different types of *contracting authorities and entities* include the State, regional or local authorities, bodies governed by public law, associations of the former, as well as public undertakings and entities operating on the basis of special or exclusive rights in the "utilities sector". The definition of central purchasing body is transposed and a definition similar to the definition of design contests in the directives is provided, although not followed by specific rules. Groups of economic operators are also allowed to submit a tender.

As regards the *specific exclusions* formulated in Article 6 of the Public Procurement Act, these do not go significantly beyond the procurement directives. Defence procurement of arms and military equipment, as well as procurement of confidential nature, is carried out by a specialised agency (ALAN) in accordance with specific rules by the ministries of Defence and of the Interior.

The Public Procurement Act does not cover subsidised contracts. In the "utilities sector", the definition of the relevant activities is based on the previous procurement directive 93/38/EEC as it covers telecommunications instead of postal services, and as the phasing-out of a utility sector following future liberalisation is not foreseen.

The general *application threshold* is significantly lower than the thresholds of the procurement directives and the rules relating to the calculation of the estimated value of public contracts reproduce in a simplified manner some of the relevant provisions of the directives.

Concerning *specifications and contract documents*, the Public Procurement Act contains rules on the preparation and content of the tender documentation including the award criteria and their relative weighting, foresees the priority application of national standards

transposing European standards and technical approvals, and prohibits references to a particular make or origin. At the same time, the detailed rules on technical specifications, variants and contract performance conditions are not implemented. Regarding subcontracting, the Public Procurement Act goes beyond the procurement directives when allowing for the prohibition of subcontracting and setting a maximum proportion of 49% for works and services contracts.

Regarding the different *types of procurement procedures*, the Public Procurement Act largely transposes the definitions of the open procedure, restricted procedure and negotiated procedure. The terminology used to describe these procedures is not always identical to that of the directives. The competitive dialogue procedure, framework agreements, electronic auctions or dynamic purchasing systems are not regulated.

As far as the *use of the procurement procedures* is concerned, the act differs from the procurement directives by imposing a limitation on the use of the restricted procedure. The latter procedure can only be used in case the number of qualified or reliable tenderers is limited, if open tendering raises confidentiality issues, or if open tendering would cause disproportionate costs or difficulties or is inadequate for other reasons notably in the case of complex, extensive or demanding procurement operations. Apart from this conceptual difference, the use of the different procedures is largely harmonised. The conditions for the use of the negotiated procedure with or without prior publication of a contract notice take up the relevant provisions of the directives, but certain details are not incorporated such as the time limit of 3 years for the use of certain exceptions. Regarding the "utilities sector", contracting authorities and entities operating in the relevant sectors may choose between the open, restricted and negotiated procedure with prior call for competition, as foreseen by the utilities directive. Based on the provisions of this directive, the act defines specific conditions for the use of the negotiated procedure without prior call for competition in those sectors.

In relation to *advertising and transparency*, the Public Procurement Act contains publication requirements substantially corresponding to the concepts of the prior information notice, the contract notice and the award notice, as well as of the periodic indicative notice and the notice on the existence of a system of qualification in the "utilities sector". In the case of the negotiated procedure without prior call for competition, there is an obligation to publish, at least 15 days before the conclusion of the contract, a notice on the award decision also indicating the legal base for having recourse to the said procedure.

The publication of prior information notices is foreseen in conditions largely similar to the provisions of the classical directive, the main difference being the reference to "identical works". The publication is of facultative character, allowing for an accelerated procedure in case other conditions are also met (see below). The Public Procurement Act also provides for thresholds which are identical (supplies and services) or somewhat lower (works) than those defined in the classical directive. Contract notices are published in conformity with the directives, in all open, restricted and negotiated procedures with prior publication above a contract value of HRK 200,000. The publication of award notices is mandatory within 30 days from contract conclusion, which Croatia acknowledges represents less than stipulated in the directives. The relevant exception is defined based on the procurement directives. The publication of periodic indicative notices is purely facultative. In this case, no details are given regarding the date of publication, contract type and value. The publication rules foreseen in the case of the existence of a qualification system substantially satisfy the requirements of the utilities directive.

Further to the basic requirements of the Public Procurement Act on the content of the notices, the relevant requirements are defined in detail in a separate Regulation on Announcements and Records on Public Procurement, amended in October 2005 taking into account the modifications of the Public Procurement Act. The Regulation specifies the compulsory information to be provided in the different types of procurement notices separately for supply, service and work contracts and for open, restricted or negotiated procedures. It also defines the information to be published in the case of design contests separately for open or restricted procedures. The Regulation includes most of the relevant information foreseen in the procurement directives in accordance with its scope, with some exceptions such as the details on the appeal procedure.

According to the Public Procurement Act and the Regulation, all publications have to be made in the Bulletin of Public Procurement, a separate annex to the Official Gazette ("Narodne Novine"). Furthermore, the act also foresees publication in the EU Official Journal as from the date of accession. There are no provisions for the electronic publication of the notices.

Regarding the time limits for receipt of tenders and requests to participate, the Public Procurement Act distinguishes between "regular" and "accelerated" procedures. As far as the regular procedures are concerned, the time limits foreseen are compliant with the procurement directives except in the case of the negotiated procedure with prior publication. The possibility for having recourse to the accelerated procedure is foreseen in case a prior information notice was published and the procedure is urgent. In this respect, the time limits foreseen are only partially compliant with the procurement directives and the grounds for using the accelerated procedure are significantly broader, also including cases when there is a need to perform the contract within the budgetary year.

Regarding the provision of the tender documentation, the Public Procurement Act provides for the basic rules. Concerning additional information or requests for clarification, the guarantees required by the procurement directives are not incorporated. Contracting authorities and entities can modify tender conditions and the documentation before the deadline for the submission of the tenders.

Unlike on notices, there are no detailed rules on the way of communicating the invitations to submit a tender or to negotiate. The contracting authority or entity is obliged to communicate its decision on the cancellation of the procedure or on the award of the contract, including the reasons for such decision. There is no specific provision for providing reasons individually to the unsuccessful tenderers. The Public Procurement Act lays down a general obligation for all communication to be made in writing. Electronic means of communication are not regulated.

The Act requires all contracting authorities and entities to keep record of all procurement procedures and to provide certain factual information to the Public Procurement Office based on a specific annex of the above mentioned Regulation.

Regarding the *conduct of the procedure*, the Public Procurement Act differentiates between qualification requirements and award criteria. It provides for the minimum number of participants in the restricted and negotiated procedures. The grounds for exclusion cover some of those foreseen in the directives. Rules on evidence are also included, including an obligation to accept equivalent certificates issued in the EU. With regard to contract award criteria, the Public Procurement Act reproduces the provisions of the procurement directives including the obligation to specify the relative weighting of the criteria in all cases where the criterion of the most economically advantageous tender is applied.

The Public Procurement Act also regulates the establishment of the procurement commission, the content, form and submission of the tender, public opening and evaluation and lays down strict rules for "acceptable" and "unacceptable" tenders and for the mandatory cancellation of the procedure. Besides the clarification of tenders, it also foresees the possibility of negotiations in connection with the clarification of the tender or alternative tenders. It also contains certain provisions regarding abnormally low tenders which are quantitatively defined, but the request for explanation, as well as its acceptance is facultative.

Croatia intends to bring the provisions of the Public Procurement Act and implementing measures thereto fully in line with the procurement directives with effect from 1 January 2007.

Electronic procurement

Although the conduct of procedures on paper remains mandatory in the absence of adequate provisions, parallel use of electronic means has been widely encouraged. The Official Gazette and the standard content of the notices are available online. In 2005, 90% of the notices were also submitted by electronic means, as compared to 10% in 2002. Moreover in the framework of an ongoing pilot project for central purchase of IT equipment, part of the procurement procedure is supported by an IT system. Electronic auctions are not yet used. Laws already regulate electronic signatures and e-commerce and an interoperability framework is currently being developed under the responsibility of the Central State Administrative Office for e-Croatia.

Croatia intends to develop its electronic procurement capacities gradually by 2006/2007, through the insertion of a legal framework in the Public Procurement Act and the further implementation of the Programme e-Croatia 2007, the HITRO.HR Programme, and the National Information Security Programme in the Republic of Croatia.

Concessions

Concessions in Croatia are currently regulated by the 1992 Concessions Act, which stipulates ten articles of general nature, as well as by nearly 40 sector-specific pieces of legislation. Croatia stresses that these differ as regards their approach, content and precision.

The Concessions Acts does not provide a definition of concessions and does not refer to the different types of concessions (public service concession, public works concession) provided in the procurement directives. The Act envisages concessions notably in connection with the economic exploitation of natural resources or the construction and operation of facilities in the interest of Croatia. Forestry is explicitly excluded from its scope whereas other laws may derogate from the Act. The notion of concessions is not applied uniformly throughout the sector-specific acts and for some of those, concessions are not clearly differentiated from other legal concepts such as licences.

The Concessions Act provides for concession decisions to be adopted by the Croatian Parliament, or by delegation, by the Government. The preparation of the concession decisions falls within the responsibility of the competent ministries, regional or local authorities. Public tender is only compulsory if required by a specific act and there are only broad examples for criteria to be evaluated by the Government such as the bidder's business image, the operational feasibility, the soundness of the proposed technical and financial arrangements and environmental protection issues. Procurement provisions are not sufficient to ensure a competitive award of concessions. In particular the sector-specific acts do not describe the award procedures in detail with the exception of the two specific regulations on

the procedure for granting concessions on respectively the maritime domain, and water and public water domains.

Further to the concession decision, the relevant authority concludes a concession agreement with the economic operator, concession fees forming part of the revenues of the state budget. Concession agreements are recorded in a common concessions register managed by the Ministry of Finance.

Concessions for building are regulated in particular by the Maritime Domain and Seaports Act and its implementing Regulation, the Waters Act and its implementing Regulation, the Act on Inland Waterway Ports, the Nature Protection Act, the Public Roads Act and the Railway Act.

Croatia acknowledges the above shortcomings and started preparing a new Concessions Act in compliance with the *acquis* with a view to its entry into force on 1 January 2007. It would lay down a general framework for the award of concessions, to be supplemented by separate legal acts as regards the sector-specific aspects.

Croatia also envisages a separate Public-Private Partnership Act. It would develop practices regarding both contractual and institutionalised public-private partnerships (PPPs) in a wide range of fields, whereas so far only contractual PPPs were established based on the provisions of the above sector-specific acts. No timetable for adoption is currently determined.

Implementation capacity

At the level of the central procurement organisation, the Public Procurement Office (PPO) is responsible for drafting primary and secondary legislation in the field of public contracts, supervision and control of the implementation of the Public Procurement Act, initiating action in case of criminal offences committed in the course of a procurement procedure, provision of operational tools and opinions to contracting authorities and entities, implementation of training programmes, collection and analysis of relevant data, as well as international cooperation.

The PPO was legally established by a government regulation of 2003 as amended in 2005, effectively took up its functions in January 2004 and moved to own premises in September 2005. It is currently employing 13 civil servants. The Head of the Public Procurement Office is appointed by the Government upon proposal of the Prime Minister. Three departments were created following the 2005 amendments to the regulation: Department for the Supervision of Public Procurement Procedures, Department for the Development and Improvement of the Public Procurement System and the International Relations Department.

Regarding the strengthening of the administrative capacities of the public procurement system as a whole, the Public Procurement Office intends to develop in 2006 a national training concept. It works towards enlarging the content of its website, publishing a public procurement bulletin and an electronic newsletter, continues organising seminars on public procurement, with the aim of increasing the level of public awareness on the public procurement rules.

Croatia recognises the need to strengthen the PPO's capacity. Croatia plans some activities meant to provide the necessary administrative capacity by end 2006. It notably plans to bring the staffing level to 24 in 2006. Projects are underway to develop its work methodologies, to

develop the training of its staff, to train 20 staff to act as trainers, and to provide a number of training and information activities for contracting entities.

Concessions and public-private partnerships fall outside the competence of the Public Procurement Office. In the field of concessions, different authorities are participating in the policy and decision making processes in the different sectors including the Parliament, the Government, individual Ministries as well as relevant regional and local authorities. The preparation of the new Concessions Act is carried out by an inter-ministerial working group led by the Ministry of Finance. Regarding public-private partnerships, the Ministry of Economy, Labour and Entrepreneurship was entrusted with the lead for inter-ministerial preparations of the relevant legislative initiative.

II.c. Remedies

Regarding legislation, The Croatian remedies system includes both administrative and judicial review. Based on the provisions of the Public Procurement Act, the General Administrative Procedures Act and the Act on the State Commission for the Supervision of Public Procurement Procedures, the administrative review is carried out by the State Commission after the review of the objection by the contracting authority or entity concerned.

According to the Public Procurement Act, the persons entitled to request review are those having participated in the procurement procedure as candidate or tenderer, with the exception of the negotiated procedure without prior publication. A review procedure can only be initiated against decisions of contracting authorities and entities regarding the selection or the cancellation of the procedure.

Within three days from the receipt of the written decision or – in the case of the negotiated procedure without prior publication – eight days from the date of publication – the complainant first has to submit an objection to the contracting authority or entity concerned. The submission of an objection automatically suspends the conclusion of the procurement contract. In the event of refusal or absence of reply, the complainant may submit a complaint to the State Commission – an independent, administrative body – within respectively eight or sixteen days. In this context, there is also a provision for automatic suspension, except if – upon request of the contracting authority or entity and in reason of a risk of disproportionate damages – the State Commission approves the continuation of the procedure.

In the context of the review procedure, the State Commission examines the legality of the procurement procedure as a whole and takes a decision in line with the rules provided in the Act on the State Commission. There is no provision for a stand-still period between the notification of the award decision and the conclusion of the contract, but the Public Procurement Act provides that all contracts concluded in violation of the rules stipulated therein or contrary to the decisions of the State Commission are null and void.

The decisions of the State Commission are subject to review by the Administrative Court of the Republic of Croatia based on the Administrative Disputes Act. In the course of the review, the Administrative Court examines the legality of the decision of the State Commission, as well as the legality of the procurement procedure itself, without being bound by the claims of the complainant. This procedure has no suspending effect over contract execution. Requesting compensation for damages is possible via civil law procedures, as regulated by the Civil Procedure Act.

The above described review procedure applies equally to the classical and utilities sectors, without extending, however, to those contracts not covered by the Public Procurement Act such as concessions and public-private partnerships. These are dealt with by the competent ministry in accordance with the rules of the General Administrative Procedures Act. Judicial review is ensured in line with the provisions of the Administrative Disputes Act and the Civil Procedure Act.

Implementing capacity

The State Commission was established in 2003 as an independent administrative body. Its five members - including the President and the Vice-President - are appointed for five years by the Parliament upon proposal of the Government. The State Commission reports to the Parliament, which is also competent for the dismissal of the members. Additional rules relating to its structure, members, decision-making, reporting and financial aspects are regulated by the Act on the State Commission.

The State Commission has a separate budget, which Croatia considers sufficient. It has been located in the Ministry of Finance until March 2006, when it moved to its own premises. For the time being, the State Commission has 16 employees.

In 2004, the State Commission conducted 833 review procedures which is estimated at 8.2% of the total public procurement announcements. 32% is estimated to concern municipalities. A judicial review was sought against 4% of the decisions of the State Commission. The Administrative Court rejected 64% of those, dismissed 8% and accepted 28%. The State Commission maintains a case register available online and undertakes to develop its website.

Croatia acknowledges the need to strengthen the State Commission's implementation capacity. It indicated that the optimal number would be 26. A project is currently ongoing with the objective of strengthening the operational capacity of the State Commission and raising awareness of review procedures in Croatia. In this context, training and seminars are also organised.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Croatia's public procurement system is partially in line with the *acquis* in this chapter. Important efforts are necessary to align the legislative, with particular challenges in the area of concessions, and important changes necessary on all other aspects including remedies. Coherence of any legislative initiative on public-private partnerships with other rules requires attention. There are important concerns as to the effective application of the public procurement rules.

Croatia's objective of bringing legislative alignment in the near future (mostly by end 2006) seems feasible but is highly demanding. Plans to strengthen implementing capacity in 2006 are welcome but should be expanded as regards the period from 2007 onwards and in order to address the main purchasers and the judiciary. The fulfilment of these objectives will in particular require that successive steps be planned and driven by a central procurement organisation that provides more firm and coherent policy guidance, and delivered with higher speed and quality than in past years.

III.a. General principles

In the field of public contracts, Croatia partially complies with the general principles of transparency, free competition and equal treatment. As concerns the principle of non-

discrimination, the Public Procurement Act foresees equal access for all economic operators, irrespective of their residence, registered seat, or the origin of the goods. At the same time, the requirement of the Companies Act and the Trade Act for undertakings to be established in Croatia in order to operate in the country may have an effect of restricting the access of Community undertakings to the Croatian public procurement market. Furthermore the possibility referred to in the Public Procurement Act that separate rules provide for the mandatory use of domestic subcontractors would be in contradiction with the principle of non-discrimination if implemented. There is no evidence that such requirements exist in Croatian law nor that they are applied in practice. Moreover, Croatia has submitted information demonstrating that EU companies can participate in tenders and have been awarded public contracts covered by the Public Procurement Law.
In line with the commitment of Croatia to ensure national treatment for Community companies by 1 February 2008, as required in Article 72 of the Stabilisation and Association Agreement, these issues will be closely monitored by the Commission.

Moreover the current regulation regarding smaller-value procurement will need to be adjusted in order to ensure coherence with the parallel alignment on the directives. This further highlights the necessity for a strategy to coordinate the various steps towards alignment and to provide milestones for their monitoring.

In the area of concessions, the current set of rules, composed of the 1992 Concessions Law and nearly 40 different sector-specific acts with different approach, content and precision, is not in line with the general principles. Far-reaching legislative efforts are needed to provide uniform requirements in line with the general principles, as well as with the specific requirements of the classical directive.

The objective of Croatia to prepare and adopt a new Concessions Act in the course of 2006 could address these problems subject to important conditions (see below further assessment under Award of Public Contracts).

Croatia's international obligations in the field of procurement are limited and do not mirror the EC ones. This does not raise particular difficulties given that the EC exclusive external competence has a wide coverage in this area. Croatia should be cautious in taking on any international obligations (see Chapter 30 – External Relations).

III.b. Award of public contracts

Regarding public contracts, the Croatian Public Procurement Act provides a reasonable level of alignment with the *acquis*. Albeit adopted with some delay, the latest amendments adopted in 2005 have been developed in consultation with the Commission services, and meet their objective of constituting a first step towards full compliance with the procurement directives. Important differences remain in view of the limitation to the use of the restricted procedure and the lack of implementation of the new instruments introduced by the 2004 procurement directives. Moreover, although most provisions of the Public Procurement Act were based on the procurement directives, these are not sufficiently precise to reach alignment. Some detailed provisions of the public procurement directives are not transposed, and several months after the entry into force of the amendments a number of implementing regulations remain overdue. Defence procurement does not raise particular concerns at this stage.

Croatia indicates that it intends to carry out the necessary legislative reforms in the course of 2006 resulting in a new Law with effect from 1 January 2007. The Public Procurement Act constitutes a good basis for further development. However, taking into account the time

pressure, strategic planning of successive steps, early preparations and attention from policy-makers will have to be mobilised to reach good quality legislation, capable of limiting the frequent delays and iterative legislative modifications as in past years. In addition, the increased complexity of the procurement rules and the introduction of new instruments will represent an important reform in the Croatian procurement system to be adequately prepared throughout the public sector and followed up by appropriate implementing rules.

Regarding electronic procurement, despite the importance of the e-Croatia 2007 programme, real progress can only be expected further to the incorporation of rules regulating the use of electronic means in the Public Procurement Act.

In the field of concessions, Croatia is not in line with the classical directive and general principles. The presence of nearly 40 sector-specific pieces of legislation alongside a limited Concessions Act represents a challenge by itself. A major reform is needed to establish a coherent and comprehensive legislative framework in compliance with the general principles and the relevant requirements of the classical directive.

Croatia's target of designing the legislation with a view to its entry into force on 1 January 2007 is noted. In view of the complexity of this task and the ambitious time schedule foreseen by Croatia, early preparation and sustained political determination will have to be mobilised to reach a legislative framework not only compliant in itself, but also coherent with the rules applicable to public contracts, and capable of serving as a basis for a variety of different fields. At the same time, all pieces of specific legislation regulating concessions in the different sectors will also have to be brought in compliance.

As regards *public-private partnerships*, the new legislative initiative envisaged raises important concerns as regards its compatibility with the legislative framework for public contracts and concessions, which is being reformed in parallel. Without adequate coordination of these parallel initiatives, there is a risk of incoherence possibly undermining compliance with the procurement directives.

The implementation capacity needs to be progressively strengthened at all levels. The current staff level of the Public Procurement Office is insufficient in view of the wide range of key tasks it should perform. Furthermore, there appears to be a lack of strong central policy-making capacity able to lead and coordinate the different policy initiatives in the field of public procurement, such as the revision of the Public Procurement Act, the adoption of a new Concessions Act, the adoption of a Public-Private Partnerships Act, the introduction of electronic procurement and the further development of the remedies system. In the field of concessions, there is a particular concern that no adequate coordination is guaranteed between the different authorities involved in the policy and decision-making process in the various sectors. There are important concerns as to the effective application of the public procurement rules, as illustrated by the frequent use of negotiated procedures or direct awards.

Croatia's plans to strengthen staffing and training of the PPO's capacity, as well as to deliver training to main purchasers throughout 2006, are welcome but not commensurate with the challenges ahead. Among other examples there lacks training and awareness-raising plans from 2007 onwards, precisely when a large amount of new legislation would enter into force. In order to provide sufficient capacities for preparing, adopting and implementing the envisaged reforms, detailed and credible plans should be a comprehensive mid-term strategy would be needed and a uniform central policy-making should be provided for guiding its implementation.

III.c. Remedies

The Croatian legislation on review procedures is partially in line with the directives and general EC Treaty principles.

The remedies system based on the administrative review of the State Commission and the judicial review by the Administrative Court seems a solid basis for reaching compliance. However, for achieving this target, important changes are required above all in the scope of the review concerning the persons entitled to request review as well as the attackable acts. Furthermore, in the context of the new Concessions Act, it will need to be ensured that at least works concessions are subject to the same review procedures. Moreover, additional procedural guarantees will have to be introduced such as the stand-still period between the receipt of the notification on the result of the selection procedure and the conclusion of the contract and an adequate timeframe for submitting objections.

Croatia plans to address these issues in the context of the revision of the Public Procurement Act during 2006. This is to be welcomed, yet there seem to be different views on whether a separate act on review procedures is needed. Here also a strategy appears necessary to enable preparations on the basis of clear policy objectives and to provide clear responsibilities for guiding progress.

The implementation capacity should be progressively strengthened, in particular at the State Commission. The fact that the State Commission plans to hire additional staff soon should be welcomed. Attention should be paid to training, awareness raising, especially as from 2007, as well as to the capacity of the administrative courts in terms of training and technical support.